

**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF

WHITESTONE WINERY, INC.  
WHITESTONE WINERY  
9 NE ANNE STREET  
WILBUR, WA 99185

LICENSEE

License No. 401110

NO. 22, 719

OAH NO. 2007-LCB-0006

FINAL ORDER OF THE BOARD

**I. BOARD'S CONSIDERATION**

The above entitled matter coming on regularly before the Board to review the Findings of Fact, Conclusions of Law and Initial Order entered by Administrative Law Judge Edward S. Steinmetz on May 17, 2007, and it appearing:

1. A formal hearing was held on April 26, 2007 at the Licensee, Whitestone Winery's timely request for an administrative hearing following the Liquor Board's Complaint No. 22,719, issued on March 22, 2007. The Complaint alleged Whitestone Winery, or an employee thereof, engaged in the production and/or storage of wine at a new location which did not have a domestic winery license in violation of RCW 66.44.090 and RCW 66.24.170. The Complaint sought a three day suspension of Whitestone's domestic winery license or a \$500 monetary penalty in lieu of suspension.

2. At the hearing the MIW Division of the Board was represented by Assistant Attorney General Jennifer Elias and the Licensee was represented Walter Haig, II, President of the Licensee's corporation.

3. On May 17, 2007 Administrative Law Judge Edward S. Steinmetz (ALJ) entered Findings of Fact, Conclusions of Law and Initial Order in this matter which dismissed the Complaint.

4. The MIW Division filed timely a timely Petition for Review of the ALJ's initial order, specifically taking exception to the ALJ's Conclusion of Law No. 4 as containing an incorrect interpretation of WAC 314-01-005 (1), pointing to typographical errors in Finding of Fact No. 3 and requesting the Complaint be sustained.

5. The entire record of this proceeding was presented to the Board for its review and the entry of a final decision.

## II. FINDINGS OF FACT

1. The Board affirms and adopts the ALJ's findings of fact, except as to the typographical errors contained in Finding of Fact No. 3.

2. The Board substitutes the following language for the existing Finding of Fact No. 3. The substitute Finding of Fact No. 3 which corrects the typographical errors is as follows:

### Finding of Fact No. 3:

On or about October 1, 2002 Officer McCabe met with Michael Haig, son of Walter and Judith Haig, corporate officers for Whitestone Winery, Inc. Michael Haig serves as the winemaker for Whitestone Winery. During this conversation Officer McCabe advised Michael Haig that the Licensee could have no ownership or possession of any grape juice until they had applied for their state license, and Mr. Haig advised that they did not. However, Officer McCabe subsequently

discovered that grape juice was being stored at the Licensee's location at 115 N.E. Main Street, Wilber, Washington, as of approximately September 20, 2002.

### III. CONCLUSIONS OF LAW

The Board hereby adopts Conclusions of Law Nos. 1, 2, 3 and 6 as entered by the ALJ. The Board hereby **rejects** Conclusions of Law Nos. 4, 5 and 7. The Board hereby enters the following Conclusions of Law Nos. 4, 5, 7 to substitute for the original, rejected, Conclusions of Law 4, 5 and 7.

#### Conclusion of Law No. 4:

WAC 314-01-005 (1) is not applicable to the allegations in the Board's complaint that the Licensee was operating at a new location without a license for that location, in violation of the law. WAC 314-01-005 (1) applies to specific premises for which a license has already been issued, and cannot be read to mean that a separate location, not licensed by the Board, should be considered licensed as a part of some other, already licensed, premises.

#### Conclusion of Law No. 5.

Licensee's reliance on WAC 314-01-005 (1) as an explanation for or defense to the allegation of operating at a new location without a license is not reasonable. As noted above in Conclusion of Law No. 4, WAC 314-01-005 (1) refers to areas under a licensee's control, available to or used by customers and/or employees in the conduct of business operations, only when such areas are part of the specific premises for which a license has already been issued. Licensee in this case did not possess a license for the 9 Anne Street location, also known as "Building 3" until February of 2007 when Licensee applied for and received a license for the premises known as "Building 3."

Conclusion of Law No. 7.

The evidence establishes a violation of RCW 66.24.170 and of RCW 66.44.090 when the Licensee used Building 3 in its winemaking operation at points in time prior to application for and receipt of a license for Building 3 in February of 2007. The Board's Complaint in this matter is sustained. The standard penalty of a three day suspension of Whitestone's domestic winery license or a \$500 monetary penalty in lieu of suspension is appropriate.

**IV. ORDER**

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

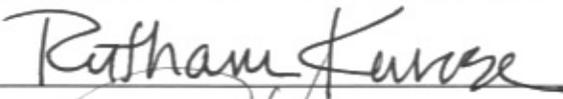
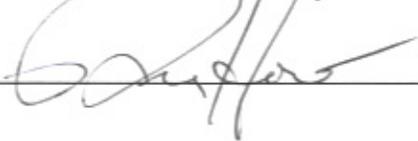
The ALJ's Initial Order dismissing the Complaint is REVERSED and the Board's complaint is SUSTAINED and a penalty of a three day license suspension or a \$500 penalty is imposed; therefore, the license privileges granted to Whitestone Winery, 9NE Anne St in Wilbur, Washington, License Number 401110, are hereby suspended for a term of three days (3) days effective from 10:00 a.m. on August 21, 2007, until 10:00 a.m. on August 24, 2007; HOWEVER, the suspension shall be vacated upon payment of a monetary penalty in the amount of five hundred dollars (\$500) due on or before August 14, 2007. Failure to comply with the terms of this order will result in further disciplinary action.

Payment in reference to this order should be sent to:

**Washington State Liquor Control Board**  
**Enforcement and Education MIW Division**  
**1303 W Broadway**  
**Spokane, WA 99201-2053**

DATED at Olympia, Washington this 25<sup>th</sup> day of July, 2007.

WASHINGTON STATE LIQUOR CONTROL BOARD

  
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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).