



Request for City Council Committee Action from the Department of Regulatory Services License Division

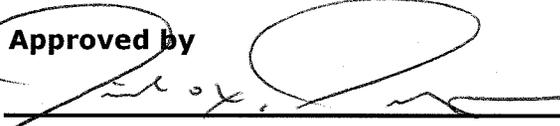
Date November 19, 2008
To Public Safety and Regulatory Services Chair Don Samuels
Subject Revocation of licenses held by McHie-Eddins Alliance of Trust and Rubylicious, Inc., 27 S. 7th St. Minneapolis, 55402.

Recommendation

The Business License Division recommends that the Confectionery and Tobacco Dealer's licenses for McHie-Eddins Alliance of Trust, dba Arcade Convenience, 27 S. 7th St., Minneapolis, 55402; the Restaurant license for Rubylicious Inc., d/b/a Rubylicious Caribbean Café, 27 S. 7th St; and the Sidewalk Food Cart Vendor's license for Rubylicious Inc., d/b/a /Rubylicious, 27 S. 7th St., be revoked for failure to pay administrative fines in the amount of \$1350 for selling tobacco products to minors at Arcade Convenience.

Prepared or Submitted by Leanne Selander, Inspector, Licenses and Consumer Services.
Ricardo Cervantes, Deputy Director, Licenses and Consumer Services.

Approved by



Ricardo Cervantes, Deputy Director of Licenses



Burt Osborne, Director of Licenses



Rocco Forte, Assistant City Coordinator

Policy Review Group (PRG) Not Applicable X

Presenters in Committee (Ricardo Cervantes, Deputy Director)

Financial Impact X No financial impact -or- Action is within current department budget

Background/Supporting Information Attached Evidence Packet

ALLEGED ORDINANCE VIOLATION REPORT

Defendant's Name: Ruby Billingsley, President

Business Name: McHie-Eddins Alliance of Trust

DBA: Arcade Convenience

Business Address: 27 S 7th St., Minneapolis, 55402

Violation Address: 27 S 7th St., Minneapolis, 55402

Type of Licenses: Tobacco Dealer L022-50693
Confectionery L153-50230
(The licensee also holds Minneapolis Restaurant (L159-50599) and Sidewalk Food Cart Vendor's (L012-50006) licenses under the name Rubyliscious, Inc., 27 S. 7th St.)

Chapter & Violation: MCO 259.15. Payment of taxes prerequisite to issuance, renewal of license. No license shall be granted, maintained, or renewed, for operation on any premises, on which taxes, assessments or other financial claims of the city or of the state are due, delinquent or unpaid.

Chapter & Violation: MCO 259.250. Business license management responsibilities. The following minimum standards and conditions shall be met in order to hold a license, provisional license or permit under Titles 10, 13 and 14 of this Code. Failure to comply with any of these standards and conditions shall be adequate grounds for the denial, refusal to renew, revocation or suspension of said license or permit. (2) It shall be the responsibility of the licensee to maintain and operate the business in compliance with all applicable laws and ordinances, including the zoning, fire, environmental health, environmental management, license, food, liquor, housing and building codes.

Total Fines and Fees: \$1350

Description: Ruby Billingsley, President of McHie-Eddins Alliance of Trust, dba Arcade Convenience, 27 S 7th St., was first granted confectionery and tobacco dealer's licenses on July 22, 2006. In addition to these licenses, Ms. Billingsley currently holds a restaurant license and a sidewalk food cart vendor's license, both first granted in 2005.

On June 27, 2007, License Inspector Leanne Selander conducted a yearly, state-mandated, youth tobacco compliance check at Arcade Convenience. Per standard operating procedures, an underage female checker was sent into the store with a \$5 bill to request a pack of cigarettes. The checker had previously received training with instructions to furnish her valid picture ID and correct age if asked, and to never lie or use deception to purchase tobacco. The checker, who was 16 years, 5 months at the time, was equipped with a tape recorder and under direct supervision of the inspector during the check. After a short time, she exited the store with a pack of cigarettes and stated a female clerk had sold to her.

The inspector entered the store, identified the clerk, and presented her with a written Violation Report which described the offense and the presumptive penalty for a first violation. The owner was not present at the time, but was called to the scene. After arriving, the inspector explained what had occurred and advised the owner that she had the option of paying the fine (\$200 fine for a first-time failure, plus a \$50 clerk fine) or appealing the citation. The owner was also advised that if she chose to appeal, Licensing would request a copy of the video of the sale. (MCO requires tobacco dealers and confectionery stores maintain an operational surveillance system, and to keep on hand the last 30 days of taped surveillance; and, that failure to do so, or failure to provide a copy of the tape when requested, is a violation of ordinance.)

Arcade Convenience neither paid nor appealed the \$250 in fines. Per standard operating Licensing procedures, the fine was applied to the business's 2008 Tobacco Dealer's license renewal fee statement.

On November 9, 2007, License Inspector Phil Schliesman conducted a state-mandated follow-up tobacco compliance check at Arcade Convenience. The male tobacco checker was 15 years, 8 months at the time of the check, and, like all checkers, had been provided with training on how to lawfully conduct himself. Under direct supervision, the tape-recorded checker was sent inside the store, where he was sold a pack of cigarettes. The inspector then entered the store, identified the clerk, who happened to be the owner's son, explained the violation to him, and presented him with a written Violation Report. The report described the offense, the presumptive penalty for a second violation (a \$400 store fine and a \$50 clerk fine), and appeal information.

Arcade Convenience also did not pay or appeal these fines, and, like the earlier \$250 unpaid fines, these \$450 fines were applied to the business's 2008 license renewal statement. When Arcade Convenience renewed their 2008 tobacco dealer's

license, the \$700 in added tobacco compliance fines was deducted from the renewal fees and not paid.

On June 27, 2008, License Inspector Mohamed Ismail sent the licensee a Non Payment of Fees letter requesting the additional \$700. The letter stated that if the fees were not paid by July 11, 2008, revocation of her business license could result. The licensee did not respond.

On June 24, 2008, License Inspector Craig Eliason conducted a state-mandated follow-up tobacco compliance check at Arcade Convenience with the same youth who did the November 9, 2007, check. He was now 16 years and 6 months. The same clerk from the first violation waited on him and sold him cigarettes. The inspector entered the store and presented a copy of the Violation Report to the clerk, explained the violation, and, per newly instituted standard operating procedures, followed up by issuing the citations via the mail. Both the violation report and citation notices explained the presumptive penalty for a 3rd failure (\$600 store fine, \$50 clerk fine, and a 30-day tobacco sales suspension), along with payment and appeal procedures. These fines were also not paid or appealed.

The licensee was ordered to appear before the Department at a License Settlement Conference on September 29, 2008, to consider corrective action for failure to pay fines and fees. Appearing on behalf of the business was the licensee, Ruby Billingsley. Appearing on behalf of the City were Deputy Director Ricardo Cervantes, Licensing Manager Grant Wilson, and the three license inspectors who conducted the compliance checks.

At the hearing Ms. Billingsley did not refute that the sales had occurred. She stated that the reason the fines were not appealed or paid was, primarily, because she believed the tobacco compliance checks violated federal laws of entrapment, and, secondly, because she believed she received misleading information from an inspector regarding complying with the ordinance governing the store's surveillance system. However, Ms. Billingsley stated that she did comply with a portion of the penalty by self-imposing the 30-day tobacco sales suspension. At the conclusion of the hearing, Ms. Billingsley was provided the opportunity to pay her outstanding fines. She declined. Therefore, per MCO 259.15 and 259.250, the Division of Licenses is requesting that all current Minneapolis licenses held by the licensee be revoked for failure to pay fines.

Calculation of fees owed:

2007 tobacco fines:	\$ 250
	\$ 450
2008 tobacco fines:	<u>\$ 650</u>
Total:	\$1350

Submitted by L. Selander, License Inspector