

MINUTES

WEIGHTS AND MEASURES COMMISSION OF LOUISIANA HEARING

March 20, 2013

I. SWEARING-IN NEWLY APPOINTED COMMISSION MEMBERS

LDAF Counsel Tabitha Gray swore in four new commission members
Justin Alford, John O'Neill, Brad Terral, and Marcy LeBlanc

II. CALL TO ORDER

Mr. Thompson called the meeting to order at 9:00 a.m.

III. ROLL CALL AND DECLARATION OF QUORUM

COMMISSION MEMBERS PRESENT

Mike Miller
John O'Neill
Dave George
Larry Terrell
Nolan Percy
Frank LoPinto
Marcy LeBlanc Sr
Justin Alford
Brad Terral
Joseph Al Moreaux

MEMBERS ABSENT

none

STAFF MEMBERS PRESENT

Assistant Commissioner, Benjy Rayburn
Director, Todd Thompson
Assistant Director, Danny McCartney
Executive Counsel, Tabitha Gray
Program Manager, Milton Hunter
Program Manager, Jarrad Poirrier

Secretary, Lisa Sonnier
Secretary, Nicole Robino
Inspector, Teri LeMaire
District Supervisor, Paul Floyd
LDAF Security Robert Rarick

VISITORS PRESENT

Rav Khinda and Nick Khinda with Save & Go #4

DECLARATION OF QUORUM

Quorum declared ten members present.

IV. PUBLIC COMMENT

None

V. ELECTION OF CHAIRMAN AND VICE CHAIRMAN

Dave George nominated Mike Miller as Chairman for Weights and Measure Commission, motion was second by Nolan Percy all members were in favor.

Mike Miller nominated John O'Neill as Vice Chairman for Weights and Measures Commission, motion was second by Frank LoPinto all members were in favor.

VI. NEW BUSINESS

Mr. Thompson requested to move the new business from number eight (VIII) to number six (VI) on the agenda.

Motion made by Brad Terral to move new business up, second by Frank LoPinto. All members were in favor.

Mr. Thompson explained that Weights and Measures division is a consumer protection group and the Commission members are an advisory to Commissioner Mike Strain, then Mr. Thompson explained the functions the Commission plays when Weights and Measures have hearings. Mr. Thompson also gave a detailed explanation of a stipulation.

Mr. Thompson requested the Program Managers explain their programs to the Commission.

Milton Hunter, program manager presented an overview of the Price Verification program.

Jarrad Poirrier, program manager presented an overview of the Motor Fuel program.

Program manager Archie Lambert, was not at hearing due to a loss in his family; Mr. Thompson gave the overview of the scale program.

VII. APPROVAL OF MARCH 21, 2012 MINUTES

Motion made by Marcy Leblanc, second by Brad Terral to approve the minutes, all members were in favor.

Chairman Miller turned the meeting over to Hearing officer Lindsey Hunter, Ms. Hunter at this time requested to take up matters set for the hearing.

VIII. ADJUDICATORY HEARING

Ms. Gray presented the cases and Mr. Thompson read the violations, and stipulations.

- (1) **Case No. 13-20-1**
Dollar General #3097
1509 Sampson Street
Westlake LA 70669

4 violations

1- Overcharges - LA. R.S. 3:4617 (A) - No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer.

3- Price Not Displayed - LAC 7:XXXV.117 (A) - The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price maked in English on the package containing individual commodity or item, or by a placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible.

Ms. Gray requested that the charge letter along with the certified return receipt be presented and submitted into evidence as Exhibit S1.

Ms. Gray stated that Dollar General #3097 has stipulated to the violations and requested that the stipulation letter be submitted into evidence as Exhibit S2.

Ms. Hunter stated let the record reflect that Exhibits S1 and S2 have been filed into evidence.

A Stipulated fine of 800.00 was imposed on the condition that the respondent pay the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination.

Motion to accept the stipulation with penalty by Dave George, second by Nolan Percy
All in favor.

(2) **Case No. 13-20-2**
Landry's Quick Serve
6594 Highway 3059
Lake Charles LA 70615

6 violations

1- Overcharges - LA. R.S. 3:4617 (A) - No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer.

5- Price Not Displayed - LAC 7:XXXV.117 (A) - The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing individual commodity or item, or by a placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible.

Ms. Gray requested that the charge letter along with the certified return receipt be presented and submitted into evidence as Exhibit S1.

Ms. Gray stated that Landry's Quick Serve has stipulated to the violations and requested that the stipulation letter be submitted into evidence as Exhibit S2.

Ms. Hunter stated let the record reflect that Exhibits S1 and S2 have been filed into evidence.

A Stipulated fine of 1,200.00 was imposed on the condition that the respondent pay the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination.

Motion to accept the stipulation with penalty by Frank LoPinto second by Marcy Leblanc
All in favor.

(3) **Case No. 13-20-3**
Salon Centric #776
234 West Prien Lake Road
Lake Charles LA 70601

16 violations

3 - Overcharges - LA. R.S. 3:4617 (A) - No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer.

13- Price Not Displayed - LAC 7:XXXV.117 (A) - The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing individual commodity or item, or by a placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible.

Ms. Gray requested that the charge letter along with the certified return receipt be presented and submitted into evidence as Exhibit S1.

Ms. Gray stated that Salon Centric #776 has stipulated to the violations and requested that the stipulation letter be submitted into evidence as Exhibit S2.

Ms. Hunter stated let the record reflect that Exhibits S1 and S2 have been filed into evidence.

A Stipulated fine of 3,200.00 was imposed on the condition that the respondent pay the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination.

Motion to accept the stipulation with penalty by Marcy Leblanc, second by Nolan Percy.
All in favor.

- (4) **Case No. 13-20-4**
Smart Style #1846
3415 Gerstner Memorial Blvd
Lake Charles LA 70605

6 violations

6 - Overcharges - LA. R.S. 3:4617 (A) - No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer.

Ms. Gray requested that the charge letter along with certified return receipt be presented and submitted into evidence as Exhibit S1.

Ms. Gray stated that Smart Style #1846 has stipulated to the violations and requested that the stipulation letter be submitted into evidence as Exhibit S2.

Ms. Hunter stated let the record reflect that Exhibits S1 and S2 have been filed into evidence.

A Stipulated fine of 1,200.00 was imposed on the condition that the respondent pay the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination.

Motion to accept the stipulation with penalty by Mike Miller, second by Al Moreaux
All in favor.

- (5) **Case No. 13-20-5 (continued)**
Trinh Investments LLC
455 Behrman Highway
Gretna LA 70056

10 violations

10 - Price Not Displayed - LAC 7:XXXV.117 (A) - The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price maked in English on the package containing individual commodity or item, or by a placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible.

Ms. Gray requested this matter be **continued** the state does not have a problem with the continuance. Ms. Hunter continued the matter.

(6) **Case No. 13-20-6**
Dollar General #7743
11503 Highway 190
Merryville LA 70653

5 violations

5 - Overcharges - LA. R.S. 3:4617 (A) - No one shall misrepresent the price or quantity of a commodity, thing, or service sold or offered or exposed for sale, to any actual or prospective customer.

Ms. Gray requested that the charge letter along with the certified return receipt be presented and submitted into evidence as Exhibit S1.

Ms. Gray stated that Dollar General #7743 has stipulated to the violations and requested that the stipulation letter be submitted into evidence as Exhibit S2.

Ms. Hunter stated let the record reflect that Exhibits S1 and S2 have been filed into evidence.

A Stipulated fine of 1,000.00 was imposed on the condition that the respondent pay the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination.

Motion to accept the stipulation with penalty by Mike Miller, second by Nolan Percy
All in favor.

(7) **Case No. 12-21-7**
Save & Go #4
1330 12th Street
Lake Charles LA 70601

11 violations

11 - Price Not Displayed - LAC 7:XXXV.117 (A) - The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing individual commodity or item, or by a placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible.

Ms. Hunter swore in LDAF witness Teri LeMaire, Agriculture Specialist with Weights and Measure Division. Ms. Hunter requested Ms. LeMaire to explain her title and duties to the Commission.

Ms. Hunter swore in Nick and Rav Khinda “**self-represented party**” for Save & Go #4.

Ms. Gray then presented LDAF case#12-21-7 starting with the exhibits: In addition, Ms. LeMaire gave detailed explanations of each Price Verification inspection report.

Ms. Hunter at this time allowed the commission to ask questions of Ms. LeMaire.

Mr. O’Neill questioned if the store had fuel pumps, had they been checked, and did they pass? Yes.

Mr. LeBlanc asked if the store had been rechecked since these violations, Ms. LeMaire said not since 2012 for the price verification inspection and gas pumps have been checked since then.

Mr. Larry Terrell wanted to know who received and signed for the certified letter.

Ms. Hunter at this time allowed Mr. Nick & Rav Kinda to ask questions of the LDAF witness.

Mr. Khinda wanted to know if Ms. LeMaire recalled getting a phone call from his dad; Ms. LeMaire did not remember that phone call.

Ms. Hunter allowed Mr. Khinda to present his case along with any evidence he might have.

Mr. Khinda presented his case starting with the third price verification inspection dated January 2012 and explained the details of what he felt happen at the time of the inspection and he made known to the Commission they did try to come into compliance as much as they could.

Mr. Khinda gave a detailed description of the store and how the liquor counter is set up and he had pictures of the items on the shelves. Mr. Khinda requested the pictures be submitted into evidence.

Ms. Gray had an objection to the pictures being submitted into evidence, Ms. Hunter allowed the pictures to be submitted into evidence and informed the Commission members they would have to make the decision if the pictures were creditable or not.

Ms. Hunter at this time allowed the commission to ask questions of Mr. Khinda

Mr. Moreaux wanted to know how many violations and what would the fine be per violation, Mr. Thompson stated 11 violations at 500.00 per violation and he explained they had a chance to stipulate and chose not to.

Mr. Khinda said the reason they did not stipulate is that they denied the charges on nine items.

Mr. Leblanc said, so you do admit to being wrong on two items Frito dip & Miller lite beer, Mr. Khinda did agree with being wrong on those two items only.

Ms. Hunter wanted to know when the store first opened, summer of 2011.

Mr. Miller wanted to know if Mr. Khinda tried to get in touch with Mr. Thompson and try to work this out or was it all done thru letters. Mr. Khinda stated his father did get in touch with Mr. Thompson a couple of times. Mr. Thompson denied he had talked to Mr. Khinda's father.

Mr. Larry Terrell requested the law be clarified, Mr. Thompson clarified the law.

Mr. Alford wanted to know if the items in question were scanning correctly now and Mr. Khinda said yes.

Mr. Khinda stated the inspection should be a more random selection of items but in his case, the items were picked from two shelves.

Ms. Gray made her closing statement saying if you look at the inspection reports all the items were randomly selected. However, the items in question were prices not displayed and the law states specifically that they should be plainly displayed. Ms. Gray asked the Commission to find them guilty on eleven violations of prices not being displayed.

Mr. Khinda made his closing statement saying he believes the Law is being misrepresented. He stated that his store is set up so a consumer could walk in and know the price of the item they are buying because they are displayed reasonably and visibly to the consumer.

Mr. Khinda said the way we understood the law is that "every" item in the store must always be displayed with a price no matter if it is in storage, reserve, or backup.

Ms. Gray final words, we do not expect the items in storage to be publicly displayed to the consumer, however when a consumer walks into a store they should be able to pick up an item and it should scan with the correct price. The price of the item should be plainly and visibly displayed on the shelf.

A fine of 5,500.00 was imposed on the condition that the respondent pay the penalty by certified funds within 30 days after receipt or notice of the Commissioner's final determination.

Motion to accept Mike Miller, second by Dave George a vote was taken six members voted in favor and four members unfavorably. The motion carried.

VII. OLD BUSINESS:

None

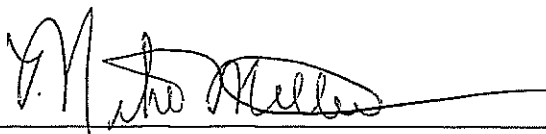
Chairman Miller requested each board member old and new to introduce themselves.

X. NEXT MEETING DATE:

Will contact members of next meeting

XI. ADJOURNMENT:

Mike Miller motion that the meeting be adjourned, second Dave George
Meeting adjourned at apporximately 11:00 am.



Mr. Mike Miller, Chairman