

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF
TRAV AND RUTH OWENS
TRAV'S RESTAURANT AND LOUNGE
20 N. WENATCHEE AVE.
WENATCHEE, WA 98801

LICENSEE

License No. 353088

OAH NO. 2006-LCB-0028

NO. 22,383

FINAL ORDER OF THE BOARD

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

1. That a formal hearing was held on July 11, 2006, on the Board's complaint that on or about December 17, 2005 the Licensee, or an employee of the Licensee supplied liquor to a person apparently under the influence of liquor or allowed an apparently intoxicated person to possess and/or consume liquor on the licensed premises in violation of WAC 314-11-035; that on or about December 17, 2005 the Licensee was consuming liquor while working on the licensed premises in violation of WAC 314-11-015(3)(d); that on or about December 17, 2005 the Licensee was disorderly or apparently intoxicated on the licensed premises contrary to WAC 314-11-015(3)(a) and that on or about December 17, 2006 the Licensee, or an employee of the Licensee engaged in conduct on the licensed premises which is prohibited by RCW Chapter 9A, in violation of WAC 314-11-015(3)(e). The Licensee was represented at the hearing by Ruth L. Owens co-owner and the Liquor Control Board's Education and Enforcement Division was represented by Assistant Attorney General Jason S. Richards.

2. That on July 19, 2006, Administrative Law Judge (ALJ) Edward S. Steinmetz entered the Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the complaint

alleging a violation of WAC 314-11-015 (3) (d) (the allegation that the Licensee consumed alcohol while working on the licensed premises); sustained the complaint alleging a violation of 314-11-015(3)(a) (the allegation that the Licensee was disorderly or apparently intoxicated on the licensed premises) and sustained the complaint alleging the Licensee engaged in conduct (obstructing a law enforcement officer) on the licensed premises which is prohibited by RCW chapter 9A, in violation of WAC 314-11-015(3)(e); but which dismissed the complaint alleging a violation of WAC 314-11-035 (the allegation that the Licensee or an employee of the Licensee supplied liquor to a person apparently under the influence of liquor or allowed an apparently intoxicated person to possess and/or consume liquor on the licensed premises).

3. That the ALJ's Initial Order recommended to the Board the aggravated penalty of a thirty day suspension without option for a monetary penalty in light of the "extremely serious offense" of the Licensee's physical assault on a Wenatchee Police Department sergeant as the sergeant attempted to investigate a citizen complaint regarding smoking inside the licensed premises in violation of the state wide smoking ban.

4. That the Licensee timely filed Exceptions to Initial Order and that the Assistant Attorney general representing the Enforcement and Education Division (Enforcement) filed a timely Reply to the Licensee's Exceptions to Initial Order. The Board considered both the Licensee's Exceptions and Enforcement's Reply in entering this Final Order. The Board is mindful of Enforcement's concern that the Licensee failed to serve the Enforcement Division or Enforcement's counsel with the Licensee's Exceptions and of Enforcement's request that the Board not consider Licensee's Exceptions. The Board has considered the Licensee's Exceptions, but agrees with Enforcement's assessment that the Exceptions lack the force and merit necessary to overcome the ALJ's decision.

After considering the entire record in this matter, the Board agrees with and affirms the ALJ's findings and conclusions.

5. In particular we defer to the ALJ's ability to observe the demeanor of the witnesses and we defer to the ALJ's determinations of witness credibility inherent to the ALJ's conclusion that a preponderance of the evidence in the record establishes that the violations found by the ALJ. Specifically, we defer to the ALJ's determinations of credibility inherent to the finding and conclusion that the Licensee, Travis and Ruth Owens were in fact working on the licensed premises on or about December 17, 2005 and that they were in fact consuming alcohol during the time they were working, in violation of WAC 314-11-015(3)(d).

6. We further defer to the ALJ's determinations of credibility as related to the findings and conclusion that a preponderance of the evidence in the record establishes that the Licensee, Travis and Ruth Owens were apparently intoxicated on the licensed premises on or about December 17, 2005, in violation of WAC 314-11-015(3)(d).

7. We again defer to the ALJ's assessment of credibility on the very serious matter of the Licensee's engaging in conduct on the licensed premises (the gross misdemeanor of obstructing a law enforcement officer in the discharge of his or her official duties) which is prohibited by RCW Chapter 9A, the criminal laws of the state of Washington, and which is a violation of WAC 314-11-015(3)(e). Determining whether the evidence in the record establishes Licensee Ruth Owens' conduct met the level of obstructing a law enforcement officer in the discharge of official duties turns on the ALJ's abilities to observe the demeanor of the witnesses and to make corresponding assessments of credibility. We affirm the ALJ's determination that the testimony of the law enforcement officials, particularly that of Sergeant Smith, is more credible than the testimony of Licensee Travis and Ruth Owens.

8. Additionally we agree with the ALJ's conclusion, which Enforcement does not challenge, that the evidence fails to substantiate the charge that the Licensee or an employee of the Licensee supplied liquor to a person apparently under the influence of liquor, or allowed an apparently intoxicated person to possess or consume liquor on the licensed premises in violation of WAC 314-11-035.

9. We also agree with the ALJ's well reasoned decision that an aggravated penalty of a thirty day license suspension without the option of a monetary penalty is appropriate. As the ALJ noted the grant of a liquor license is a privilege that carries with it the expectation that Licensees will conduct themselves in a manner that ensures compliance with all applicable laws and rules. We draw particular attention to the ALJ's counsel to the Licensees in Conclusion of Law No. 12 that compliance with applicable laws and rules include the "requirement that Licensees cooperate with local law enforcement and liquor enforcement officers, and certainly not to engage in belligerent or harassing behavior to law enforcement officers culminating in physical assault." We concur with the ALJ's assessment that Licensees such as the Owens' who "conduct themselves in an intemperate manner, and in a manner which violates the laws of this state, jeopardize their license and privilege to sell alcohol." The proposed penalty of a thirty day suspension is appropriate and is affirmed.

10. That the entire record in this proceeding, including the pleadings and correspondence filed by the parties, having been reviewed by the Board for final decision, and the Board having fully considered said record and arguments of the parties, and being fully advised in the premises; NOW THEREFORE,

IT IS HEREBY ORDERED that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order heretofore made and entered in this matter be, and the same hereby are, AFFIRMED and, THEREFORE, that the Board's Complaint that on or about December

17, 2005 the Licensee was consuming liquor while working on the licensed premises in violation of WAC 314-11-015(3)(d); that on or about December 17, 2005 the Licensee was disorderly or apparently intoxicated on the licensed premises contrary to WAC 314-11-015(3)(a) and that on or about December 17, 2006 the Licensee, or an employee of the Licensee engaged in conduct on the licensed premises which is prohibited by RCW Chapter 9A, in violation of WAC 314-11-015(3)(e) is SUSTAINED. The Board's Complaint that on or about December 17, 2005 the Licensee, or an employee of the Licensee supplied liquor to a person apparently under the influence of liquor or allowed an apparently intoxicated person to possess and/or consume liquor on the licensed premises in violation of WAC 314-11-035 is DISMISSED. The recommended penalty of a thirty (30) day suspension without the option of monetary penalty is AFFIRMED. The suspension is effective at 10:00 am on February 14, 2007, until 10:00 am on March 16, 2007.

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. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order or (b) there is specific material error of fact or law. 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: Administration, 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 Martha P. Lantz, 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).

DATED at Olympia, Washington this 19th day of January, 2007.

WASHINGTON STATE LIQUOR CONTROL BOARD



