

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
J. NAND,
dba Sanborn & Market Gas

) OTA Case No. 21067924
) CDTFA Case ID 1-739-189
)
)
)

OPINION

Representing the Parties:

For Appellant: J. Nand
For Respondent: Mari Guzman, Tax Counsel III
For Office of Tax Appeals: Casey Green, Tax Counsel III

M. GEARY, Administrative Law Judge: Pursuant to California Code of Regulations, title 18, sections 30103(b)(1) and 35065(e)(2), J. Nand, dba Sanborn & Market Gas (appellant), appeals an April 15, 2021 Decision issued by California Department of Tax and Fee Administration (respondent) denying appellant's appeal of a September 2, 2020 Notice of Decision (NOD). The NOD upheld an October 25, 2019 Warning Notice for a first-offense violation of Business and Professions Code (B&PC) section 22974.

This matter is being decided on the basis of the written record because appellant waived the right to an oral hearing.

ISSUE

Did respondent correctly issue the Warning Notice to appellant for violating of B&PC section 22974?

FACTUAL FINDINGS

1. Appellant, a sole proprietor, owns and operates a market and gas station in Salinas, California. Appellant holds a license for the retail sale of cigarette and tobacco products for this location.
2. Respondent inspected appellant's business location on March 19, 2019, and found appellant to be in violation of B&PC sections 22972 (selling cigarettes or tobacco products without a license) and 22974 (failure to maintain and provide at the business location the last 12 months of cigarette and tobacco products purchase invoices). Respondent issued a verbal warning for these violations.
3. By the time respondent next inspected appellant's business location on April 17, 2019, appellant had been licensed to sell cigarettes and tobacco products at retail. During the inspection, respondent requested that appellant provide the last 12 months of cigarette and tobacco products purchase invoices; however, appellant failed to do so and stated that the invoices were maintained elsewhere. At the conclusion of the inspection, respondent issued appellant a civil citation for violation of B&PC section 22974.
4. On October 25, 2019, as a consequence of the citation, respondent issued a Warning Notice to appellant. The Warning Notice referred to the citation, described the possible penalties for violating the Cigarette and Tobacco Products Licensing Act of 2003 (the Act), informed appellant regarding his appeal rights, and stated that the violation would be entered into his license record if appellant did not successfully appeal the citation.
5. Appellant timely appealed to respondent. In that appeal, appellant did not deny the violation. Rather, appellant argued that he was unaware of the requirement that the invoices be maintained and provided to respondent's inspectors at the business premises on demand, an error that the business had since corrected. On July 29, 2020, respondent held a citation appeal conference; and on September 2, 2020, respondent issued the NOD to appellant, finding that appellant had violated B&PC section 22974 and that the formal warning for this first offense was appropriate. Appellant disagreed and requested an appeals conference with respondent.
6. Respondent held an appeals conference and thereafter issued the April 15, 2021 Decision sustaining respondent's NOD. This timely appeal followed.

DISCUSSION

A retailer must retain purchase invoices that meet the requirements set forth in B&PC section 22978.4 for all cigarettes or tobacco products the retailer purchased for a period of four years. (B&PC, § 22974.) The records must be kept at the retail location for at least one year after the purchase and must be made available upon request during normal business hours for review, inspection, and copying by respondent. (*Ibid.*) Any retailer found in violation of these requirements or any person who fails, refuses, or neglects to retain or make available invoices for inspection and copying shall be subject to penalties pursuant to B&PC section 22981. (*Ibid.*) A first offense for a violation of B&PC section 22974 requires the issuance of a Warning Notice to the licensee or unlicensed person. (Cal. Code Regs., tit. 18, § 4603(a)(1).)

We have had some difficulty discerning the bases of this appeal. Appellant does not deny the violation. In this appeal, appellant initially objected to the tone used to describe the violation, and stated that he had already paid for another violation. The Office of Tax Appeals does not adjudicate disputes regarding the tone of notices issued by respondent, and the evidence does not show that appellant paid a fine for a prior violation of the Act. If appellant had paid a fine for an earlier violation, the consequence of the citation would have been more severe. We will not address these arguments further.¹

We also consider the arguments appellant made during his appeal to respondent. In that appeal, appellant also did not deny the violation. Appellant argued that he should not have received the written warning, stating that he is a minority, first-time business owner with limited education and knowledge; that he was not aware that he was required to keep the invoices at the retail location; that he corrected the violation “right away”; that he supports the state and “several problems” by being a retailer; and that the written warning is severe. We infer appellant makes the same arguments here.

There is no question that appellant violated B&PC section 22974 or that the violation was a continuing one. Respondent issued appellant a verbal warning about the violation on March 19, 2019, and when appellant had not corrected the violation four weeks later, respondent

¹ In a later filing, appellant objects to respondent’s assessment of interest and a penalty in connection with a sales and use tax liability. That matter is not before us, and we also will not address that argument further.

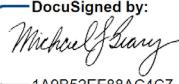
issued the citation that led to the written warning.² Appellant does not allege otherwise. Appellant offers what he apparently views as justifications for the violation. However, none of those circumstances have any bearing on whether respondent correctly issued the Warning Notice, and none warrant further discussion. We find that appellant violated B&PC section 22974, and that the written warning was an appropriate consequence of the violation.

HOLDING

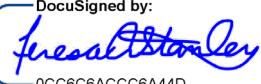
Respondent correctly issued the Warning Notice to appellant for violating B&PC section 22974.

DISPOSITION

We sustain respondent's action.

DocuSigned by:

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Michael F. Geary
Administrative Law Judge

We concur:

DocuSigned by:

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Teresa A. Stanley
Administrative Law Judge

DocuSigned by:

47F45ABE89F34D0
Suzanne B. Brown
Administrative Law Judge

Date Issued: 4/18/2022

² We do not imply that the verbal warning was required or that a licensee must know the conduct constitutes a violation. (See *Appeal of Porreca*, 2018-OTA-095P.)