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10-10-2008

HELEN WRIGHT, d/b/a TOWN AND COUNTRY STORE, RESPONDENT

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BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF AGRICULTURE

IN THE MATTER OF:	)	
	)	
HELEN WRIGHT,	)	
d/b/a TOWN AND COUNTRY STORE,	)	**DOCKET NO. 01.15-099688J**
	)	
RESPONDENT.	)	

INITIAL ORDER
DEFAULT

This contested case came on to be heard on October 10, 2008 in Nashville, Tennessee, before Administrative Judge Joyce Grimes Safley, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of Commerce and Insurance. Ms. Theresa Denton, General Counsel, Department of Agriculture, represented the State. The Respondent was not present for the hearing, nor was anyone present on her behalf.

The subject of this hearing was the State's action seeking $550.00 (Five hundred and fifty dollars) from Respondent in civil penalties and delinquent fees for violations of Tennessee Department of Agriculture Rule 0080-4-9-.06(5)(a), and T.C.A. §53-8-217(a)(2). The total amount of civil penalties and delinquent fees reflects a civil penalty of one hundred and sixty dollars ($160.00), a retail food store permit fee of two hundred and sixty dollars ($260.00), and a delinquent penalty of one hundred and thirty dollars ($130.00). Additionally, the State seeks an order revoking Respondent's permit, and denying renewal of Respondent's retail food store permit for

operation of a retail food store in the state of Tennessee until the penalties and fees are paid in full.

NOTICE OF DEFAULT

Upon the Respondent's failure to appear at the hearing of this matter, the State showed that it had served notice of the hearing upon the Respondent. The letter sent in accordance with T.C.A. §4-5-320(b) along with signed certified mail receipt showing Respondent's receipt of the notice of hearing and amended notice of hearing was entered into evidence as Exhibit 1 at the hearing of this matter. The State then moved for a default order to be entered against the Respondent, and further moved to proceed with its proof.

It is noted that the Respondent filed no preliminary pleadings, no proposed witness or exhibit list, and failed to participate in these proceedings during the entirety of the case.

The State complied with all notice requirements. The State's motion for default was **GRANTED,** and the State was allowed to proceed with its proof.

After consideration of the testimony and evidence presented, the arguments of counsel, and the entire record in this matter, it is determined that the Petitioner, the Tennessee Department of Agriculture or "the State" has met its burden of proof, by a preponderance of the evidence, that the alleged violations occurred. Further, the State has met its burden of proof that the requested civil penalties are appropriate, and that Respondents retail food store permit shall be **REVOKED and RENEWAL OF SAID PERMIT DENIED** until the penalties and fees are paid in full.

This decision is based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Respondent Helen Wright is the operator of Town and Country Store, a retail food store located at 106 E. Farrell Street, Niota, Tennessee.

2. Respondent held a retail food store permit, No. 013140, at all relevant times, including the times upon which certain violations occurred.

3. On December 6, 2006, Jeff Kirksey, inspector with the food and Dairy Division of the Tennessee Department of Agriculture, conducted a routine inspection of the Respondent's retail food store, Town and Country Store.

4. Inspector Kirksey found dirty dishes in Town and Country Store's hand sink, which rendered the sink inaccessible to employees.

5. Inspector Kirksey noted the violations in his inspection report, and left a copy of the inspection report with Respondent. The report noted that Respondent must correct "critical items" as soon as possible, and no later than ten days after the inspection. The report also noted that the Commissioner of Agriculture must be notified within fifteen days of the corrections.

6. On June 6, 2007, Inspector Carolyn Callan conducted a routine inspection of Respondent's store, Town and Country Store. She found that dirty dishes had been left in the store's sink, rendering the sink inaccessible to store employees, in addition to other violations. Inspector Callan left a copy of the inspection report with Respondent. The report noted that Respondent must

correct "critical items" as soon as possible, and no later than ten days after the inspection. The report also noted that the Commissioner of Agriculture must be notified within fifteen days of the corrections.

7. Respondent failed to notify the Commissioner of Agriculture regarding any corrections taken. To the Department's knowledge, no corrections were ever made.

8. Respondent did not pay the retail food store permit fee as required by T.C.A. §53-8-207(a)(1) by the deadline.

9. Respondent received a "Notice of Violation and Issuance of Enforcement Action Authority" on November 26, 2007. Respondent failed and refused to pay the $160.00 penalty assessed against her for violations of the Retail Food Store Inspection Act.

10. Respondent's retail food store permit came up for renewal, and Respondent did not submit the payment for the permit fee within thirty (30) calendar days of

11. At the time of the hearing, Respondent had failed to pay any penalties assessed and had not renewed and paid for her retail food store permit.

CONCLUSIONS OF LAW

1. T.C.A. §53-8-205(1)(4) and (5) authorize the Commissioner of Agriculture to prescribe rules and regulations; inspect retail stores; enforce the Retail Food Store Inspection Act; and issue, suspend, and revoke permits to operate retail food stores.

2. The Department of Agriculture inspected Respondent's retail food store pursuant to T.C.A. §53-8-205 and left a copy of the inspection report with Respondent. The report noted that Respondent must correct "critical items" as soon as possible, and no later than ten days after the inspection. The report also noted that the Commissioner of Agriculture must be notified within fifteen days of the corrections pursuant to T.C.A. §53-8-205. As a result, the Department of Agriculture issued the Respondent a Notice of Violation and Enforcement Action, which cited Respondent with repeatedly violating Tennessee Department of Agriculture Rule 0080-4-9-.06(5)(a) and further cited Respondent with failing to correct the violations as required by T.C.A. §53-8-205.

3. Rule 0080-4-9-.06 (5) (a) of the *Rules of Tennessee Department of Agriculture, Division of Food and Dairy* (Revised October 2008) provide:

> Handwashing Facilities.
> Handwashing facility installation. Handwashing facilities shall be installed according to law, shall be at least one and not less than the number required by law, and shall be conveniently located to permit use by all employees in food preparation and warewashing areas. Handwashing facilities shall be accessible to employees at all times. Handwashing facilities shall also be located in or immediately adjacent to toilet rooms or their vestibules. Sinks used for food preparation or for warewashing shall not be used for washing of hand or for any other purpose.

4. T.C.A. §53-8-210 states, in pertinent part:

> (a) The commissioner may, after providing opportunity for hearing, revoke a permit for serious or repeated violations of the requirements of this part…[.]

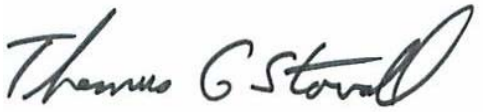
5. The Department of Agriculture has proved, by a preponderance of the evidence, that Respondent committed the above-referenced violations of the "Retail Food Store Inspection Act" and the *Rules of Tennessee Department of Agriculture, Division of Food and Dairy, Retail Food Store Sanitation.*

6. Accordingly, it is **ORDERED** that Respondent shall pay five hundred and fifty dollars ($550) in civil penalties and delinquent fees, which consists of a civil penalty of one hundred sixty dollars ($160.00) for the repeated violations of Rule 0080-4-9-.06 (5) (a) of the *Rules of Tennessee Department of Agriculture, Division of Food and Dairy* (Revised October 2008) and T.C.A. §53-8-207; Respondent's retail food permit fee of two hundred and sixty dollars ($260.00); and a one hundred and thirty dollars ($130.00) delinquent penalty for the Respondent's failure to pay the retail food store permit fee as required by law, within thirty (30) days of the permit's expiration.

7. Additionally, in light of Respondent's repeated violations and Respondent's failure to respond to the Department's charges or communicate with the Department, and her failure to participate in the hearing, it is further **ORDERED** that Respondent's retail food store permit is **REVOKED.**[1]

It is so ordered.

This order entered and effective this 13th day of January, 2009.



Thomas G. Stovall, Director

[1] Said permit shall remain REVOKED, and Respondent shall not be allowed to renew her permit or to apply for a new permit unless all penalties and fees are paid.

Administrative Procedures Division