

**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF  
KYRIAKOS, INC. dba  
MR. LUCKY  
315 1<sup>ST</sup> AVE N.  
SEATTLE, WA 98102-4502  
  
LICENSEE

NO. 22,406  
OAH NO. 2006-LCB-00058  
  
FINAL ORDER OF THE BOARD

License No. 357011

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

1. A formal hearing was held beginning on October 16 and continuing to October 17, 19 and 20, 2006 at the Licensee Kyriakos, Inc. dba Mr. Lucky's (Mr. Lucky) timely request for an administrative hearing following an Emergency Order of Suspension issued by the Liquor Control Board on April 26, 2006, which was accompanied by the Liquor Board's Complaint No. 22,406.

The Complaint alleged the following violations:

- A violation of WAC 314-11-015 occurring when on or about April 15, 2006 the Licensee or employees of the Licensee failed to conduct the licensed premises in a manner that was in compliance with RCW Title 9, Title 9A and/or Title 69;
- A violation of RCW 66.44.210 occurring when on or about April 15, 2006 the Licensee or employees of the Licensee allowed one or more minors to frequent an area classified by the Board as off-limits to any person under the age of 21-years;

- A violation of RCW 66.44.270 occurring when on or about April 15, 2006 the Licensee or employees of the Licensee furnished alcohol to one or more persons under the age of 21-years;
- A violation of WAC 314-11-015 occurring when on or about April 15, 2006 the Licensee or employees of the Licensee permitted one or more patrons to engage in behavior that provoked conduct which presents a threat to public safety; and
- A violation of WAC 314-11-015 occurring when on or about April 15, 2006 the Licensee or employee(s) of the Licensee engaged in behavior that provoked conduct which presents a threat to public safety.

The Emergency Order of Suspension and the Complaint were both served upon the Licensee on April 26, 2006. The Complaint sought revocation of the liquor license with no option for monetary penalty in lieu of revocation.

2. On February 2, 2007 Administrative Law Judge F. Neil Gorrell (ALJ) entered Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the allegations of the Complaint. The Initial Order revoked the license privileges issued to Kyriakos, Inc. dba Mr. Lucky, at a date to be set by the Board in a final order.

3. The ALJ's Findings of Fact, Conclusions of Law and Initial Order include the ALJ's determination, in Finding of Fact No. 21, that he had jurisdiction to review the Order of Emergency Suspension itself, in addition to jurisdiction to review the Board Complaint and the Board's request for revocation of the license, which accompanied the Emergency Order of Suspension. The ALJ noted the Board previously expressed a consistent conclusion when the Board held in an order in an earlier case involving a different Licensee (Larry's Greenfront, Inc., Board Docket No. 22, 371,

Final Order issued November 2, 2006) that an ALJ has jurisdiction to review an Emergency Order of Suspension.

4. At the hearing, the Education and Enforcement Division of the Board was represented by Assistant Attorney General Gregory R. Brunson; the Licensee was represented by attorney David R. Osgood.

5. The Licensee filed timely Exceptions to the ALJ's initial order. The Education and Enforcement Division timely filed a response to Licensee's Exceptions.

6. The Board affirms and adopts the ALJ's findings of fact.

7. Specifically, the Board defers to the ALJ's ability to view the demeanor of the witnesses leading to the findings of credibility underlying the evidence supporting the ALJ's findings that the Licensee allowed entry to the premises and service of alcohol to patrons who were under the age of twenty-one; that the Licensee failed to conduct the licensed premises in such a way as to prevent violations of criminal law from occurring; that the Licensee permitted patrons to engage in behavior that provoked conduct which presents a threat to public safety and that the Licensee itself engaged in behavior that provoked conduct which presents a threat to public safety.

The above findings and the Board's consideration of the entire record of this matter, which includes the totality of the evidence presented during the hearing as well as the Exceptions and Responses filed by the parties result in the following CONCLUSIONS:

1. The Board hereby agrees with, and adopts, the ALJ's conclusions that evidence presented at the hearing and contained in the record of this matter establishes the violations alleged in the complaint.

2. The Board particularly agrees with the ALJ's conclusions that the incidents of violence in an around Licensee's establishment on April 15 and 16, 2006 are a predictable and foreseeable

outcome of Licensee's business practices such that the Licensee engaged in or allowed conduct that is a direct threat to public safety, in contravention of Washington state liquor laws and rules as alleged in the Board's complaint and which is inconsistent with the privilege of holding a liquor license.

3. The conduct allowed by the Licensee presented a direct threat to public safety. The aggravated penalty of cancellation of license privileges is appropriate and is supported by the record.

4. Further we agree that the evidence contained in the record is sufficient to establish the Licensee's activities at the time of the Order on Emergency Suspension demonstrated a threat to public health, safety or welfare, which justified immediate action.

5. While we agree that the ALJ had jurisdiction to review the order of Order of Emergency Suspension itself, we decline to reach Licensee's arguments that the Board's emergency or summary suspension process is constitutionally deficient. The Board does not have jurisdiction to consider constitutional issues; NOW THEREFORE;

IT IS HEREBY ORDERED that the Initial Order is hereby adopted as the final decision of the Board and that the Emergency Order of Suspension and the allegations of the Complaint are both affirmed. Revocation of the license is appropriate and the penalty of revocation contained in the Initial Order is also affirmed.

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: 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 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 23<sup>rd</sup> day of May, 2007.

WASHINGTON STATE LIQUOR CONTROL BOARD

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*Patricia Kuvase*  
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*Garner*  
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