

## BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

In The Matter Of the Denial of the  
Application for a Liquor License of:

DM & M, LLC  
THE LIBRARY CAFE  
850 NW 85TH STREET  
SEATTLE, WA 98117-3264

LICENSEE NO. 079537

LCB NO. 22,836  
OAH NO. 2008-LCB-0024

FINAL ORDER OF THE BOARD

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

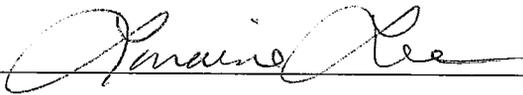
1. That a formal hearing was held on August 25, 2008, to consider the Liquor Control Board's March 26, 2008 denial of the above-captioned Applicant's application for a beer and wine restaurant lounge liquor license.
2. That the Applicant was represented at the hearing by principal shareholder Dwayne W. Dodgen and the Licensing Division of the Liquor Control Board was represented by Assistant Attorney General Gordon Karg.
3. That on October 21, 2008, Administrative Law Judge Robert P. Kingsley entered his Findings of Fact, Conclusions of Law and Initial Order in this matter, which affirmed the decision of the Board to deny the application for a beer and wine restaurant lounge license.
4. No exceptions were filed by the parties.
5. That 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 the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order are, AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board, THEREFORE, the application for a grocery beer and wine restaurant lounge liquor license by DM & M LLC, The Library Cafe, 850 NW 85<sup>th</sup> Street, Seattle, Washington, is DENIED.

DATED at Olympia, Washington this 12<sup>th</sup> day of February, 2009.

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).

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

In the Matter of:

**DM & M LLC**  
**dba The Library Café**  
**850 NW 85th Street**  
**Seattle, WA 98117**

Applicant/Licensee

License No. 079537-2A

**OAH Docket No. 2008-LCB-0024**

Agency No. 22, 836

**MAILED**

**OCT 21 2008**

**SEATTLE - OAH**

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW  
AND INITIAL ORDER**

On March 26, 2008, the Washington State Liquor Control Board (Board) notified the Applicant/Licensee (Applicant), DM & M LLC, doing business as, The Library Cafe in King County, Washington, that it had denied its application for a beer and wine restaurant lounge license. The Applicant made a timely request for a hearing.

The hearing commenced pursuant to due and proper notice at Seattle, Washington, on August 25, 2008, before Administrative Law Judge, Robert P. Kingsley, at the Office of Administrative Hearings. The Board was represented by Assistant Attorney General Gordon Karg. Dwayne W. Dodgen, principal shareholder, appeared on behalf of the Applicant.

Based upon the evidence presented, the undersigned Administrative Law Judge finds the following:

**FINDINGS OF FACT**

*The Applicant*

1. The Applicant, DM & M LLC, does business as, The Library Cafe, a restaurant located at 850 NW 85<sup>th</sup> Street, Seattle, Washington.
2. The Applicant is seeking to assume a beer and wine license for the business. It paid \$50,000.00 for the business and it anticipates investing an additional \$22,500.00 for the lease and miscellaneous expenses.
3. The business occupies the first floor of a two-story building. Mr. Dwayne Dodgen and his wife, Ms. Melissa Dodgen, reside in an apartment on the second floor. The Applicant

FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND INITIAL ORDER - PAGE 1

**RECEIVED**

**FEB 03 2009**

**LIQUOR CONTROL BOARD  
BOARD ADMINISTRATION**

Office of Administrative Hearings  
One Union Square, Suite 1500  
600 University Street  
Seattle, WA 98101-3126  
(206) 389-3400 1-800-845-8830  
(206) 587-5135 Fax

has leased the property for five years at the rate of \$3,600.00 per month. It has paid \$7,200.00 toward a security deposit and the last month's rent.

4. The principals of the LLC are Dwayne Dodgen, Melissa Dodgen and Michael Heminger. Michael Heminger is Mr. Dodgen's stepfather. Mr. Heminger has contributed \$69,008.00 from a bank loan. Mr. and Mrs. Dodgen have contributed \$2,500.00 and will manage the business.

5. Mr. Dodgen has worked as a bartender and has been issued a Class 12 Mixologist Permit. He has not been cited for any liquor violations. However, he has a criminal background.

6. In 1994, Mr. Dodgen was convicted of two separate misdemeanor offenses of Driving While License Suspended.

7. On February 2, 1995, Mr. Dodgen was convicted of a First Degree, Class C Felony of Rendering Criminal Assistance. He was sentenced to 12 months custody in the Snohomish County Jail with credit for 101 days of confinement. He was also placed on community supervision for 12 months and ordered to pay restitution.

8. On February 27, 2001, Mr. Dodgen was convicted of a Third Degree Misdemeanor of Driving While License Suspended that occurred on August 10, 2000. He was ordered to pay fines and costs in the total amount of \$390.00.

9. On March 19, 2002, Mr. Dodgen was convicted of a Third Degree Misdemeanor of Driving While License Suspended that occurred on September 30, 2001. He was sentenced to 90 days confinement with all 90 days suspended, and was ordered to pay a total of \$340.00 in fines and costs. He was also ordered to not drive without a license and insurance for a period of two years.

10. On May 6, 2003, Mr. Dodgen was convicted of the misdemeanor of Failing to Transfer Title in violation of RCW 46.12.101 that occurred on November 5, 2002. He was ordered to pay a fine of \$1,000.00 with all but \$150.00 suspended.

11. On May 7, 2003, Mr. Dodgen was convicted of the misdemeanor of Driving While License Suspended occurring on April 20, 2003. He was fined \$250.00.

12. On September 12, 2005, Mr. Dodgen was convicted of the misdemeanor of First Degree Negligent Driving that occurred on August 23, 2004. He was given a suspended sentence of 24 months and ordered to pay a total of \$1,367.00 in fines and costs with \$650.00 suspended. He was ordered to undergo an alcohol assessment and attend alcohol information school. He attended a monitored treatment program and was found to have fully satisfied all conditions of his suspended sentence on August 22, 2007.

13. On August 10, 2006, Mr. Dodgen's Petition for Deferred Prosecution was granted for a violation of the Gross Misdemeanor of Driving While Under the Influence of Intoxicants and/or Drugs that occurred on February 21, 2005. As conditions of the deferred prosecution, Mr. Dodgen must, for a period of 60 months, be free of criminal violations, not drive without a driver's license and insurance, have no breathalyzer readings in excess of .08, and use no alcohol or drugs. He was placed on supervised probation for two years and his progress is regularly monitored by the Court. In January 2008, Mr. Dodgen was found in violation of additional conditions requiring him to attend regular meetings with his probation officer and to verify attendance at regular AA meetings. No action was taken regarding the violations.

14. Mr. Dodgen contacted the Board's staff before seeking the liquor license. He disclosed his criminal history and was informed that the history did not meet the threshold for a recommendation that the license be denied.

#### *Application Process*

15. The license application was investigated by Board staff after its submission. Mr. Dodgen's criminal history was verified and reviewed by the Board's criminal history record information (CHRI) coordinator. She applied the standards set forth in WAC 314-07-040 and determined that his history merited a score of four points. According to the administrative code, the Board will not normally issue a license to an applicant who has accumulated eight (8) or more points.

16. The application was forwarded to the City of Seattle for comment before submission to the Board. The City of Seattle filed a formal objection to the license based on Mr. Dodgen's criminal history, repeat offenses, and alcohol related violations.

17. The application and Board investigation was reviewed by Sharon Hendricks, manager of the licensing division. She joined the investigators in a recommendation for approval of the application. She noted that the City's objection was based on Mr. Dodgen's criminal history and that the CHRI score did not justify denial on the basis of criminal history. She also noted that there were two other principals of the LLC and that there was no concern regarding their backgrounds.

18. The Board has issued a decision preliminarily denying the application. It expressed concern over Mr. Dodgen's ten year history of almost annual contacts with the criminal justice system demonstrating a pattern of disregard for the law. The Board remained unconvinced that the Applicant has demonstrated the type of judgment expected of a responsible licensee and that public health, safety, and welfare would not be adequately protected if a license were issued.

## CONCLUSIONS OF LAW

### Hearing

1. The Board has authority to grant or deny a retail liquor license. RCW 66.24.010(2). The Applicant is allowed to ask for and receive a hearing if the application is contested and denied. WAC 314-09-010(2)(d). A hearing pursuant to Chapter 34.05 RCW and Chapter 314 WAC has been conducted.

### Board Discretion

2. The Board has broad discretion in deciding whether to grant or deny a liquor license. RCW 66.08.010 provides that Chapter 66 RCW shall be deemed an exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all of its provisions shall be liberally construed for the accomplishment of that purpose.

3. The Board may deny a license application for several reasons including:

...

(7) Objection from the local authority or from the public (see WAC 314-09-010 and RCW 66.24.010(8)). The objection must state specific reasons and facts that show issuance of the liquor license at the proposed location or to the Applicant business will detrimentally impact the safety, health, or welfare of the community. . . (and)

(9) The board determines that the issuance of the liquor license will not be in the best interest of the welfare, health, or safety of the people of the state.

...

WAC 314-07-065.

4. The Board's decision to deny an initial license may be reviewed to determine if its conclusions are, as a matter of law, arbitrary, capricious or contrary to law. *Prestige Stations, Inc. v. Washington Liquor Control Bd.*, 33 Wn. App. 669; 657 P.2d 322 (1982); *Williams v. Seattle Sch. Dist. 1*, 97 Wn.2d 215, 643 P.2d 426 (1982); *State ex rel. Hood v. State Personnel Bd.*, 82 Wn.2d 396, 511 P.2d 52 (1973). An agency acts contrary to law when it fails to abide by the rules which govern it. *Pierce Cy. Sheriff v. Civil Serv. Comm'n*, 98 Wn.2d 690, 694-5, 658 P.2d 648 (1983). Arbitrary and capricious is defined as willful and unreasoning action, without consideration and in disregard of facts and circumstances. *Simonds v. Kennewick*, 41 Wn. App. 851, 854-855, 706 P.2d 1080 (1985). Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached. *Juanita Bay Valley Community. Ass'n v. Kirkland*, 9 Wn. App. 59, 80, 510 P.2d 1140 (Div. II,

1973); citing *DuPont-Ft. Lewis School Dist. 7 v. Bruno*, 79 Wn.2d 736, 739, 489 P.2d 171 (1971); see also *Ancheta v. Daly*, 77 Wn.2d 255, 461 P.2d 531 (1969).

5. The evidence does not show the Board has abused its discretion. According to the Applicant's business plan, Mr. Dodgen will have a major role in management of the licensed premises. He is currently under court supervision for an alcohol related offense and violated conditions of supervision as recently as January 2008. His criminal history reflects numerous repeat offenses committed while under court ordered prohibitions against similar conduct. The Board's concerns for protection of the welfare, health and safety of the general public are based on specific facts and circumstances and are not arbitrary, capricious, or contrary to law.

6. I have considered the Applicant's evidence that he contacted the licensing division and was told that his criminal history did not meet the threshold for denial. The Board's decision is not inconsistent with this statement. As noted above, the Board's concern involves consideration of factors beyond the record of conviction. A licensee is responsible for abiding with numerous regulations. The record of convictions is aggravated by the repeat offenses while under court ordered prohibitions. The Board's decision should be affirmed.

#### *All Arguments*

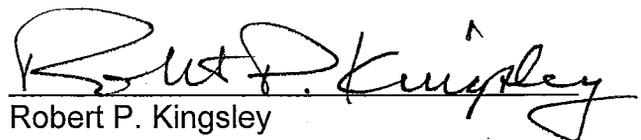
7. The Administrative Law Judge has considered all arguments made by the parties. Arguments that are not specifically addressed have been duly considered but are found to have no merit or to not substantially affect a party's rights.

From the foregoing Conclusions of Law, **IT IS THEREFORE,**

#### **INITIAL ORDER**

The decision to deny the license application of DM & M LLC, license number 079537-2A, is **AFFIRMED.**

DATED and mailed at Seattle, Washington on this the 21<sup>st</sup> day of October 2008.



Robert P. Kingsley  
Administrative Law Judge  
Office of Administrative Hearings

**Certificate of Service**

A copy of this Findings of Fact, Conclusions of Law and Initial Order was served upon the parties or their representatives, at the addresses below, by depositing a copy of same in the United States first class mail, postage prepaid, to the following on this the 21<sup>st</sup> day of October 2008.

**APPLICANT/LICENSEE:**

DM & M LLC  
dba The Library Cafe  
850 NW 85<sup>th</sup> Street  
Seattle, WA 98117

**LIQUOR CONTROL BOARD:**

Gordon Karg, AAG, GCE Div  
Washington Attorney General  
PO Box 40100  
Olympia, WA 98504-0100