BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: JUNG SOOK JUNG PEARL STREET DELI AND GROCERY 3701 N PEARL ST TACOMA, WA 98407-2609 LICENSEE LICENSE NO. 070517	LCB NO. 22,852 OAH NO. 2008-LCB-0036 FINAL ORDER OF THE BOARD

I. BOARD'S CONSIDERATION

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

1. An administrative hearing was held on November 13, 2008 at the licensee's timely request regarding an administrative violation notice issued by the Liquor Control Board on June 18, 2008.

2. The Complaint alleged that on June 13, 2008 the licensee or employee(s) thereof, supplied or furnished liquor to a person under 21 years of age, contrary to RCW 66.44.207 and WAC 314-11-020(1).

3. At the hearing, the Education and Enforcement Division of the Board was represented by Assistant Attorney General Gordon Karg and the Licensee, Junk Sook Jung, represented herself.

4. On January 2, 2009 Administrative Law Judge Mary Ellen Goodwin 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 hereby enters the following Findings of Fact.

II. FINDINGS OF FACT

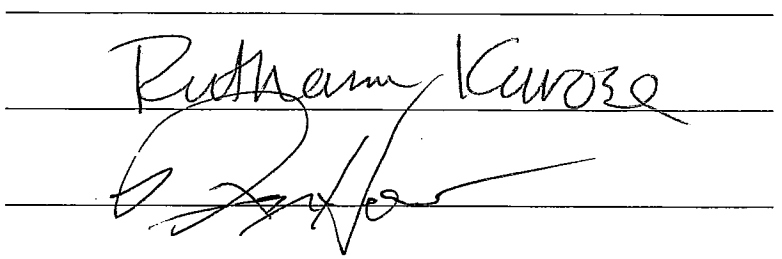
1. The header of the ALJ's Initial Order incorrectly states the Licensee's address as 6701 S. 12th Street, Tacoma, WA 98467. The correct address for the Licensee's location address is 3701 N. Pearl Street, Tacoma, WA 98407.

III. FINAL ORDER

NOW THEREFORE; IT IS HEREBY ORDERED that that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order, corrected as to the Licensee's address, 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 Jung Sook Jung d/b/a Pearl Deli & Grocery located at 3701 N Pearl Street, Tacoma, Washington, 98407, License Number 070517, are hereby suspended for a term of seven (7) days. The suspension will begin at 10:00 a.m. on March 5, 2009 until 10:00 a.m. on March 12, 2009. Failure to comply with the terms of this order will result in further disciplinary action.

DATED at Olympia, Washington this 5th day of February, 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).

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

IN THE MATTER OF: JUNG SOOK JUNG PEARL STREET DELI AND GROCERY 6701 S. 12th STREET TACOMA, WA 98467 LICENSEE LICENSE NO. 070517-1P	**DOCKET NO.** 2008-LCB-0036 **LCB CASE NO. 22,852** FINDINGS OF FACT, CONCLUSIONS OF LAW AND INITIAL ORDER

I. STATEMENT OF THE CASE

1.1 Administrative Law Judge Mary Ellen Goodwin, conducted an administrative hearing in this matter on November 13, 2008 at the Liquor Control Board Enforcement Office, 6240 Tacoma Mall Blvd., Suite 208, Tacoma, Washington. The issues presented were (1) whether Jung Sook Jung , doing business as Pearl Street Deli and Grocery, (the "Licensee") furnished liquor to a person under 21 years on June 13, 2008 Administrative Violation Notice, June 18, 2008, Exhibit 2. And (2) if so, whether the Washington State Liquor Control Board (the "Board") should consequently suspend liquor license number 070517-1P for seven days. Administrative Violation Process and Request for Hearing, June 18, 2008, Exhibit 1.

1.2 Gordon Karg, Assistant Attorney General, appeared and represented the Board. Jung Sook Jung, the Licensee, appeared and represented herself.

1.3 On June 18, 2008, the Board issued a complaint against the Licensee. That complaint charged the Licensee as follows: "On or about June 13, 2008, the above-named Licensee, or an employee thereof, sold, gave and/or otherwise supplied liquor to a person under the age of 21 (twenty-one) years of age, in violation of RCW 66.44.270(1)."

1.4 The parties received due notice of the time and the place of the administrative hearing. All eight proposed exhibits were admitted in their entirety. The following witnesses gave testimony, (1) Chuck Radawick, Liquor Control Board Enforcement Officer; (2) Tacoma Police Officer G. Hopkins; (3) T.H., Minor Investigative Aide and (4) Jung Sook Jung.

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II. FINDINGS OF FACT

I make the following findings of fact based on the preponderance of the evidence:

Jurisdiction

2.1 At all times relevant, the Licensee held liquor license number 070517-1P. It was responsible for the premises known as Pearl Street Deli and Grocery, located at 3701 North Pearl Street, Tacoma, Washington. Jung Sook Jung is the owner and manager of the Licensee business.

2.2 On June 18, 2008, at 8:25 p.m. , Officer Chuck Radawick personally served an Administrative Violation Notice on Licensee's clerk, Jong Su Kim, Administrative Violation Notice, 1P8165E, dated June 18, 2008, Exhibit 2. The Notice alleged the Licensee sold a 24 oz. can of Bud Light beer to a person under the age of 21. *Id.* The Board proposed a sanction of a 7 day suspension. Administrative Violation Process, June 18, 2008/ Request for Hearing, June 18, 2008, Exhibit 1. Jung Sook Jung requested a hearing on or about June 18, 2008, to protest the notice and the proposed sanction. *Id.*

Compliance Checks

2.3 To encourage adherence to liquor control laws, the Board conducts compliance checks. For a compliance check, the Board uses operatives under the age of 21 years to attempt to buy liquor from licensed retail vendors under the supervision of a Board officer. The operative looks youthful and dresses as he normally would. He carries only his genuine Washington State identification and buy money provided by the Board officer. He is instructed to attempt to buy alcohol without any deception except misrepresenting his age. If asked to produce identification, the operative produces his genuine Washington State identification. If a licensee sells liquor to an underage operative during such a compliance check, the Board takes administrative disciplinary action.

Sale of Beer

2.4 On June 13, 2008, at approximately 10:10 PM, the Board conducted a compliance check at Pearl Street Deli and Grocery. Exhibit 2

2.5 T. H., born December 30, 1989, who was then 18, served as the underage operative. He looks his age, and he dressed normally in a dark grey "hoody" sweatshirt and blue jeans. Exhibits 2, 4 and 5

2.6 T.H. carried his genuine Washington State driver's license, which showed his picture and his actual birthdate . T.H.'s Driver's License, Exhibit 7

2.7 T.H. carried $5 buy money provided by Officer Radawick. Exhibit 4 and November 13, 2008 testimony of T.H.

2.8 Officer Radawick and Officer Munson sat in their cars outside the Pearl Street Deli and Grocery. Tacoma Police Officer Hopkins stood outside the store with a clear view of the inside of the store through the store's large plate glass window. Officer Hopkins was able to observe the clerk, Jong Su Kim, behind the register and he was able to observe T.H. enter through the front door, walk to the beer cooler and select a 24 oz. can of Bud Light beer. Testimony of Officers Radawick and Hopkins Exhibit 2, p. 3.

2.9 The clerk, Jong Su Kim, sold the beer to T.H. for $2.72. T.H. paid his five dollars, and received the appropriate change. At no time did the clerk, Jong Su Kim, ask T.H.'s age or request to see his identification. T.H. walked out of the store with the beer and gave it unopened to Officer Radawick. Exhibits 2, 4, testimony of T.H. and testimony of Officer Hopkins.

2.10 On June 13, 2008, Officers Hopkins, Munson and Radawick contacted the clerk and advised him of the violation. Officer Radawick impounded the beer as evidence. Photograph of the Beer, Exhibit 8 and testimony of Officer Radawick.

2.11 On June 13, 2008, Officer Munson issued Jong Su Kim a criminal citation for "Providing/sale of alcohol to a person under twenty-one years of age" in violation of RCW 66.44.270. Citation No. 79390, TPD case #081651494. Exhibits 2 and 3.

2.12 Jong Su Kim was acting as a clerk and agent for the Licensee on June 13, 2008. Exhibit 2 and testimony of Jung Sook Jung.

2.13 The Licensee had one prior violation of RCW 66.44.270(1) in the two years before June 13, 2008 Administrative Violation Notice, Exhibit 8

III. CONCLUSIONS OF LAW

Based on the foregoing findings of fact, I make the following conclusions of law:

3.1 The Washington State Liquor Control Board has jurisdiction over Jung Sook Jung , doing business as Pearl Street Deli and Grocery, which holds a liquor license issued pursuant to chapter 66.24 RCW and is subject to the provisions of RCW 66.24.010.

3.2 Liquor licensees are responsible for the operation of their licensed premises in compliance with the liquor laws and rules of the board. The Board will treat any violations

committed or permitted by employees as violations committed or permitted by the licensee. WAC 314-11-015(1)(a).

3.3 As used in Chapter 66.44 RCW and Chapter 314-11 WAC, "liquor" includes beer, wine, and spirits. RCW 66.44.010(23); WAC 314-01.005(5). No retail licensee may give, sell, or otherwise supply "liquor" to someone under 21. RCW 66.44.270(1) and WAC 314-11-020(1). Thus, no retail licensee may sell beer to someone under 21.

3.4 On June 13, 2008, Jong Su Kim violated RCW 66.44.270(1) and WAC 314-11-020(1) by selling beer to T.H. because T.H. was then under 21. The Licensee also violated RCW 66.44.270(1) and WAC 314-11-020(1), because Jong Su Kim committed the violation while acting as employee or agent of the Licensee under WAC 314-11-015(1)(a).

3.5 When a licensee has violated the provisions of RCW 66.44.270(1) and WAC 314-11-020(1), the Board may, in its discretion, suspend or cancel its liquor license and all rights to keep and sell liquor thereunder. RCW 66.24.010(3).

3.6 Selling, supplying or otherwise giving liquor to a person under 21 or otherwise allowing a person under 21 to possess liquor is a group 1 violation against public safety. WAC 314-29-015(2)(a) and WAC 314-29-020. For a second sale to an underage person in a two year period, the standard penalty is a seven day liquor license suspension with no monetary option. WAC 314-29-020.

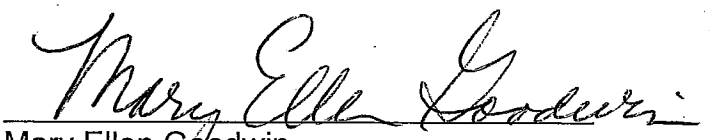
3.7 However, the Board may impose a different penalty based on the presence of mitigating or aggravating factors. WAC 314-29-015(4). There being no mitigating or aggravating factors, the standard penalty for a second violation is the appropriate punishment for this violation. So, the Licensee's liquor license number 070517-1P should be suspended for seven days.

INITIAL ORDER

Based on the foregoing conclusions of law, NOW THEREFORE,

IT IS HEREBY ORDERED that the Board's complaint dated June 18, 2008 is hereby **SUSTAINED**. On a date to be established in the Board's Final Order, the liquor license number 070517-1P granted to Jung Sook Jung , doing business as Pearl Street Deli and Grocery, shall be suspended for seven (7) days with no monetary option.

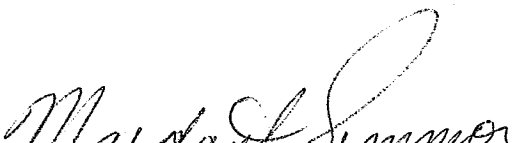
DATED at Olympia, Washington, this 2nd day of January, 2009.



Mary Ellen Goodwin
Administrative Law Judge
Office of Administrative Hearings

Certification of Mailing

I certify taht I mailed a true and exact copy of the Findings of Fact, Conclusions of Law and Initial Order to the following parties, postage prepaid this 2nd day of January 2009 at Olympia, Washington.



Margaret Simmons
Legal Secretary

Jung Sook Jung
d/b/a Pearl Street Deli and Grocery
3701 North 30th Street
Tacoma, WA 98406
telephone: (253) 759-6013

Gordon Karg
Assistant Attorney General
Office of the Attorney General
PO Box 40100
Olympia, WA 98504-0100
telephone: (360) 586-3264

Kevin McCarroll
Adjudicative Proceedings Coordinator
Washington State Liquor Control Board
PO Box 43076
Olympia, WA 98504-3076

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