

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF

TSEDALU HAILE KEBEDE
ETHIOPIAN CENTER
1220 E JEFFERSON STREET
SEATTLE, WA 98122

LICENSEE

LICENSE NO. 082930

LCB NO. 22,708

OAH NO. 2007-LCB-0021

FINAL ORDER OF THE BOARD

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

1. An administrative hearing was held on August 20, 2008 at the Licensee's timely request for a hearing on the Administrative Violation Notice issued by the Liquor Control Board on September 18, 2006.

2. On March 27, 2007, the Board issued a Complaint alleging that on or about July 27, 2006 the Licensee, or an employee(s) there of allowed a person under 21 (twenty-one) years of age to frequent a restricted premises contrary to RCW 66.44.310 and WAC 310-11-020.

3. At the hearing the Education and Enforcement Division of the Board was represented by Assistant Attorney General Gordon Karg and the Licensee, Tsedalu Haile Kebede represented herself.

4. On September 30, 2008 Administrative Law Judge Christy Gerhart Cufley issued her Proposed Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the Complaint.

5. On October 6, 2008, Administrative Law Judge Christy Gerhart Cufley issued a CORRECTED Proposed Findings of Fact, Conclusions of Law and Initial Order in this matter

which sustained the Complaint; the previous omitted further appeal rights; the correct version also modified the exception due dates.

6. No exceptions were received timely; however, the Licensee did submit a letter maintaining that she did not violate liquor laws and wishes to resolve this matter.

7. A copy of the Initial Order was received by the Liquor Control Board; however, the complete hearing record including exhibits and recordings have not been transmitted to the Liquor Control Board by the Office of Administrative Hearings and the record is unable to be located. Without access to the complete record of this proceeding, the Board is unable to review the Initial Order to adequately determine whether the charges against the licensee were proven with a preponderance of the evidence.

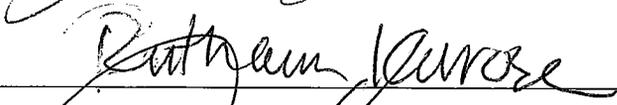
8. Lacking the ability to determine whether the Initial Order correctly sustained the charges against the licensee the Board is compelled to vacate the Initial Order and dismiss the charges against the licensee.

NOW THEREFORE, IT IS HEREBY ORDERED that that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order heretofore made and entered in this matter be VACATED, and the COMPLAINT is hereby DISMISSED.

DATED at Olympia, Washington this 15th day of January, 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. 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).

ROOSEVELT CURRIE
Chief Administrative
Law Judge



October 6, 2008

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS

One Union Square Suite 1500 • 600 University Street • Seattle WA 98101
(206) 389-3400 • (800) 845-8830 • FAX (206) 587-5135 • www.oah.wa.gov

Tsedalu Haile Kebede
Ethiopian Center
1220 E Jefferson Street
Seattle, WA 98122

Gordon Karg, Assistant Attorney General
Office of the Attorney General - GCE Division
PO Box 40100
Olympia, WA 98504

RE: Ethiopian Center
OAH Docket No. 2007-LCB-0021
Agency No. 22,708

Dear Ms. Kebede and Mr. Karg:

On September 30, 2008 a Proposed Findings of Fact, Conclusions of Law, and Initial Order was issued in the above-referenced matter. However, the information related to further appeal rights was inadvertently omitted.

Accordingly, enclosed please a CORRECTED copy of that document inclusive of further appeal rights. With the exception of the date of mailing, no other content has been changed. The parties now have until **OCTOBER 26, 2008** to file written exceptions as explained therein.

Please accept my apologies for any inconvenience this omission may have caused.

Sincerely,

Christy Gerhart Cufley
Administrative Law Judge

c: Roni Pettit

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LIQUOR CONTROL BOARD
BOARD ADMINISTRATION

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE WASHINGTON STATE LIQUOR CONTROL BOARD

In the Matter of:

Tesadalu Haile Kebede
ETHIOPIAN CENTER
1220 E. Jefferson St
Seattle, WA 98122

Licensee.

License No. 082930

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I hereby certify that I have this day served a copy of this document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent.

DATED at Seattle, Washington, this 6th day of October, 2008.

Phonghan Le
Representative, Office of Administrative Hearings

OAH NO. 2007-LOB-0021
Agency No. 22,700

NOTICE TO PARTIES

The attached administrative law judge's findings of fact, conclusions of law and initial order are not effective until a final order of the Washington State Liquor Control Board is issued.

All parties hereto shall have twenty (20) days from the date of service of these proposals to file exceptions as provided by RCW 34.05.464 and WAC 314-29. Exceptions shall be filed in triplicate with the Liquor Control Board, 3000 Pacific Avenue S.E., P.O. Box 43075, Olympia, WA 98504-3076. Replies to exceptions shall be filed with the Board within ten (10) days of the date of service of exceptions as provided by WAC 314-29. The exceptions must be received on or before **October 26, 2008**. One copy of the exceptions or replies must also be served upon all other parties of record, or their attorneys, with proof of service as required by WAC 314-29.

After reviewing the entire record including exceptions, replies, briefs and legal arguments, if any, the board will affirm, reverse or modify these proposals by a final order of the board.

The administrative law judge's proposed decision provides for payment of a monetary penalty. The monetary penalty would be based upon the formula shown in the administrative law judge's proposed order.

DO NOT SEND PAYMENT AT THIS TIME. In the event the board adopts the administrative law judge's recommended monetary penalty, payment should be made at that time by cashier's or certified check only.

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF :

Tesadalu Haile Kebede
ETHIOPIAN CENTER
1220 E. Jefferson St
Seattle, WA 98122

Licensee.

License No. 082930

OAH Docket No. 2007-LCB-0021
(Agency No. 22,708)

CORRECTED
PROPOSED
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
INITIAL ORDER

STATEMENT OF THE CASE

On September 18, 2006 the Washington State Liquor Control Board (Board) issued an Administrative Violation Process for Violations – Standard Penalty to Tesadalu Haile Kebede. (dba Ethiopian Center), the licensee in this matter, located at 1220 E. Jefferson Street, Seattle, in King County, Washington. In its Notice, the Board proposed that the license of the licensee be suspended for a period of five days, or that the licensee pay a civil monetary penalty in the amount of five hundred dollars (\$500.00) in lieu of the suspension. The licensee made a timely request for a hearing.

On March 27, 2007 the Board issued a Complaint alleging that "On or about July 27, 2006, the above-named Licensee, or an employee(s) thereof, allowed a person under 21 (twenty-one) years of age to frequent a restricted premises contrary to RCW 66.44.310 and WAC 310-11-020." (Exhibit 7).

This matter came on for hearing pursuant to due and proper notice at Seattle, Washington, on August 20, 2008 before Christy Gerhart Cufley, Administrative Law Judge, Office of Administrative Hearings.

At the hearing, Tesadalu Haile Kebede, Owner, appeared *pro se* on behalf of the licensee, Ethiopian Center. The Education and Enforcement Division of the Washington State

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Liquor Control Board ("Board") was represented by Gordon Karg, Assistant Attorney General. Seattle Police Department Patrol Officers Stephen Kauhane and George Davisson, and Liquor Enforcement Officer IV (Lt.) Frank Gallegos appeared and provided testimony on behalf of the Board.

Based upon the evidence presented, the undersigned administrative law judge makes the following:

FINDINGS OF FACT

1. Tesadalu Haile Kebede is the licensee and owner of Ethiopian Center, the licensed premises at issue in this matter, located at 1220 E. Jefferson Street in Seattle, Washington, in King County, Washington. The licensee has operated this establishment since March 1999.
2. Stephen Kauhane is a Patrol Officer with the Seattle Police Department, and has been employed in that capacity for approximately 16 years. George Davisson is a Patrol Officer with the Seattle Police Department (SPD), and has been employed in that capacity for approximately 7 years.
3. On July 27, 2006 at approximately 2:10 a.m. SPD Officers Stephen Kauhane and George Davisson received a radio communication from their supervisor, Captain Landy Black, advising that he had observed through a window several individuals present in the licensed premises apparently consuming alcohol after hours. Captain Black requested the two officers investigate further, and they joined Captain Black outside the premises shortly thereafter.
4. Officers Kauhane and Davisson were on patrol in the general area as part of an enforcement patrol emphasis (a process where additional officers assist those regularly scheduled patrol officers due to an increase in criminal activity in the surrounding geographical area).
5. Upon their arrival approximately five minutes after receiving the radio dispatch, the two officers observed the outside lights of the subject premises turned off, signaling the establishment was closed. However, lights were on inside of the establishment, and Officer

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Kauhane observed through the window three individuals seated at the bar with what appeared to be open containers of beer and drinks in front of them on the bar counter.

6. Officers Kauhane and Davisson proceeded with a "knock and talk" by knocking on the door of the premises. The owner, Ms. Kebede, opened the door and allowed the officers access. Upon entry at approximately 2:16 a.m., the officers observed an additional four individuals present inside the licensed premises and more clearly observed "...open containers and drinks on and around the bar counter. We also observed money on the bar with what appeared to be a bar tab attached...Kebede did have an odor of alcohol on her breath and appeared to be intoxicated..." (Exhibit 1, page 2).

7. Officer Kauhane initiated a discussion with Ms. Kebede while Officer Davisson obtained identifying information from the seven individuals present to determine their age as well as to determine whether or not any of the individuals were subject to any outstanding arrest warrants.

8. Officer Davisson identified the names and dates of birth of each of the individuals who were present on July 27, 2006 in the licensed premises at 2:16 a.m. as follows:

Selam A. Mengesha (DOB 12/10/82); Girma B. Gebreyohannes (DOB 9/26/68), Tiruneh F. Haile (DOB 4/12/83), Anthony Q. Braxton (DOB 12/29/85), Michael G. Bryan (4/14/84), Hargewoini M. Seretse (DOB 1/1/84) and Alexander A. Mengitsu (DOB 8/1/85).

9. Each of the above-listed individuals was over the age of 21 years with the exception of Mr. Braxton who was identified by a Washington Identification Card listing his birth date as "12-29-1985;" Mr. Braxton was 20 years of age on July 27, 2006. (Exhibit 2, pages 2 and 3).

10. At the time of the subject incident, the entire premises was classified as restricted to those persons twenty-one years or older.

11. Officer Kauhane prepared an Investigative Summary the day following the subject incident setting forth the observations and actions of the officers. Officer Davisson did not participate in the preparation of that report other than to provide the names and birth dates of the individuals present in the licensed premises at or about 2:16 a.m. on July 27, 2006.

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12. On September 1, 2006 the Seattle Police Department forwarded the report to the Seattle Enforcement Office where it was received and reviewed by Lt. Gallegos. Lt. Gallegos has been employed in the Enforcement Division of the Washington State Liquor Control Board for approximately 13 years. He is also a retired police officer formerly employed by the City of Los Angeles Police Department.

13. Officer Gallegos reviewed the Incident Report to determine whether sufficient evidence existed to issue an Administrative Notice of Violation (AVN). He also reviewed the prior history of the licensee, determined the entire premises was restricted to only those patrons over 21 years of age, and concluded issuance of the subject AVN was appropriate. Lt. Gallegos considered issuing, but ultimately did not issue, an AVN to the licensee for serving alcohol after hours. Lt. Gallegos has issued approximately 200 AVN's during his tenure with the Enforcement Division.

14. On September 18, 2006 Lt. Gallegos returned to the establishment and issued the AVN at issue to Ms. Kebede for allowing a minor to remain in a restricted area.

15. Although this is the first formal Notice of Violation issued by the Board to this licensee, prior written warnings for allowing minors to frequent the premises were issued by the Board to this licensee in 2005 and 2006.¹

16. On October 3, 2006 Officer Gallegos prepared a Case Report setting forth the basis for his actions following receipt by the Board of a request for hearing from the licensee.

17. The licensee has subsequently obtained approval from the Board to divide the premises into separate areas designating certain portions as non-restricted areas where presence of minors is allowed.

¹The warnings were dated June 11, 2005 (No. 2Z5153) and September 27, 2006 (No. 2Z6264C) and were both issued for allowing a minor to frequent the premises.

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18. The Board (through the Education and Enforcement Division) regulates the conduct of licensees to ensure compliance with applicable laws related to the serving of alcohol, including but not limited to, ensuring the safety and protection of minors.

19. The licensee, Ms. Kebede indicates that most of the individuals present at the establishment after 2:00 a.m. on July 27, 2006 were close friends and known to her. She does not personally know Mr. Braxton, but believes he was present to provide transportation to another individual, and that he was present in the establishment for only ten to fifteen minutes.

20. The Board (in cooperation with the Seattle Police Department) regulates the conduct of licensees to ensure compliance with applicable laws related to the serving of alcohol, including but not limited to ensuring the safety and protection of minors.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter pursuant to chapters 66.44, 34.12, and 34.05 RCW, and chapters 10-08, 314-11 and 314-12 WAC.

2. As a licensed retail seller of liquor, the licensee is subject to the jurisdiction of the Washington State Liquor Control Board. The license is subject to the conditions and restrictions imposed by Title 66 RCW. RCW 66.24.010(6). The Board has authority pursuant to RCW 66.24.010 to suspend or cancel a license so long as the licensee is afforded the opportunity for a hearing. Proceedings involving agency action are adjudicative proceedings under chapter 34.05 RCW. The Board has authority to assign such proceedings to an administrative law judge pursuant to chapter 34.12 RCW. A proper hearing was provided in this case.

3. RCW 66.44.310 provides, in pertinent part:

(1) Except as otherwise provided by RCW 66.44.316 and 66.44.351, it shall be a misdemeanor:

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(a) To serve or allow to remain in any area classified by the board as off-limits to any person under the age of twenty-one years: . . .

4. The undersigned concludes that the undisputed evidence establishes that an individual under the age of 21 years (Mr. Braxton) was present in the licensed premises on July 27, 2006. Despite the licensee's assertion that Mr. Braxton was only there for 10 or 15 minutes to pick up another person, the fact remains that he was present inside the premises which at that time was restricted to prohibit minors from being present. The licensee remains responsible for ensuring that no minors are present in restricted areas (irrespective of whether or not alcohol is served to or consumed by the minor). The presence of Mr. Braxton in the licensed premises at 2:16 a.m. on July 27, 2006 is a clear violation of RCW 66.44.310. Accordingly, the undersigned concludes the Board's complaint should be sustained.²

5. Chapter 314-11 WAC sets forth general requirements for liquor licenses (WAC 314-11-005) and outlines the responsibilities of a liquor licensee (WAC 314-11-015).

6. WAC 314-12-170 and -300 establish a standard penalty of a five-day suspension, with a monetary option in the amount of five hundred dollars (\$500.00), for a first violation of RCW 66.44.310. WAC 314-12-330 authorizes variation from the standard penalty where there exist mitigating or aggravating factors.

7. Despite the licensee's assertion that Mr. Braxton was only present in the establishment for approximately 15 minutes, she has the duty as the licensee to verify that he was 21 years of age or older before allowing him to be present in her establishment. There are no mitigating circumstances to warrant a departure from the standard penalty requested here. Therefore, the undersigned concludes a five (5) day license suspension or payment of a civil monetary penalty in the amount of five hundred dollars (\$500) in lieu of suspension is the appropriate penalty.

²The Board concluded there was insufficient evidence to issue additional citations to the licensee, but the presence of seven individuals in the establishment after 2:00 a.m., accompanied by the officers' credible observations, does raise legitimate suspicions as to the nature of the activity occurring at that time.

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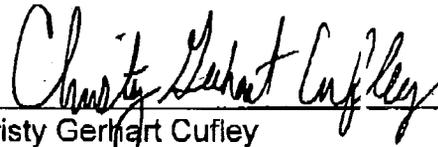
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From the foregoing conclusions of law, NOW THEREFORE,

INITIAL ORDER

The Board's Complaint dated March 27, 2007 based on the Notice of Administrative Violation alleging a violation of RCW 66.44.310 on July 27, 2006 is hereby AFFIRMED. The licensee, Tesadalu Haile Kebede dba Ethiopian Center located at 1220 E. Jefferson Street Seattle, in King County, Washington, License Number 082930, shall, on a date to be set by the Board in its final order, be suspended for five days or the licensee may make payment of a monetary civil penalty in the amount of five hundred dollars (\$500) in lieu of suspension.

Dated at Seattle, Washington this 6th day of October, 2008

By 
Christy Gerhart Cufley
Administrative Law Judge
Office of Administrative Hearings

A copy of this Proposed Findings of Fact, Conclusions of Law, and Initial Order was mailed on the 6th day of October, 2008 to the following parties and representatives:

Tsedalu Haile Kebede
Ethiopian Center
1220 E Jefferson Street
Seattle, WA 98122

Gordon Karg
Assistant Attorney General
Office of the Attorney General - GCE Division
PO Box 40100
Olympia, WA 98504

CORRECTED

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Roni Pettit
Office of Administrative Hearings
PO Box 42488
Olympia, WA 98504-2488

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I hereby certify that I have this day served a copy of this document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent.

DATED at Seattle, Washington, this 6th day of October, 2008.

Phonghan Le
Representative, Office
of Administrative Hearings

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