

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY 03-47742

Mahfood Abdelrahman Btoush,

Debtor(s).

**RESPONSE TO
MOTION TO ASSUME AND ASSIGN
OF EXECUTORY CONTRACT**

1. AHAM LLC (“Lessor”), by the undersigned attorneys, hereby provides this response to the Motion to Assume, Cure and Assign Lease filed by Julia A. Christians, Trustee (“Trustee”).

2. The Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding.

3. Trustee is seeking to assume and assign a lease of real property for premises located at 1845 Nicollet Avenue South, Minneapolis, Minnesota. Trustee’s motion seeks to assign the lease Ali Sabhari (Assignee). Assignee was the original lessee under the lease and was forced to assign the lease to Debtor.

4. Section 365(f) of the Bankruptcy Code authorizes a trustee to assign a lease or executory contract. Section (f)(2) indicates that the trustee may only assign such a lease if:

“(A) the trustee assumes such a contract or lease in accordance with the provisions of this section; and

(B) if adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.”

5. Lessor contends that assumption of the lease is a condition precedent to assignment of a lease. Section 365(b) provides that if there has been a default under a lease, a trustee may only assume that lease if it cures the default, provides compensation for any actual pecuniary loss and provides adequate assurance of future performance.

6. Section 365(l) grants a lessor the right to demand a new deposit from an assignee of a lease.

7. Trustee has the burden of proof as to proving cure and adequate assurance of future performance. *In re Diamond Mfg. Co. Inc.*, 164 BR 189, 199 (Bankr. S.D. GA. 1994).

8. Trustee acknowledges in her motion that there are defaults and losses by Lessor of \$20,650. Trustee proposes in her motion to pay that sum to Lessor. Lessor presumes that this proposal

means that either Trustee has those funds in her estate or that the assignee will present funds in that amount, by means of cashier or certified funds, to Lessor or his agent at the hearing. Under these circumstances, where Trustee is proposing to assign the lease to a third party, Lessor contends that this is the only adequate way to cure or promptly cure the default.

9. Trustee in her motion has provided nothing that would constitute adequate assurance of future performance by the assignee of the lease. Trustee or her assignee must show that assignee has the financial ability to pay the rent payments, that there is some evidence of profitability. See *In re Embers 86th Street, Inc.* 184 B.R. 892, 902 (Bkrcty.S.D.N.Y.,1995.).

10. Lessor believes there is a good faith basis for questioning whether Assignee will be able to obtain a license to operate a business at the location in question. Attached as Exhibit A is a copy of a criminal complaint filed against the assignee relating to his previous operations of the facility. Attached as Exhibit B is Stipulation of Settlement regarding Assignee's surrender of his business license. Attached as Exhibit C is correspondence from Stevens Square Community Organization evidencing community opposition to Assignee obtaining a further license to operate the facilities.

11. Lessor further requires that Assignee post a new deposit if the lease is assumed. The prior deposit was in the amount of \$3,500.00 and Lessor demands that such a sum be tendered to it prior to approval of such an assignment.

12. In the alternative Lessor proposes that it will pay the Trustee the sum of \$2,500 in exchange for the lease being assigned to it.

WHEREFORE, The client requests an order as follows:

- (A) Denying the Motion of Trustee to assume and assign the executory contract;
- (B) Determining that the lease between Debtor and Movant is rejected and terminated immediately;
- (B) Granting Movant relief from the automatic stay to commence the appropriate State Court actions; and
- (C) Granting any other relief the Court deems just and proper.

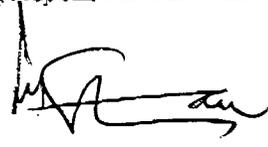
Hedback, Arendt & Carlson, PLLC

Dated: October 11, 2004

 /s/ John A. Hedback
 John A. Hedback, #142438
 2855 Anthony Lane South, Suite 201
 St. Anthony, MN 55418
 (612) 436-3280
 Attorneys for Movant

VERIFICATION

The undersigned, being a member or officer of AHAM, LLC, verifies under penalty of perjury that the information contained in the foregoing response is true to the best of my knowledge, information and belief.



Dated: October 11, 2004

State of Minnesota County of Hennepin District Court

OCT 1 LIST CHARGE STATUTE ONLY \$609.52 MOC U1283 OOC N CTY ATTY FILE NO. 02-5150 CONTROLLING AGENCY 0271100 CONTROL NO. 02073719

PROPERTY MONDAY

COURT CASE NO. DATE FILED

Amended Tab Charge Previously Filed

if more than 4 charges (see statute) if Domestic Assault as defined by MS 61B02, sub 3

State of Minnesota,

PLAINTIFF,

SERIOUS FELONY SUMMONS FELONY WARRANT GROSS MISDM DWI ORDER OF DETENTION GROSS MISDM EXTRADITION

VS.

NAME: first, middle, last

Date of Birth

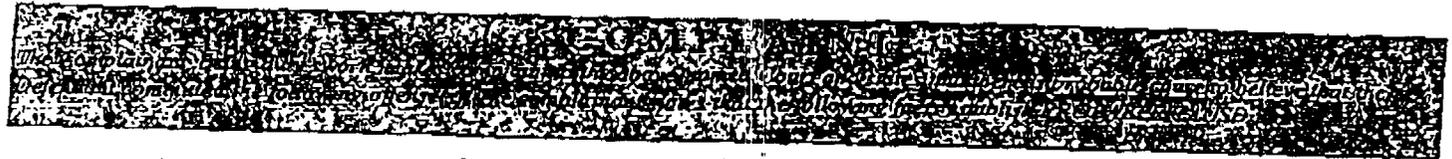
Legal Edge Number

ALI ABDULLA SABHARI 02023199

1/4/58

LE#: 02-16125

121 Washington Ave., Apt. 1511 DEFENDANT. Minneapolis, MN 55401



Complainant Officer James Loveland of the Minneapolis Police Department, has investigated the facts and circumstances of this offense and believes the following establishes probable cause:

On March 8, 2002, Minneapolis Police received information from a CRI that an individual later identified as ALI ABDULLA SABHARI, DOB: 1/4/58, the defendant herein, was purchasing stolen items at the Food and Dollar store located at 1845 Nicollet Ave, in Minneapolis, Hennepin County, Minnesota. The CRI stated that Defendant had been purchasing stolen items from him for several years and that he primarily sells the Defendant stolen cigarettes. The CRI told Police that Defendant knew the items were stolen because he would routinely tell Defendant how he stole the items before he sold them to him.

On March 11, 2002, Minneapolis Police met with the CRI and arranged for him to make a controlled sale of cigarettes to the defendant. The CRI was searched and determined to be free of contraband and money. He was then given 4 cartons of cigarettes which were documented and recorded by serial number and UPC code. The CRI was also wired for audio and events captured on videotape. The defendant entered the Food and Dollar store located at 1845 Nicollet Ave, in Minneapolis and spoke with defendant store owner. The CRI informed Defendant that he had 4 cartons of cigarettes for sale that he had stolen from a store located on 76th & Nicollet Ave. The defendant and CRI agreed upon a price of \$30.00 and Defendant gave the CRI \$30.00, from the store register in exchange for the 4 cartons of cigarettes. The \$30.00 was recovered from the CRI and photocopied and property inventoried.

On March 14, 2002, Minneapolis Police met with the CRI and arranged for him to make an additional controlled sale of cigarettes to the defendant. The CRI was searched and determined to be free of contraband and money. He was then given 4 cartons of cigarettes which were documented and recorded by serial number and UPC code. The CRI was also wired for audio and events captured on videotape. At approximately 1930 hours the CRI was taken to 1845 Nicollet Ave. and dropped off. Officers observed the defendant enter the Food and Dollar store located at 1845 Nicollet Ave. in Minneapolis and speak to the clerk. The clerk advised the CRI to come back at around 2130-2300 hours when the defendant would be there. At approximately 2130 hours the CRI returned to the store. Officers observed the CRI enter the store and meet with the defendant. The CRI informed Defendant that he had 4 cartons of cigarettes for sale that he had stolen from 75th & Nicollet Ave., where the previous ones had come from. The CRI told Defendant that he had stolen the cigarettes in a "smash & grab" theft. The CRI then told Defendant that a deal was in the works to deliver between 90-100 cartons of cigarettes. The defendant and CRI agreed upon a price of \$25.00 and Defendant gave the CRI \$25.00 from the store register in exchange for the 4 cartons of cigarettes. The \$25.00 was recovered from the CRI and photocopied and property inventoried along with the audio-cassette tape of the recorded body wire conversation.

On March 21, 2002, Minneapolis Police met with the CRI to arrange the final controlled sale of cigarettes to the defendant. The CRI was searched and determined to be free of contraband and money. The CRI was also wired for audio and events captured on videotape. He was then given a blue Addidas duffel bag containing 51 cartons of cigarettes, valued at \$1453.50, which were documented and recorded by serial number and UPC code. At approximately 2240 hours the CRI was taken to 1845 Nicollet Ave. and dropped off. Officers observed the defendant enter the Food and Dollar store located at 1845 Nicollet Ave. in Minneapolis and meet with the Defendant. The CRI informed Defendant that he had 26 cartons of Marlboro and 25 cartons of Kool cigarettes. The CRI told Defendant that he was giving Defendant 1 free carton but wanted \$8.00 for each of the remaining 50 cartons for a total of \$400. The CRI informed the Defendant that the cigarettes were stolen from Ken's Quick Stop in Coon Rapids. The CRI told defendant that he stole them off a truck. The defendant and CRI haggled over a price and eventually agreed upon a price of \$300.00. Defendant gave the CRI \$300.00 from the store register in exchange for the 51 cartons of cigarettes. The \$300.00 was recovered from the CRI and photocopied and property inventoried along with the audio-cassette tape of the recorded body wire conversation.

Police returned to the store location and observed the Defendant exit the store and enter a tan 2000 Mercedes S430 bearing MN license plate # HVJ 230. Officers stopped the vehicle and placed defendant under arrest. The defendant was returned to the store where Police served him with a search warrant. Officers recovered their blue Addidas duffel bag containing 51 cartons of cigarettes, valued at \$1453.50, in the rear area of the store. Police confirmed through the identification of unique markings that it contained the same cartons of cigarettes provided to the CRI.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In The Matter of The Licenses Held by the
Minneapolis Food & Dollar Store for the
Premises Located at 1845 Nicollet Avenue
South

STIPULATION OF
SETTLEMENT

OAH No.: 15-6010-15090-3

WHEREAS, the City of Minneapolis, Licensing Authority, has commenced a proceeding against the Licensee by service of a Notice of Hearing dated 9/20/02, seeking adverse action against the Licensee up to and including revocation of all licenses; and

WHEREAS, the Notice of Hearing is attached hereto as Exhibit A; and

WHEREAS, a hearing was scheduled for 12-18-02 before an administrative law judge of the OAH; and

WHEREAS, the OAH hearing was postponed based on a tentative settlement, the terms of which are set forth in a letter dated 12-13-02 from the Licensee's attorney, Nelson L. Peralta, attached hereto as Exhibit B.

NOW THEREFORE, the parties wish to finalize the settlement of this matter, and stipulate as follows:

STIPULATION

1. The Licensee agrees to surrender his licenses and cease operating the store no later than close of business March 4, 2003.
2. The Licensee may continue to operate the store and use his existing licenses until March 4, 2003, but he agrees to surrender his licenses and cease operating on or before close of business March 4, 2003, even if he is not able to complete a sale prior to that date.

3. The Licensee may sell his store to a new purchaser, who may apply for transfer of the licenses now held by the Licensee. The sale must be an arm's length transaction, in which the Licensee and his family members have no hidden interest and no continuing relationship with the business as owners, managers, consultants, or employees. The Licensee understands that a new purchaser seeking approval of the licenses will be required to submit documentation of the source of funds for purchase, all sale documents, and a signed statement that the Licensee and family members will not have a hidden interest or a continuing relationship as owners, managers consultants, or employees.

4. No retail licenses will be issued ^{by the City of Minneapolis} to the Licensee for a period of one year after the date of this agreement.

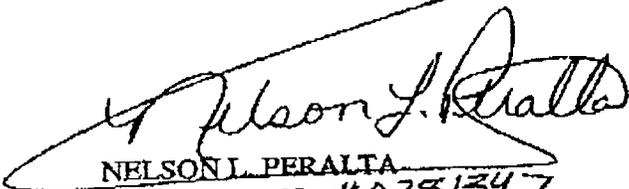
5. The license hearing in this matter is cancelled.

Dated: 2/10/03

Dated: February 3, 2003

CAPISTRANT & ASSOCIATES

JAY M. HEFFERN
City Attorney
By


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Minneapolis, MN 55402-2453
(612) 673-2066

STEVENS SQUARE COMMUNITY ORGANIZATION



ADDRESS

110 E. 18TH STREET, #112
MINNEAPOLIS, MN 55403

PHONE: 612.871.7307
FAX: 612.871.1653
SSCO@TCFRENET.ORG

BOARD

GREG SCANLAN – CHAIR
KEN STROBEL – VICE CHAIR
KEITH TWIST – TREASURER
RITA LAVIN – SECRETARY
MICHELLE CRUMLY
AMY FALATIC
FRANK FALLON
LISA FINK
TERRY GALE
DIANE HANSEN
KAREN IVES
DEBBIE JONNES
NADINE KNIBB
ZACHARY KORB
ALEX MOROS
ARLENE STORANDT
DEE TVEDT
LIZBETH WAWRZONEK

STAFF

JULIE FILAPEK
EXECUTIVE DIRECTOR
DAVE DELVOYE
SAFETY COORDINATOR

September 21, 2004

Julie Casey, Licensing Inspector
Licenses & Consumer Services
City Hall, Room 1C
350 South 5th Street
Minneapolis, MN 55415

Dear Inspector Casey,

At its meeting on September 9, 2004, the Board of Directors of Stevens Square Community Organization (SSCO) expressed great concern over the possible return of ownership of the business at 1845 Nicollet Avenue to Ali Sabhari.

According to the manager of that commercial property, the owners of Minneapolis Food Market at 1845 Nicollet went out of business in August and closed the store. The manager reports that Mr. Sabhari, the previous owner of the market (then known as the Minneapolis Food and Dollar Store), plans to assume the lease and reopen the store. Mr. Sabhari was observed taping hand-written notices to the windows of the store indicating that it would reopen soon after remodeling.

On March 21, 2002, Mr. Sabhari was arrested for receiving and concealing stolen property at 1845 Nicollet Avenue. (Minneapolis Police case no. 02-073719) Mr. Sabhari was subsequently charged with felony theft for three incidents in March of 2002 in which he purchased stolen cigarettes during a police sting operation. (Hennepin County Attorney file no. 02-5150) Mr. Sabhari participated in a court diversion program for felony offenders. As part of a legal settlement with the City, Mr. Sabhari agreed to surrender his business licenses and to sell or close the Minneapolis Food and Dollar Store by March of 2003. No business licenses were to be issued by the City to Mr. Sabhari for a period of one year.

In addition to the serious and repeated criminal behavior demonstrated by Mr. Sabhari in the operation of his business, SSCO received numerous complaints from community members regarding:

- the sale of drug paraphernalia;
- the covering of windows with excessive signage, making it difficult to see in or out of the store;
- the failure to keep the property clear of litter and trash.

Many of these complaints were forwarded to licensing staff at the time.

SSCO does not want to see these kinds of problems return to the market and the neighborhood. We will contact the owner of 1845 Nicollet and share our concerns.

Thank you for your attention to this matter.

Sincerely,

Greg Scanlan
Chair, Stevens Square Community Organization

Cc: City Council Member Lisa Goodman
Ifan Sandozi, owner of 1845 Nicollet Avenue

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

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Mahfood Abdelrahman Btoush,

Debtor(s).

**UNSWORN DECLARATION FOR
PROOF OF SERVICE**

The undersigned, being an employee of Hedback, Arendt & Carlson, PLLC, attorneys licensed to practice law in this Court, with offices located at 2855 Anthony Lane South, St. Anthony, Minnesota, declares that on the date indicated below, I served the following:

1. Response to Motion to Assume and Assign Executory Contract;
2. Proposed Order; and
3. Unsworn Declaration for Proof of Service

upon each of the entities named below by mail (unless otherwise indicated below) by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid, and depositing same in the post office at St. Anthony, Minnesota, addressed to each of them as follows:

Office of United States Trustee
1015 US Courthouse
300 South Fourth Street
Minneapolis, MN 55415
By facsimile 612 664 5516

Julia Christians
120 S 6th St., Ste 2500
Minneapolis, MN 55402
By facsimile 612-338-6651

Mahfood A. Btoush
3512 Bryant Avenue South
Apt 301
Minneapolis, MN 55408

Ali Sabhari
c/o Joseph W. Dicker
1406 W Lake St
Suite 208
Minneapolis MN 55408
By facsimile 612-822-1873

Wayne G. Nelson
5500 Wayzata Blvd. Suite 1025
Golden Valley, MN 55416
By facsimile 763-591-1653

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: October 12, 2004

_____/e/ John A. Hedback_____

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY 03-47742

Mahfood Abdelrahman Btoush,

ORDER

Debtor(s).

This case came before the court on trustee's Motion to Assume, Cure and Assign Lease. Appearances were noted on the record. Based on the motion, and the file, record and proceedings herein,

IT IS HEREBY ORDERED:

1. That Trustee's Motion to Assume and Assign lease is hereby denied.
2. That the executory contract between Debtor and AHAM LLC is hereby deemed rejected.

BY THE COURT

Dated: _____

U.S. Bankruptcy Judge