BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF SWANSON TAV, LLC / JACK-SONS TAV, INC d/b/a JACK-SONS SPORTS BAR 432 S 48TH AVE YAKIMA, WA 98908-3407 LICENSEE LICENSE NO. 074679 AVN NO. 4F7166A	LCB NO. 22,768 OAH NO. 2008-LCB-0012 FINAL ORDER OF THE BOARD FOLLOWING REMAND

I. BOARD'S CONSIDERATION

The above entitled matter coming on regularly before the Board, and it appearing that:

1. A formal hearing was held on August 12, 2008 at the licensee's timely request for a hearing in relation to the Liquor Control Board's Complaint dated January 23, 2008.
2. The Complaint alleged that on June 16, 2007 the licensee or employee(s) thereof, allowed an apparently intoxicated person to possess and/or consume liquor on the licensed premises in violation of WAC 314-16-150.
3. At the hearing, the Education and Enforcement Division of the Board was represented by Assistant Attorney General Jennifer Elias and the Licensee was represented by attorney Lou V. Delorie.
4. On October 9, 2008 Administrative Law Judge Chris Blas entered his Findings of Fact, Conclusions of Law and Initial Order in this matter which held the licensee "did not violate WAC 314-16-150 on June 16, 2007" and further held the licensee was not subject to any penalty in this matter.

5. A Petition for Review was filed timely by the Enforcement Division specifically taking exception to the ALJ's determination to apply WAC 314-42-070 to determine the violation of WAC 314-16-150 charged in the complaint did not occur.
6. A reply in opposition to the Enforcement Division's Petition for Review and request to adopt the ALJ's initial order was filed timely by the Licensee.
7. The Board entered Findings of Fact 1 through 33 and Conclusions of Law 1 through 10 and reversed the Initial Order.
8. In the Final Order of the Board dated January 23rd, 2009, the matter was remanded to the ALJ to enter an order sustaining the complaint and to determine if mitigating or aggravating circumstances were established in the record.
9. The ALJ issued his Initial Order on Remand, which was properly served on May 13th, 2009, whereby determining, "There exist several mitigating factors allowing for a reduction of the standard penalty."
10. Enforcement Division's Petition for Review of the Initial Order on Remand was received on June 1st, 2009 stating its position against the ALJ's determination on mitigation and to request correction of scrivener's errors on Findings of Fact 2, 3, and 5.
11. Licensee's Memorandum in Opposition to Petition for Review of the Initial Order on Remand in support of the ALJ's determination on mitigation was received on June 15th, 2009.
12. The entire record in this proceeding was presented to the Board for final decision.

II. FINDINGS OF FACT

The Board affirms and adopts the ALJ's findings of fact, except as to the errors contained in Findings of Fact 2, 3 & 5 in which the Board substitutes the year 2007 in place of 2006.

III. CONCLUSIONS OF LAW

1. The Board concludes that the mitigating factors included in the Initial Order on Remand, Findings of Fact 3 though 9 do not meet the criteria for mitigation in the Board's rules, except that the facts do demonstrate that the Licensee has taken steps to attempt to control liquor-related issues in the establishment. However, these facts, including the fact that the security personnel who are charged with patrolling the premises to look for over-served patrons are not required to attend the TIPS training, do not justify a reduction of the standard penalty for a second violation to $500.

2. The Board hereby modifies Conclusion of Law 4 entered by the ALJ, specifically modifying the amount of the monetary option to $1000.00.

IV. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Board ORDERS:

The ALJ's Initial Order on Remand is AFFIRMED with corrections and the Board's complaint is SUSTAINED;

NOW THEREFORE; IT IS HEREBY ORDERED that that liquor license privileges granted to Swanson Tav LLC/Jack-Sons Tav Inc, d/b/a Jack-Sons Sports Bar at 432 S 48th Avenue, Yakima WA, License Number 074679, be and the same are hereby suspended for a term of five days (5) days effective from 10:00 a.m. on August 21, 2009, until 10:00 a.m. on August 26, 2009; PROVIDED, HOWEVER, that said suspension shall be vacated upon payment of a monetary penalty in the amount of one-thousand dollars ($1,000), due on or before August 14, 2009. Failure to comply with the terms of this order will result in further disciplinary action.

Payment should be labeled in reference to this matter and sent to:

Washington State Liquor Control Board

Enforcement and Education Division

P.O. Box 43085, Olympia, WA 98504-3085

DATED at Olympia, Washington this 22nd day of July, 2009.

WASHINGTON STATE LIQUOR CONTROL BOARD

Reconsideration. Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of this Order to file a petition for reconsideration stating the specific grounds on which relief is requested. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering it directly to the Washington State Liquor Control Board, Attn: Kevin McCarroll, 3000 Pacific Avenue Southeast, PO Box 43076, Olympia, WA 98504-3076, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board's office. RCW 34.05.010(6). A copy shall also be sent to Mary M. Tennyson, Assistant Attorney General, 1125 Washington St. SE, P.O. Box 40110, Olympia, WA 98504-0110. A timely petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on the petition. An order denying reconsideration is not subject to judicial review. RCW 34.05.470(5). The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Stay of Effectiveness. The filing of a petition for reconsideration does not stay the effectiveness of this Order. The Board has determined not to consider a petition to stay the effectiveness of this Order. Any such request should be made in connection with a petition for judicial review under chapter 34.05 RCW and RCW 34.05.550.

Judicial Review. Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).