

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
SONNY WHOLESALERS, INC.	:	DETERMINATION
	:	DTA NO. 821669
for Redetermination of a Proposed Refusal to	:	
License as a Wholesale Dealer of Cigarettes and	:	
as a Wholesale Dealer of Tobacco Products under	:	
Article 20 of the Tax Law.	:	

Petitioner, Sonny Wholesales, Inc., 146 North Avenue, New Rochelle, New York 10801, filed a petition for redetermination of a proposed refusal to license as a wholesale dealer of cigarettes and as a wholesale dealer of tobacco products under Article 20 of the Tax Law.

An expedited hearing was held before Dennis M. Galliher, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York on May 8, 2007 at 11:30 A.M., with all briefs to be submitted by May 18, 2007. Petitioner appeared by Ashok Kumar. The Division of Taxation appeared by Daniel Smirlock, Esq. (Herbert M. Friedman, Jr., Esq., of counsel).

ISSUE

Whether the Division of Taxation's proposed refusal to license petitioner, Sonny Wholesales, Inc., as a wholesale dealer of cigarettes and as a wholesale dealer of tobacco products was proper and should be sustained.

FINDINGS OF FACT

1. Petitioner, Sonny Wholesales, Inc. ("Sonny"), filed with the Division of Taxation ("Division") a Form CG-100-W (Application for a License as a Wholesale Cigarette Dealer

Other Than Those Who Only Operate Vending Machines), dated February 26, 2002 and signed by one Sanjay K. Singla, under the title president, seeking a license as a wholesale dealer of cigarettes. This application lists Sanjay K. Singla as the sole shareholder and director of Sonny and, by an attached letter dated May 10, 2002, specifies that the application is for a wholesale license only and not for a wholesale and retail license. In the section of the application requiring disclosure of all officers of the corporation, Sanjay K. Singla is listed as the president of Sonny. One Ashok Kumar is also listed in this section of the application, although no officer title is disclosed for him. The Division issued to Sonny a license as a wholesale dealer of cigarettes dated July 16, 2002.

2. Petitioner filed with the Division a Form MT-202 (Application for a License as a Wholesale Dealer of Tobacco Products or an Appointment as a Distributor of Tobacco Products), dated December 19, 2003 and signed by Sanjay K. Singla, under the title president, seeking a license as a wholesale dealer of tobacco products. This application lists Sanjay K. Singla as the sole shareholder of Sonny, and he is listed as the president of Sonny. Included among the attachments to the application is a photocopy of the New York State driver's license of Ashok Kumar, together with a handwritten note stating that he is an employee manager responsible for the conduct of the day-to-day business affairs of Sonny. This application was filed in response to an arrest and charge that Ashok Kumar was selling cigars (i.e., tobacco products) without the proper license therefor. The charge was adjourned by the City Court of New Rochelle, New York in contemplation of dismissal, apparently premised upon the filing of an application for such a license. The Division, in due course, issued a license to Sonny as a wholesale dealer in tobacco products.

3. A document pertaining to Sonny and titled "Corporate Minutes" reflects, in relevant part and consistent with the foregoing filings, that as of August 2002, Sanjay Singla was the president and sole owner of Sonny, and that Ashok Kumar was Sonny's manager responsible for the day-to-day operations of the business. This document, which is undated and provides a summary of events and actions spanning the period August 2002 through September 2006, also indicates that Monica Singla, Prem Singla and Mohit Singla constitute Sonny's "governing board." This document goes on to provide that as of December 2004, Monica Singla had resigned in order to go to school, and that Prem Singla had been named co-president. The document also recites that in March 2006, the business was "raided" as part of an alleged cigar smuggling ring, merchandise was confiscated, and that this incident was covered by a story in the New York Post newspaper, including a photograph of Ashok Kumar who was charged with evasion of cigarette tax. Mr. Kumar assured the board of directors that he would fight the charge resulting from the raid. Finally, the document provides that, as of March 2006, Sanjay Singla believed he was being harassed by the FBI and other agencies as the result of the foregoing raid, tax evasion charges and attendant publicity, that he wanted to opt out of the business, but that he would remain the owner until a suitable replacement could be found. The document is signed by Sanjay Singla, Monica Singla, Prem Singla and Mohit Singla. No corporate title or officer status is specified for any of these individuals with regard to the capacity in which they affixed their signatures.

4. On August 3, 2006, Sonny submitted Form DTF-95 (Business Tax Account Update) to the Division, dated July 31, 2006 and signed by Prem Singla. This form lists Ms. Singla as holding the title of president of Sonny and having a 94 percent ownership interest in the corporation, and lists Ashok Kumar as holding the title of vice-president of Sonny and having a

6 percent ownership interest in the corporation. This form specifies that the change in the ownership of Sonny was effective as of January 1, 2006.

5. On August 7, 2006, Sonny submitted a letter to the Division, dated August 5, 2006 and signed by Sanjay Singla. This letter provides that Sanjay Singla would remain the owner of the corporation until a successor in the family could be found and a new business license secured, and that Prem Singla would function as president of the corporation.

6. By a letter to Sonny dated September 19, 2006, the Division advised that Sonny's licenses had been cancelled by operation of law effective as of January 1, 2006, based upon the transfer of 94 percent of the shares of Sonny to Prem Singla, which transfer had not been reported to the Division until Form DTF-95 was filed on August 3, 2006. The letter advised that because Sonny no longer possessed valid licenses, it was to immediately cease conducting any activities in the sale of cigarettes or tobacco products in any capacity, it was to physically surrender its licenses, and that new application forms for new licenses meeting all statutory licensing requirements under Tax Law Article 20 and Section 480 must be filed by the new owner of the corporation before Sonny could resume operations.¹

7. No penalties were imposed by the Division against Sonny based on the period during which it operated its business subsequent to the cancellation of its licenses. Division representatives advised Sonny, by telephone, to submit new applications for licenses, and indicated that Sonny could receive new licenses notwithstanding the cancellation, assuming that the information on the new applications was clear, complete, accurate, consistent and supported.

¹ Given the language in Sanjay Singla's August 5, 2006 letter referring to securing a new business license, it is presumed that Sonny may have been advised that the September 19, 2006 letter would be forthcoming (*compare* Findings of Fact "5" and "6").

8. Sonny filed a second Form DTF-95, signed by Prem Singla under the title president and dated September 22, 2006. This form reflects Prem Singla as owning 100 percent of Sonny with Sanjay Singla having zero ownership interest in the corporation. On the same September 22, 2006 date, Sonny filed Forms CG-100-W and MT-202 seeking licenses as a wholesaler of cigarettes and of tobacco products. Each of these forms lists Prem Singla as owning 100 percent of Sonny and holding the title of president of the corporation. Form MT-202 also acknowledges the cancellation of the prior licenses based on the change of ownership of the corporation (without notifying the Division thereof prior to the change). The corporate minutes, referenced above (*see*, Finding of Fact “3”), note the receipt of the September 19, 2006 cancellation letter from the Division, and state that Sanjay Singla agreed to transfer his shares to Prem Singla, that Prem Singla was appointed the owner and president of the corporation, and that the new applications for licenses were filed.

9. By a letter dated October 12, 2006, the Division acknowledged receipt of Sonny’s September 22, 2006 applications for licenses described above and provided with respect thereto the following:

Please be advised that the submission of an application does not permit you to conduct business. You may conduct business only if and when your application is approved and you are duly licensed. **Conducting any unauthorized business in this capacity is a violation of the tax law and may result in the denial of your application and may subject you to civil and/or criminal penalties.**” (Emphasis as in original.)

10. On October 16, 2006, the charge of evasion of cigarette tax leveled against Ashok Kumar was dismissed by the City Court of New Rochelle, New York.

11. Sonny filed an amended Form CG-100-W, dated October 25, 2006. This form, again signed by Prem Singla as president and 100 percent owner of the corporation, differs from the

September 22, 2006 filing in that Ashok Kumar is listed as manager of the corporation's business.

12. By a letter dated January 17, 2007, the Division proposed denial of Sonny's applications (Forms CG-100-W and MT-202) for licenses as a wholesaler of cigarettes and of tobacco products. The two specified grounds for the proposed denial were that Sonny had continued to operate its business after its licenses had been cancelled by operation of law (*see*, Finding of Fact "6") effective January 1, 2006 (Tax Law § 480[1], [2][d]), and that Sonny had provided ongoing information as to its ownership structure which was inconsistent and at odds with or contradicted by information set forth on its tax returns and reports thus constituting failure to fully disclose required information for licensing purposes (20 NYCRR 72.1[b][1]). The Division's letter also references an interview, conducted on December 13, 2006, at which additional information furnished with respect to the ownership of Sonny was "completely different from and contradictory [*sic*] of that previously disclosed in any documents previously provided to [the Division]."

13. The record includes the New York State corporation franchise tax reports (Form CT-3 and Form CT-4) and MTA surcharge returns (Form CT-3M/4M), and Federal corporation income tax returns (Form 1120) as filed by Sonny for the years 2002 through 2005. These reports and returns reflect the following information regarding Sonny:

- 2002: Form CT-4 and Form CT-3M/4M are signed by Prem Singla under the title president. Form 1120 is unsigned but reflects the typewritten name Monica Singla (Prem Singla's daughter) under the title president.
- 2003: Form CT-4 and Form CT-3M/4M are signed by Monica Singla under the title president. Form 1120 is unsigned but reflects the typewritten name Monica Singla under the title president. A Request for Six-Month Extension to File (Form CT-5) is signed by Prem Singla under the title president.

– 2004: Form CT-4 and Form CT-3M/4M are signed by Monica Singla under the title president. Form 1120 is unsigned but reflects the typewritten name Monica Singla under the title president.

– 2005: Form CT-3, Form CT-3M/4M and Form 1120 are each signed by Prem Singla under the title president.

14. Schedule K (Other Information) to Form 1120 provides, *inter alia*, a “yes” or “no” checkbox to answer the following question set forth at line “5” thereof:

[a]t the end of the tax year, did any individual, partnership, corporation, estate or trust own, directly or indirectly, 50% or more of the corporation’s voting stock?

For each of the years 2002 through 2004, the “no” box was checked on Schedule K in response to this question. In contrast, for the year 2005, the “yes” box was checked and an accompanying statement provided that 100 percent of Sonny’s voting stock was owned by Monica Singla.

15. Schedule E (Compensation of Officers) to Form 1120 includes space to provide the names of the officers of a corporation, as well as other information including the percentage of corporation stock owned by the corporation’s officers. Schedule E is to be completed only if the corporation’s total receipts are \$500,000.00 or more. For the year 2002, Sonny’s total receipts were less than \$500,000.00, and for each of the years thereafter from 2003 through 2005, Sonny’s total receipts exceeded \$500,000.00. For each of the years 2002 through 2005, Schedule E to Form 1120 as filed by Sonny was left blank.

16. The record includes an affidavit made by one Emanuel Urzi, the director of the Division’s Cigarette Tax Bureau. Mr. Urzi conducted an interview of Prem Singla on December 13, 2006 with regard to Sonny’s pending applications. Mr. Urzi asked Ms. Singla to identify who owned Sonny at that point in time, in response to which he was advised that Prem Singla was a “50% owner” and that “her daughter” (presumably Monica Singla) was a “50% owner.”

Noting that this ownership information differed from that set forth on the pending applications for licenses, Mr. Urzi concluded the interview, suggested that Ms. Singla consider obtaining representation by counsel, and offered to continue the interview with counsel present. No request to continue the interview was made thereafter to Mr. Urzi.

17. Sonny presented the testimony of Sudarshan Singla and of its manager Ashok Kumar. Sudarshan Singla is Prem Singla's husband and is Monica Singla's and Mohit Singla's father, and also is Ashok Kumar's brother. His older brother, who apparently has no involvement in Sonny's business, is Sanjay Singla's father. Sonny was described by Sudarshan Singla as a family business organized to be operated entirely by Ashok Kumar. Sonny supplies cigarettes, cigars, candy and other such items to small stores. The initial capital to commence the business was provided by Prem Singla, a practicing physician. The corporation was organized by Sanjay Singla and the corporation's stock was, at least initially, entirely owned by Sanjay Singla. The record is not entirely clear as to precisely when or why the shares of stock may have been transferred from Sanjay Singla or reallocated to Prem Singla (allegedly initially at 94%) and Ashok Kumar (allegedly at 6%), and then thereafter to Prem Singla (allegedly at 100%). However, Sudarshan Singla noted that allowing Mr. Kumar to own some shares of the corporation could enable him to share in the profits thereof. Further, Sudarshan Singla stated that the alleged change of ownership to 100% in Prem Singla occurred at a point in time when the charge of evasion of taxes leveled against Mr. Kumar remained outstanding, and allegedly was causing concern to Sanjay Singla in the context of his own employment, thus prompting him to seek someone to replace him as Sonny's only shareholder. Finally, as to the various signatures and indications of ownership set forth on Sonny's various tax reports and returns, Sudarshan Singla stated, essentially, that it was not important within the family who would sign

such returns since the benefit of the business would inure to the entire family. He also stated that since the shares of stock “had no value” and were not publicly traded, there was no risk of loss to the public.

18. Sonny also submitted a one-page document reflecting a search of the New York State Department of State Division of Corporations website. This document, dated March 20, 2007 and entitled “Entity Information,” provides no information regarding stock ownership interests in Sonny, but does reflect that for the selected entity name Sonny Wholesales, Inc., Prem Singla is the “Chairman or Chief Executive Officer” and “Principal Executive Office.”

CONCLUSIONS OF LAW

A. The first basis upon which the Division has proposed denial of Sonny’s application for licenses as a wholesale dealer of cigarettes and as a wholesale dealer of tobacco products is grounded upon Tax Law § 480(2)(d), which provides as follows:

Refusal to License. The commissioner of taxation and finance may refuse to license an applicant where such applicant files an application under this section and in considering such application the commissioner ascertains that:

* * *

(d) The license of such applicant has been cancelled or suspended pursuant to this section within the preceding five years

B. Pursuant to Tax Law § 480(1)(i) and 20 NYCRR 72.1, a wholesale dealer’s license is not assignable, and such a license will be deemed to have been assigned upon the transfer of more than 25 percent of the shares of stock of a wholesale dealer having 4 or fewer shareholders. Such an assignment is an invalidating action and results in an immediate cancellation of the license. Here, it is undisputed that Sonny’s licenses were cancelled by operation of law upon the basis of the report that 100 percent of the ownership of Sonny had been transferred from Sanjay

Singla to Prem Singla and Ashok Kumar, effective January 1, 2006, while the Division had not been notified of this transfer as required until August 3, 2006 (*see*, Finding of Fact “4”), thus constituting a nonpermitted assignment of the licenses with resulting cancellation thereof (*see*, Tax Law § 480[1][i]; 20 NYCRR 72.1[a][2]; [c][1],[2]; [d][1]).

C. It was fully appropriate, based upon Tax Law § 480(2)(d) and the relevant regulations, for the Division to propose denial of Sonny’s applications for licenses solely upon the foregoing basis that the licenses had been cancelled within the preceding five years as described. However, it is also true that such license application denial is not a mandated result, inasmuch as the statutory language employs the permissive “*may* refuse to license” rather than “*will*” or “*must*” refuse or other such mandatory denial verbiage. Hence, if compelling or appropriate circumstances exist and are furnished to explain the cancellation, the Division “*may*” conclude that denial of an application for a license is not warranted. Thus, for instance, pure oversight in failing to notify the Division of changes in the ownership of a licensee, without other considerations might, in an appropriate case, allow for corrective action and granting of a license application, notwithstanding the cancellation of a prior license by operation of law based on a nonpermitted license assignment within the preceding five years. The Division acknowledged as much when it advised Sonny to submit new applications and intimated that new licenses could be issued assuming all of the required information was clear, complete, accurate, consistent and supported (*see*, Finding of Fact “7”), particularly the information with respect to Sonny’s ownership.

D. The reasons for the asserted change in Sonny’s ownership are not entirely clear from the record. There is some indication that the same was undertaken as a means to allow Ashok Kumar, as the person who in fact managed and operated Sonny’s daily business activities, to

have some share in the anticipated profits of Sonny in light of what, at the time, appears to have been an ongoing progression from a startup business toward profitability. However, there is also the fact that the charge of tax evasion leveled against Mr. Kumar was pending at the same time as the changes in Sonny's ownership occurred and clearly may have been a factor with respect thereto. Ultimately, resolution of the question of whether the proposed denial of Sonny's applications should be sustained can be had by a review of the balance of events in the context of the Division's second basis for the proposed denial, to wit, the requirement of full disclosure of all information by the applicant for a license, as required by 20 NYCRR 72.1(b)(1), (3).

E. Review of the record leaves clear the conclusion that the Division's refusal to grant licenses to Sonny, as requested, was appropriate and justified. In fact, even as of the time of the hearing in this matter, the actual state of Sonny's ownership is not entirely clear. The facts do make clear that Sonny's stock was, at the time the licenses were initially granted, held entirely by Sanjay Singla. Thereafter, there appear to have been transfers of the majority of the shares (or "ownership interest") to Prem Singla (94%) with a small percentage of shares (or "ownership interest") transferred to Ashok Kumar (6%). Thereafter, it appears that there may have been a subsequent transfer of Mr. Kumar's shares or ownership interest back to Prem Singla, such that 100 percent of the shares were owned by Prem Singla. In fact, it is unclear whether or not the shares themselves were ever transferred, for the term "ownership" is used without any specific indication that the shares themselves were transferred of record or otherwise. This might be explained as mere inartful use of nomenclature. However, the same must be contrasted with the statement that the change in ownership whereby Prem Singla became the majority owner was "effective January 1, 2006," while other statements were made as late as August 2006 whereby it was set forth that Sanjay Singla would *remain* the *owner* of the business until a suitable

replacement could be found (*see*, Findings of Fact “3” and “5”). Further confusing the issue is the manner in which Sonny’s tax returns were filed. On some, Monica Singla is listed as president, while on others Prem Singla is listed as president. Sanjay Singla, the initial owner of 100 percent of Sonny’s stock is not listed on any of the returns, and in fact none of the returns provide any information as to the actual ownership or stock holdings of Sonny except for Schedule K to Form 1040 as filed for the year 2005. In particular, Schedule E and Schedule K to Form 1040, wherein shareholder and officer information is to be set forth, are left blank for all of the years, save only for the noted exception of the year 2005, in which Monica Singla (as opposed to Prem Singla or Sanjay Singla) is listed as owning 100 percent of Sonny’s stock. These returns only serve to add confusion to the actual state of Sonny’s ownership and cannot in any manner be said to represent full disclosure as required. Finally, according to statements given in an interview with Prem Singla conducted by the Division in December 2006, Sonny was allegedly half owned by Prem Singla and half owned by Monica Singla. Sonny would excuse this confusion and inconsistent information upon the premise that Sonny’s business was a family business, that many family members were involved for the overall good of the enterprise, and that the particulars of ownership or signatures on tax filings were not of high importance. From Sonny’s perspective, this may be true and accurate. However, from the Division’s perspective this manner of operation and its accompanying lack of clarity is unacceptable, for the same leaves the Division in the untenable position of being asked to issue licenses without having the relevant, clear and necessary information from which to ascertain who in particular will be responsible to ensure that Sonny complies with all of the responsibilities attendant to being licensed as a wholesale dealer of cigarettes and a wholesale dealer of tobacco products. At this juncture, the record contains no testimony (or even an affidavit) from the initial owner, Sanjay

Singla, or the alleged current owner, Prem Singla, concerning the current status of the ownership of Sonny's stock. The subject applications, filed in September 2006 and October 2006, are signed by Prem Singla and list her as owning 100 percent of Sonny's stock. However, this assertion of ownership is undermined by Prem Singla's statement in the subsequent December 2006 interview that she and her daughter Monica Singla each was a 50 percent owner of Sonny (*see*, Finding of Fact "16"). Accordingly, the Division's proposal to refuse granting the license applications filed by Sonny was, in light of the facts and circumstances, reasonable and must be sustained.²

F. The petition of Sonny Wholesales, Inc. Is hereby denied and the Division's proposed denial of Sonny's applications for licenses as a wholesale dealer of cigarettes and as a wholesale dealer of tobacco products, dated January 17, 1007, is sustained.

DATED: Troy, New York
May 25, 2007

/s/ Dennis M. Galliher
ADMINISTRATIVE LAW JUDGE

² On May 21, 2007, Petitioner submitted a "Rebuttal" to the Division's brief. Since the briefing schedule in the matter required all briefs to be submitted by May 18, 2007, and since no provision was made for the submission of responding briefs, petitioner's submission of a rebuttal has not been considered in the rendering of this determination.