

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

3	In the Matter of the Appeals of the Second)	
4	Decisions Upholding the License)	
5	Revocations Under the Cigarette and)	
6	Tobacco Products Licensing Act of 2003 of:)	
7	SMOKE RINGS INC.,)	Account Number: LR Q ET 91-245826
8	dba Smoke 4 Less #1)	Case ID: 371854
9	dba Smoke 4 Less #2)	Account Number: LR Q ET 91-245827
	Appellant)	Case ID: 371860
		Lancaster, Los Angeles County

10 Type of Business: Cigarette and tobacco stores
 11 Date of Citations: June 19, 2006

UNRESOLVED ISSUES

13 **Issues:** Whether appellant violated Business and Professions Code section 22980.2,
 14 subdivision (c), by continuing to sell cigarettes and tobacco products at its Smoke 4 Less #1 and
 15 Smoke 4 Less #2 locations during the period the license for each of those locations was suspended, and
 16 if so, whether the penalty for those violations should be revocation of appellant’s Cigarette and
 17 Tobacco Products Retailer’s License for each location. We conclude that appellant violated section
 18 22980.2, subdivision (c), by selling cigarettes at each location during the period of license suspension,
 19 and that revocation of appellant’s licenses should be imposed as the penalty.¹

20 Appellant, a corporation, owned and operated Smoke 4 Less #1 at 2839 W. Avenue L,
 21 Lancaster, California, and Smoke 4 Less #2 at 2026 W. Avenue J, Lancaster, California.² In previous
 22 matters, the Investigations Division (ID) made inspections at both locations on April 15, 2005, and
 23

24 _____
 25 ¹ Since appellant closed out its license for Smoke 4 Less #1 effective December 7, 2007, and for Smoke 4 Less #2 effective
 26 May 31, 2007, there can be no actual license revocations at this time, but if the violations and penalties are sustained, they
 27 will be reflected in the Board’s licensing records.

28 ² Appellant sold Smoke 4 Less #1 to K. Zoeann Hauprich, an unrelated person, who obtained a new license, number LR Q
 ET 91-297747 (start date December 7, 2007), and seller’s permit SR X AR 100-990649 for sales and use taxes, for this
 location. Appellant sold Smoke 4 Less #2 to Sushil Kumar Modi, an unrelated person, who obtained a new license, number
 LR Q ET 91-291781 (start date June 1, 2007), and seller’s permit SR AR 100-912926 for sales and use taxes, for this
 location

1 found and seized packages of unstamped and counterfeit-stamped cigarettes. Appellant was cited for
2 violations of the Cigarette and Tobacco Products Licensing Act of 2003 (Act), and as a result
3 appellant's license for each location was suspended for 30 days, from June 5 through July 4, 2006.
4 The Excise Taxes Division (ETD) mailed appellant a Notice of Suspension for Smoke 4 Less #1 and a
5 Notice of Suspension for Smoke 4 Less #2, each dated May 19, 2006.

6 During the suspension period, an ID investigator made an undercover purchase of a package of
7 Marlboro brand cigarettes from each location on June 15, 2006. On June 19, 2006, a different ID
8 investigator purchased another package of Marlboro brand cigarettes from each location. Later that
9 day, three ID investigators entered Smoke 4 Less #2 and informed appellant's cashier at that location,
10 Mr. George Matanoos Hadad, that Smoke 4 Less #2 was in violation of section 22980.2, subdivision
11 (c), because it was selling cigarettes and tobacco products while its license was suspended. According
12 to ID, Mr. Hadad provided ID with cash register tapes showing that appellant sold cigarettes during the
13 suspension period. ID also performed a cigarette and tobacco products inspection at both Smoke 4
14 Less #1 and Smoke 4 Less #2.

15 Appellant's president, Mr. Rami Darghalli, arrived each location shortly after each respective
16 inspection started. ID informed Mr. Darghalli that both Smoke 4 Less #1 and Smoke 4 Less #2 were
17 in violation of the Notice of Suspension issued for each location because they sold cigarettes to ID's
18 investigators on June 15 and June 19, 2006. Mr. Darghalli replied that he believed the suspension
19 period was not effective for either location until July 4, 2006. When ID asked Mr. Darghalli to
20 produce the Notices of Suspension, he did so, and he confirmed that the notices state that the license of
21 Smoke 4 Less #1 and the license of Smoke 4 Less #2 were suspended from June 5 through July 4,
22 2006. ID then explained to Mr. Darghalli that both locations were in violation of section 22980.2,
23 subdivision (c), and as a consequence ID would seize all of the cigarettes and tobacco products that
24 Smoke 4 Less #1 and Smoke 4 Less #2 had in their possession.

25 ID's inspection of Smoke 4 Less #1 disclosed one carton and 42 packages of cigarettes which
26 were affixed with counterfeit California tax stamps. ID's inspection of Smoke 4 Less #2 disclosed 96
27 cartons and 107 packages of cigarettes affixed with counterfeit California tax stamps. ID states that
28 Mr. Darghalli indicated that the counterfeit-stamped cigarettes were probably left over from the

1 previous inspection made on April 15, 2005. However, ID states that this is unlikely because the
2 counterfeit stamps were “new” style stamps which were brought in to use after the previous inspection,
3 some of the cigarettes affixed with counterfeit stamps appeared to be products that had been brought to
4 market just recently, and the dates of manufacture stamped on some of those cigarettes were
5 inconsistent with appellant’s assertion that they had been in appellant’s inventory for more than a year
6 prior to the seizure. According to ID, Mr. Darghalli provided no further explanation as to the
7 counterfeit-stamped cigarettes.

8 ID seized appellant’s entire inventory of cigarettes and tobacco products at each location. The
9 seized inventory from Smoke 4 Less #1 consisted of 2,305 cartons and 2,326 packages of cigarettes
10 and tobacco products. The seized inventory from Smoke 4 Less #2 consisted of 1,005 cartons and
11 1,792 packages of cigarettes and tobacco products. ID issued appellant Civil Citation number 01779
12 for Smoke 4 Less #1 and Civil Citation number 01778 for Smoke 4 Less #2 for violation of
13 section 22980.2, subdivision (c), because both locations continued making sales of cigarettes or
14 tobacco products during the period their licenses were suspended. In addition, because ID found
15 counterfeit-stamped cigarettes in its inspections of each location, ID issued Notice to Appear (a
16 misdemeanor citation) number 01302 to appellant for Smoke 4 Less #1’s license and Notice to Appear
17 number 01301 to appellant for Smoke 4 Less #2’s license, for violation of Business and Professions
18 Code section 22974.3, subdivision (a)(4), for a second violation of the Act within five years involving
19 a seizure of 20 or more packages of untaxed cigarettes.

20 Based on the Civil Citations, ETD issued appellant a Notice of Violation dated August 18,
21 2006, in which it assessed a revocation of appellant’s license for Smoke 4 Less #1 and a Notice of
22 Violation dated August 11, 2006, in which it assessed a revocation of appellant’s license for Smoke 4
23 Less #2, as the penalties for violation of section 22980.2, subdivision (c), at each location. The notices
24 state that, if appellant did not appeal the notices, or if such an appeal were denied, the violation would
25 be entered into appellant’s license record at the Board for Smoke 4 Less #1 and for Smoke 4 Less # 2,
26 and the indicated penalty would be assessed. Appellant filed a timely Request for Appeals Hearing
27 with ETD for each violation in which Mr. Darghalli asserted that when ID’s investigators purchased
28 cigarettes at the two locations on June 15 and June 19, 2006, appellant believed that the license for

1 each location was active and would not be suspended until July 5, 2006. Mr. Darghalli stated that his
2 office received ETD's Notice of Suspension (mailed May 19, 2006) on May 24, 2006, but by then he
3 was absent to attend to urgent family matters both in and out of the country, due to his mother's
4 passing on May 20, 2006, which absence continued for several weeks thereafter. Mr. Darghalli states
5 that his employees informed him of the Board's suspension notices, but he was unable to personally
6 review them due to his absence. Mr. Darghalli states that he "either heard incorrectly or was so caught
7 up in my personal grief & issues that I misunderstood / miss-recalled whatever I was told" because he
8 was left with the belief that each license suspension period started on July 5, 2006, and as a result of
9 this misunderstanding he "failed to instruct my store managers to shut down on June 5, 2006, but
10 instead said to shut down July 5, 2006."

11 During the telephone conference held by ETD on appellant's appeals, appellant confirmed that
12 it had received the Notices of Suspension, but asserted that appellant was confused as to the
13 information in the notices. Appellant asserted that Mr. Darghalli delegated handling of the notices to
14 the store managers, but they misread the notices and believed that the suspension periods started in
15 July and not June. Prior to the ETD conference, appellant submitted a copy of a notice indicating that
16 Smoke 4 Less #2 would be closed for remodeling "July 5 – August 4." Appellant stated that such
17 notices (the "remodeling notices") were posted in both Smoke 4 Less #1 and Smoke 4 Less #2, and
18 asserted that the time periods indicated on those notices confirm that appellant's managers misread the
19 Board's suspension notices. Mr. Darghalli stated that while he understood that appellant is responsible
20 for its managers' actions, due to his mother's passing he was not fully focused on business matters at
21 the critical times, in particular when the Notices of Suspension arrived and when the suspensions were
22 in effect. He also stated that he never received or reviewed the Notices of Suspension himself, and he
23 assumed that the managers provided him with the correct suspension periods. In response, ID
24 contended that appellant sold cigarettes at both locations while its license for those locations were
25 suspended, and appellant's confusion as to the correct suspension period does not excuse that violation.

26 During the telephone conference we conducted, Mr. Darghalli stated that appellant did not
27 intend to sell cigarettes or tobacco products while its licenses were suspended, and appellant would not
28 have risked its inventory of \$150,000 to \$170,000 of cigarettes and tobacco products (approx. \$75,000

1 to \$85,000 at each location), or risk losing \$200,000 to \$250,000 in annual sales, by disregarding a
2 suspension. Also, appellant asserted that if a violation is found, then in these circumstances a 30-day
3 license suspension is a more appropriate penalty than a license revocation. ID contends that ETD's
4 Citation Hearing Recommendation should be upheld because appellant violated the Act when it sold
5 cigarettes during the period of suspension for licenses at each location, and that appellant's alleged
6 confusion as to the correct suspension period does not excuse that violation.

7 We asked appellant to provide its records relating to the remodeling notices, and statements or
8 other evidence indicating how its employees became confused as to the suspension period. We also
9 asked for information as to how the misdemeanor citations were resolved. In response, appellant
10 provided the Declaration of Barbara Newsome dated February 26, 2008, made under penalty of
11 perjury, in which she states that Mr. Darghalli travelled to Syria shortly after his mother passed away
12 on May 20, 2006, to attend to that matter, and he left Ms. Newsome to manage his business operations,
13 including Smoke 4 Less #1 and Smoke 4 Less #2. She further states that she received the Board's
14 Notices of Suspension dated May 19, 2006, indicating that the licenses for both locations would be
15 suspended for the period from June 5 through July 4, 2006, but as a result of the combined effects of
16 the stress she experienced due to Mr. Darghalli's departure, and her grief over the loss of his mother,
17 she misread the notices and believed that the suspensions ran from July 5 through August 4, 2006.
18 Ms. Newsome further states that she asked someone who previously performed work for
19 Mr. Darghalli, and who was experienced in preparing flyers on a computer, to prepare the remodeling
20 notices which "were posted, and on display, when the searches were conducted on June 19, 2006."
21 Ms. Newsome states that after Mr. Darghalli returned from Syria, he had many business matters to
22 attend to and he accepted her mistaken representation that Smoke 4 Less #1 and Smoke 4 Less #2
23 should close for the period July 5 through August 4, 2006, due to the license suspensions.

24 Appellant also provided copies of court records indicating that in the misdemeanor actions
25 resulting from the Notices to Appear issued to Smoke 4 Less #1 and Smoke 4 Less #2, appellant was
26 convicted of violating section 22974.3, subdivision (a)(4), and as a result appellant was sentenced to
27 probation, and in addition paid fines, assessments, fees and restitution, totaling \$2,635, to the court.
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1 At the conclusion of our telephone conference, we asked ID to inquire as to whether its
2 investigators who were at appellant's locations on June 19, 2006, recalled seeing remodeling notices
3 posted in the stores. In accordance with our requests, ID provided pictures that it took at Smoke 4 Less
4 #1 and Smoke 4 Less #2 on June 19, 2006, none of which appear to show that remodeling notices were
5 posted in either store at that time, and ID stated that its investigators did not recall seeing such
6 remodeling notices posted in either location, on June 19, 2006.

7 Business and Professions Code section 22980.3, subdivision (c), provides that, "Continued
8 sales after the notification of suspension shall constitute a violation of the licensing provisions of this
9 division and shall result in the revocation of a license." Accordingly, since appellant violated section
10 22980.2, subdivision (c), by continuing to sell cigarettes and tobacco products at each location after the
11 license for those locations were suspended, the law mandates revocation of the license, and a different
12 penalty, such as a monetary fine or even a suspension, cannot be substituted. (As noted above, since
13 appellant has closed out both licenses, there can be no actual license revocation at this time, but if the
14 Board upholds the revocations, both the violation of the Act and the penalty of revocation will be
15 reflected in the Board's licensing records for each license.)

16 **OTHER DEVELOPMENTS**

17 None.

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20 Summary prepared by Cindy H. Chiu, Tax Counsel