



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

Appeal No. 05384822

DCA v. Arrow Ebikes, Inc.

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Appeal Decision

Petitioner, the Department of Consumer Affairs, appeals from that part of a decision by Hearing Officer #1143 (Manh), issued on February 13, 2017, dismissing nine charges of Section 20-762(b) of the Administrative Code of the City of New York (Code) for selling or attempting to sell motorized scooters.

Having fully reviewed the record, the Tribunal finds that the hearing officer’s decision is not supported by the law and a preponderance of the evidence as to four of the dismissed charges of Code Section 20-762(b). Therefore, the Tribunal grants the appeal in part and finds as follows:

Law charged	Determination	Penalty
Code Section 20-762(b)	Violation (x 5)	\$5,000 (\$1,000 x 5)
Code Section 20-762(b)	Dismissed (x 5)	\$0

Summons

In the summons, the issuing officer (IO) affirmed on November 23, 2015, that he observed Respondent selling/displaying for sale ten motorized scooters/electric bicycles (e-bikes). The IO identified the manufacturer’s name and the price of the motorized scooters.

The hearing

At the hearing, the IO affirmed his statements on the summons. He submitted four photographs depicting five e-bikes and portions of the interior of Respondent’s shop. Respondent’s owner acknowledged that he offered and sold e-bikes as well as ordinary human propelled bicycles but contended that at the time of inspection only five e-bikes were being offered for sale, rather than the ten e-bikes claimed to have been observed by the IO. In response, the IO testified that he was unsure how many of the bicycles he observed were motorized at the time of his inspection and so would not dispute Respondent’s claim that only five e-bikes were being offered for sale.

In his decision, the hearing officer found that Petitioner’s evidence established a violation of Code Section 20-762(b) but sustained only one of the ten charges, concluding that the summons did not contain sufficient notice that Respondent was subject to a separate penalty for each of the charged e-bikes.

The issues

The issues on appeal are (1) whether each e-bike offered for sale on a single occasion is deemed to be a separate violation of Code Section 20-762(b); and, if so, (2) whether Respondent refuted that there were ten e-bikes for sale.

Applicable law

Code Section 20-762(b) provides that “[n]o person shall sell, lease or rent or attempt to sell, lease or rent a motorized scooter to another person in the city of New York.”

Code Section 20-762(c) provides, in pertinent part:

Any person who violates subdivision b of this section shall be liable for a civil penalty of one thousand dollars for a first violation Each sale, lease or rental, or attempt to sell, lease or rent, a motorized scooter shall be deemed a separate violation.

The appeal

On appeal, Petitioner that in accordance with Code Section 20-762(c), the allegations in the summons were sufficient to put Respondent on notice that it was subject to a civil penalty of \$1,000 for each e-bike observed by the IO, as that section provides that each sale or attempt to sell a motorized scooter shall be deemed a separate violation.

The Tribunal's determination

On this record, Petitioner's appeal is granted in part. Code Section 20-762(c) provides that "each sale . . . or attempt to sell . . . a motorized scooter shall be deemed a separate violation." Here, the IO specifically stated in the "Nature/Description of Violation" section of the summons that he observed ten e-bikes for sale. The Tribunal finds that this allegation was sufficient to put Respondent on notice that it was subject to a civil penalty of \$1,000 for each e-bike observed by the IO, in accordance with Code Section 20-762(c). *See DCA v. King Eagle Inc. d/b/a Fly E-Bike* (Appeal No. 05402835, March 8, 2017).

Nonetheless, at the hearing, Respondent's owner disputed that Respondent was selling or offering for sale ten e-bikes. Instead, while Respondent's owner conceded that there were five e-bikes for sale, he maintained that the other five bicycles cited by the IO were not yet assembled and therefore not for sale. At that point, the IO conceded that he may have miscounted the e-bikes and that there may have been only five e-bikes for sale. Therefore, on this record, the Tribunal finds that Petitioner established that Respondent was selling or offering for sale five e-bikes and that Respondent refuted the charges as to the other five e-bikes.

Accordingly, the Tribunal reverses the hearing officer's dismissal of four charges of Code Section 20-762(c) and imposes a civil penalty of \$1,000 for each charge, for a total civil penalty of \$5,000 (including the one charge that was previously sustained by the hearing decision).

*OATH Hearings Division Appeals Unit
August 8, 2017*