



Public Service Commission

State of North Dakota

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February 23, 2023

Mr. Steve Kahl
Executive Secretary
North Dakota Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck ND 58505-0480

via Hand Delivery

Re: Case No. WM-23-67
Public Service Commission
Shalom International Market LLC
W & M Enforcement

Dear Mr. Kahl:

Enclosed is a copy of the Consent Agreement to be filed in the above captioned case.

Sincerely,

A handwritten signature in blue ink, appearing to read "John M. Schuh".

John M. Schuh
Special Assistant Attorney General

Enclosure

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

**Public Service Commission
Shalom International Market LLC
W & M Enforcement**

Case No. WM-23-67

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	
)	
vs.)	CONSENT AGREEMENT
)	
)	
Shalom International Market LLC)	
)	
Respondent.)	

This Consent Agreement is entered into by and between Shalom International Market LLC (Shalom) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case No. WM-23-67.

Discussion

On September 27, 2022, a Commission Weights and Measures Inspector (Inspector) conducted an inspection at Shalom’s principal place of business which is located at 325 28th Avenue Southwest, Minot, North Dakota 58701. During the inspection, the Inspector identified an ACS System Electronic Scale (ACS Scale) being used commercially which did not conform to state laws and rules. The ACS Scale was not National Type Evaluation Program (NTEP) certified and it was not a Legal for Trade scale. The Inspector affixed a “Non-Commercial Device” tag (number 30209) to the ACS Scale which stated the device is illegal to use in commerce. The Inspector informed a

Shalom employee and the owner, Paul Nketia, that commercial use of the device must cease immediately. The owner was instructed how to obtain a scale that would conform to state laws and rules and would be Legal for Trade.

On October 24, 2022, the Inspector conducted a follow-up inspection at Shalom and observed Shalom actively using the ACS Scale affixed with the “Non-Commercial Device” tag, a violation of North Dakota Century Code (N.D.C.C.) § 64-03-02. When questioned about the use of the non-compliant ACS Scale, a Shalom employee stated that the new scale had not arrived. The Inspector spoke to the owner and informed both the owner and the employee that using the device is a violation of state laws and rules and must cease immediately.

On November 9, 2022, the Inspector conducted an inspection of Shalom’s new scale, a Shanghai DLP-300 Scale (Shanghai Scale), which did conform to state laws and rules and is Legal for Trade. The Inspector tested the device and determined it did not meet acceptance tolerance as required by paragraph G-T.1. of the National Institute of Standards and Technology (NIST) Handbook 44 (2020 edition), adopted by reference. However, since the Shanghai Scale met maintenance tolerance, paragraph G-T.2. of NIST Handbook 44 (2020 edition), the Inspector affixed a “Repair Notice” to the Shanghai Scale tag which authorized Shalom temporary use of the device for 60 days. The steps required to bring the Shanghai Scale into compliance were explained to the employee at Shalom. The owner was not available; however, the employee texted him a picture of the “Repair Notice.”

On February 6, 2023, the Inspector followed up on the 60-day "Repair Notice" tag and noted the Shanghai Scale had not been repaired. The 60-day temporary variance period provided by the "Repair Notice" tag expired on January 9, 2023; therefore, the "Repair Notice" tag defaulted to a "Rejected for Repair" tag and in accordance with N.D. Admin. Code § 69-10-01-05, the Shanghai Scale was illegal to use in commerce. The Inspector affixed a "Non-Commercial Device" tag (number 30468) and explained the situation to Mr. Nketia over the phone that he must contact a Registered Service Company to have the Shanghai Scale calibrated and placed into service.

Violation 1. Use of Non-Conforming Device

N.D.C.C. § 64-02-13 provides that an owner of any weighing or measuring device is responsible for its accuracy. Additionally, it is unlawful for any person to knowingly and fraudulently use a weighing or measuring device, or keep a device for public use, which does not conform to the legal standard of weights and measures of this state in accordance with N.D.C.C. § 64-03-02.

Furthermore, an operator of a commercial weighing and measuring device shall ensure that the device is designed, constructed, operated, and maintained to meet applicable standards in the North Dakota Century Code and the North Dakota Administrative Code. Finally, the Commission may require proof of compliance as required by N.D. Admin. Code § 69-10-01-13.

Shalom violated N.D.C.C. § 64-02-13 and N.D. Admin. Code § 69-10-01-13 by using a weighing device that does not conform to the legal standards of weights and measures of the state and then continuing to use a non-conforming device between September 27, 2022 and October 24, 2022.

Violation 2. Using a Scale Rejected for Repair

Pursuant to N.D. Admin. Code §§ 69-10-01-03.2 and 69-10-01-05, an equipment repair notice tag defaults to a rejection seal if the device is not repaired or modified to a compliant state within sixty days. Once a weighing or measuring device has been rejected, the device may not be used in commerce.

Furthermore, Shalom violated N.D. Admin. Code §§ 69-10-01-03.2 and 69-10-01-05 by using a scale in commerce that had been rejected for repair.

Agreement

The Parties engaged in good faith settlement discussions resulting in this Consent Agreement. Staff's impression was that this was Shalom's first violation and since Shalom agreed to their culpability, the matter resulted in a reduced penalty amount. However, subsequent violations will likely result in an escalation of the penalty. Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving this administrative action, the Parties agree to the following, subject to the approval and acceptance of the Commission:

1. Shalom violated N.D.C.C. § 64-02-13 and N.D. Admin. Code § 69-10-01-13 by using a weighing device that does not conform to the legal standards of weights and measures of the state and then continuing to use a non-conforming device between September 27, 2022 and October 24, 2022. Furthermore, Shalom violated N.D. Admin. Code §§ 69-10-01-03.2 and 69-10-01-05 by using a scale that had been rejected for repair.

2. Shalom agrees to be assessed a civil penalty of \$300, payable to the North Dakota Public Service Commission within ten (10) business days of service of an Order accepting or approving the Consent Agreement.
3. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in this case.
4. Shalom consents to the filing of the Consent Agreement and an Order and hereby waives any further procedural requirements with respect to the Order's issuance. Provided the Commission adopts this Consent Agreement and issues an Order consistent with it, Shalom understands and agrees to waive all rights to contest the violation, the right to be represented by counsel, the right to present evidence and arguments to the Commission, the right to cross-examine witnesses, or contest the validity of this Consent Agreement and Order, including all rights to administrative or judicial hearings or appeals.
5. For purposes of the identification requirement of Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), the performance is restitution, remediation, or an amount paid to come into compliance with the law. Accordingly, Shalom agrees to provide the Commission with a U.S. Department of the Treasury Internal Revenue Service Form W-9 for this purpose.
6. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.
7. This agreement may be executed in counterparts and duplicate copies, each which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.

8. The undersigned is authorized to act on behalf of Shalom and bind Shalom for purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 23rd day of February, 2023

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – WEIGHTS & MEASUERS

By: 

John Schuh
Special Assistant Attorney General, Bar ID 08138
North Dakota Public Service Commission
600 E Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480
701-328-2421

Dated this 23rd day of February, 2023

Shalom International Market LLC

By: 

Paul Nketia, Owner