

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

BIG AL'S INC.
d/b/a BIG AL'S
16615 SE 18TH STREET
VANCOUVER, WA 98683-3595

LICENSEE

LICENSE NO. 088700

LCB NO. 22,825
OAH NO. 2008-LCB-0020

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 October 8, 2008 at the licensee's timely request for a hearing on the Liquor Control Board's Complaint dated April 30, 2008.
2. The Complaint alleged that on January 8, 2008 the Licensee or an employee(s) thereof, permitted a person under 21 years of age to remain in an area classified by the Board as off-limits to any person under the age of 21, contrary to RCW 66.44.310 (1) (a).
3. At the hearing, the Education and Enforcement Division of the Board was represented by Assistant Attorney General Gordon Karg and the Licensee was represented by David H. Smith, Attorney at Law.
4. On March 13, 2009 Administrative Law Judge Janet L. Schneider entered her Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the Complaint.
5. No exceptions were filed by the parties.
6. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises; 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, and the same hereby are, AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board and that the liquor license privileges granted to Big Al's, Inc., doing business as Big Al's, located at 1665 SE 18th Street in Vancouver, Washington, License Number 088700, are hereby suspended for a term of five (5) days. In lieu of a license suspension, the Licensee may pay a monetary penalty in the amount of five-hundred dollars (\$500) due within 30 days of this order. If timely payment is not received, then suspension will take place from 10:00 a.m. on May 14, 2009 until 10:00 a.m. on May 19, 2009. 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

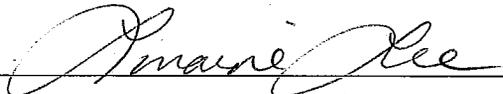
Enforcement and Education Division

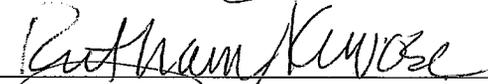
P.O. Box 43094

Olympia, WA 98504-3094

DATED at Olympia, Washington this 8th day of April, 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).

VIAILEL

MAR 13 2009

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

VANCOUVER OFFICE OF
ADMINISTRATIVE HEARING

In the Matter of:

BIG AL'S INC.
BIG AL'S
1665 SE 18TH STREET
VANCOUVER, WA 98683

LICENSEE

LICENSE NO. 088700

Docket No. 2008-LCB-0020
LCB No. 22,825

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND INITIAL ORDER

STATEMENT OF THE CASE

On January 24, 2008, the Washington State Liquor Control Board (hereinafter Board) issued an Administrative Violation Process for Violations - Standard Penalty to Big Al's Inc. doing business as Big Al's 16615 SE 18th Street, Vancouver, Washington. In its Notice, the Board alleged that on January 8, 2008, the Licensee, or an employee thereof, allowed a person under the age of 21 to frequent a restricted area contrary to RCW 66.44.310 and WAC 310-11-020. 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 hearing

Pursuant to notice duly give, an administrative hearing was held before Janet L. Schneider, Administrative Law Judge, in the Liquor Control Board Enforcement Office, 12501 NE 99th Street, Suite A-100, Vancouver, Washington on the 8th day of October 2008. The Washington State Liquor Control Board was represented by Gordon Karg, Assistant Attorney General, with witnesses Kendra Ogren and Almir Karic, Liquor Control Agents. David H. Smith, Attorney at Law, appeared to

represent the Licensee with Michael Hawks, Manager; Cristina Brown, server; Jerimy Killam, Bartender; and Daniel Kirkwood, part-Owner as witnesses.

The administrative law judge, having considered the entire record in this proceeding, including the arguments of the respective representatives, now enters the following Findings of Facts.

FINDINGS OF FACT

1. Big Al's is a large family oriented bowling and restaurant establishment in Vancouver, Washington. The facility opened in 2006 . It is owned by Daniel Kirkwood and his father Al.
2. Big Al's Inc. is the holder of liquor license number 088700 for Big Al's, located at 16615 SE 18th Street, Vancouver, Washington. The license was issued by the Washington State Liquor Control Board under the provisions of Revised Code of Washington (RCW) 66.24.
3. Within this facility is an area referred to as the "Sports Bar and Grill". The area is approximately 10,000 square feet in size with several points of ingress and egress. The majority of this area is designated by the Board as off-limits to persons under the age of twenty-one (21). At each opening to the off-limit to persons under the age of twenty-one area there is a sign posted advising persons that the area is off-limits to persons under the age of twenty-one. During peak business hours each area of ingress and egress to the Sports Bar and Grill is monitored by an employee, employees circulate through the restricted area and persons who have provided identification showing that they are over twenty-one are given bracelets so that persons who are legally in the restricted area can be easily identified.
4. January 8, 2008, was a quiet Tuesday night at Big Al's. The Sports Bar and Grill had one bartender working the bar and one server circulating throughout the rest of the area, with the manager on duty circulating between the sports bar and other areas of the facility. On January 8, 2008, Liquor Control Board Enforcement Officers Kendra Ogren and Almir Karic made a premise

check at Big Al's at approximately 8:10 p.m. to follow up on complaints received by the Liquor Control Board.

5. Prior to leaving the premises, they observed a group of youthful appearing people in the portion of the Sports Bar and Grill designated as off-limits to persons under twenty one years of age. Both Officers contacted the group. As the Officers entered the Sports Bar and Grill, they noted that there was nobody checking identification as patrons entered the area.

6. The Officers established that one of the individuals in the group, Talawana Fulgham Duran, was 19 years of age. Ms. Duran was identified by her Oregon Driver's License listing a birth date of December 12, 1988.

7. Ms. Duran was moved to a quiet area where she explained to Officer Karic that she entered the area with her sister, Sara Winward, to wish her cousin a Happy Birthday. Ms. Duran confirmed that she knew she was in an area restricted to individuals twenty one years of age or older and that as she entered the area she saw the signs advising her she was entering a restricted area.

8. While Officer Karic interviewed Ms. Duran, Officer Ogren interviewed several employees at Big Al's including the bartender, Jerimy Killam; server, Cristina Brown; and the manager on duty, Michael Hawks.

9. Mr. Hawks advised Officer Ogren that the bartender, Mr. Killam, was aware of the group and was in the process of checking ID's and could not get to Ms. Duran.

10. Mr. Killam, an experienced bartender, advised Officer Ogren that he did not see Ms. Duran enter the restricted area, but observed her with a group of young looking people and planned on checking their identifications. Mr. Killam advised Officer Ogren that he was busy at the bar and asked Ms. Brown to check the identifications of the people in the group. Mr. Killam returned to his bar duties after asking Ms. Brown to check the identifications.

11. Ms. Brown was pushing a cart of dishes toward an exit and made contact with the group. She informed Ms. Duran and Ms. Winward that the bartender needed to check their identification. Ms. Brown turned and left. She did not stay to observe whether or not Ms. Duran and Ms. Winward went to the bar.

12. A security video of the incident shows that Ms. Duran was in the restricted area approximately ten minutes prior to Officers Ogren and Karic approaching her.

13. At hearing, Ms. Brown asserted that she thought Ms. Duran started toward the bar as she turned and left the group to remove the cart of dishes. Mr. Killam asserted at hearing that he believed Ms. Duran was starting to leave the restricted area after speaking to Ms. Brown.

14. At the time that Officers Karic and Ogren observed Ms. Duran, which was after Ms. Brown had spoken to her, Ms. Duran was standing in one place interacting with the group of people near her in the restricted area.

15. The Licensee does not dispute that Ms. Duran was in the area restricted to persons twenty-one years of age or older. Rather the Licensee argued that they should not be cited because Ms. Duran was not served alcohol, Ms. Duran was in the restricted area a relatively short period of time, she had been identified as potentially underage and the bartender had simply been too busy to get to her and check her identification.

CONCLUSIONS OF LAW

1. The Washington State Liquor Control board has jurisdiction over the licensee, Big Al's Inc., who is the holder of a liquor license issued pursuant to chapter 66.24 RCW and is subject to the provisions of RCW 66.24.010.

2. The licensee of a liquor licensed premises is responsible for operation of the licensed premises in compliance with the liquor laws and rules of the Board. If the licensee chooses to

employee others in the operation of the business, any violations committed, or permitted, by those employees shall be treated by the Board as violations committed, or permitted, by the licensee. WAC 314-11-015(1)(a). It is the duty and responsibility of the licensee to control the conduct of employees at all times. WAC 314-11-015(2).

3. RCW 66.44.310 (1)(a) states that it is a misdemeanor to serve or allow to remain in any area classified by the Board as off limits, any person under the age of 21 years. Subsection 2 of that statute gives the Board the power and duty to classify licensed premises, or portions of licensed premises, as off limits to person under the age of 21. WAC 314-11-020(2) reiterates that statute as prohibiting licensees from allowing persons under the age of 21 to remain in any premises, or any area of the premises, classified as off limits by the Board.

4. The undisputed and credible evidence presented at hearing was that Ms. Duran, a person under the age of 21 years, was present in the licensed premises on January 8, 2008. Despite the Licensee's assertions that individuals under twenty one are allowed to pass through a restricted area, Ms. Duran she was only present in the restricted area for a few minutes and was identified as a person whose identification needed to be checked, the fact remains that Ms. Duran was present inside the area of the premises restricted to prohibit minors from being present and that she was there for at least ten minutes, far longer than the amount of time necessary to pass through the restricted area, before being approached by the Liquor Control Board Enforcement Officers. The Licensee remains responsible for ensuring that no minors are present in restricted areas (irrespective of whether or not alcohol is served to the minor or consumed by the minor). Ms. Duran's presence in the restricted portion of the premises was a clear violation of RCW 66.44.310. Therefore, it is concluded the Board's complaint should be affirmed.

5. The remaining issue in this proceeding is the appropriate penalty for violation of the above cited law. The Board had the authority to establish an appropriate penalty. Under WAC 314-29-020, a minor frequenting a tavern, cocktail lounge or other age restricted area has 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.

6. In this case, there are no mitigating circumstances to warrant a departure from the standard penalty requested. Therefore, the undersigned concludes that a five (5) day license suspension or payment of a civil monetary penalty in the amount of five hundred dollars (\$500.00) in lieu of suspension is the appropriate penalty.

From the foregoing Conclusions of Law, NOW THEREFORE

INITIAL ORDER

IT IS HEREBY ORDERED That the Board's Complaint be sustained and that the liquor license privileges granted to Big Al's Inc., doing business as Big Al's located at 16615 SE 18th Street, Vancouver, Washington, License Number 088700, shall, on a date to be set by the Board in its final order, be suspended for five days or the licensee may make a payment of a monetary civil penalty in the amount of five hundred dollars (\$500.00) in lieu of suspension.

DATED and mailed at Vancouver, Washington, this 13th day of March, 2009.


Janet L. Schneider
Administrative Law Judge
Office of Administrative Hearings

///

///

NOTICE TO THE PARTIES

Either the licensee or permit holder or the assistant attorney general may file a petition for review of the initial order with the liquor control board within twenty (20) days of the date of service of the initial order. RCW 34.05.464 and WAC 10-08-211, 314-29-010(1)(c) and 314-42-095(2)(a).

The petition for review must:

- (i) Specify the portions of the initial order to which exception is taken;
- (ii) Refer to the evidence of record which is relied upon to support the petition; and
- (iii) Be filed with the liquor control board within twenty (20) days of the date of service of the initial order.

A copy of the petition for review must be mailed to all of the other parties and their representatives at the time the petition is filed. Within ten (10) days after service of the petition for review, any of the other parties may file a response to that petition with the liquor control board. WAC 314-42-095(2)(b). Copies of the reply must be mailed to all other parties and their representatives at the time the reply is filed.

The administrative record, the initial order, and any exceptions filed by the parties will be circulated to the board members for review. WAC 314-42-095(3).

Following this review, the board will enter a final order which is appealable under the provisions of RCW 34.05.510 through 34.05.598. WAC 314-42-095 (4). The board may issue a final order that differs from the initial order even though no party has filed a petition for review or reply. WAC 414-42-095(4).

A copy was mailed to:

Big Al's Inc.
2101 NE 129th, Suite 201
Vancouver, WA 98686

David H. Smith
Attorney at Law
Garvey Schubert Barer
1191 Second Ave 18th FLR
Seattle, WA 98101-2939

Gordon Karg
Office of the Attorney General
1125 Washington St SE
PO Box 40100
Olympia, WA 98504-0100

Barbara Cleveland, OAH
Mail Stop: 42488