

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

HOLY SMOKE BAR & GRILL, LLC
d/b/a HOLY SMOKE BAR AND GRILL
8794 KENDALL RD
SUMAS, WA 98295-8204

LICENSEE

LICENSE NO. 360777

LCB NO. 22,860

OAH NO. 2009-LCB-0021

FINAL ORDER OF THE BOARD

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

I. PROCEDURAL HISTORY OF THE CASE

1.1. The Liquor Control Board issued a Complaint dated April 23, 2009, alleging that on July 19, 2008 the above-named Licensee, or employee(s) thereof, allowed an apparently intoxicated person to possess or consume liquor on the licensed premises in violation of WAC 314-16-150.

1.2. The Licensee made a timely request for a hearing, and after due and proper notice, a hearing was held before Pro tem Administrative Law Judge Jill Geary on September 11, 2009. The Licensee appeared pro se, through Steve and Starlare Hovander. The Education and Enforcement Division of the Board was represented by Assistant Attorney General Brian Considine.

1.3. A Prehearing Conference was held by telephone on June 23, 2009. The Administrative Law Judge issued a Prehearing Order and Notice of Hearing on August 24, 2009, setting dates for filing and exchange of exhibits and witness lists by the parties. By letter dated August 25, 2009, Assistant Attorney General Brian Considine requested that a second prehearing conference be held, as the August 24, 2009 Notice required that the Board's exhibits and witness list be filed on August 21,

2009, three days before the Notice was issued. The Education and Enforcement Division of the Board filed its exhibits and witness list, along with a prehearing brief, on September 3, 2009.

1.4. The Licensee did not file any proposed exhibits or provide a list of its proposed witnesses prior to the hearing. The Licensee did bring two witnesses, Sonya Buckner and Mark Dyne, to the hearing, and they were allowed to testify on behalf of the Licensee over the objection of the Assistant Attorney General. A brief recess of the hearing was allowed, to allow the Assistant Attorney General to interview the witnesses, but the Administrative Law Judge insisted that Mr. and Mrs. Hovander be allowed to be present while the witnesses were interviewed.

1.5. The Administrative Law Judge entered Proposed Findings of Fact, Conclusions of Law and an Initial Order on March 9, 2010, setting aside the Complaint. The Education and Enforcement Division of the Board requested, and was granted, an extension of time to file a Petition for Review, to be filed no later than 20 days after the Assistant Attorney General received a copy of the recording of the hearing. The Education and Enforcement Division filed a Petition for Review on April 25, 2010, requesting that the Complaint be sustained, and the standard penalty for a second violation in a two-year period be imposed. The Petition also noted, however, that as the Licensee has discontinued business, a monetary penalty in lieu of suspension be imposed.

1.4. The Board does not adopt the ALJ's Proposed Findings of Fact, Conclusions of Law and Initial Order, as that Order applied an improper burden of proof, and contains other errors. The Board enters the following Findings of Fact, Conclusions of Law and Order as follows:

II. FINDINGS OF FACT

2.1. As of July 19, 2008, Steve and Starlare Hovander held a liquor license at Holy Smoke Bar and Grill, located at 9794 Kendall Road, Sumas, WA. The license was issued to Holy Smoke Bar & Grill LLC, d/b/a Holy Smoke Bar & Grill (hereinafter "Holy Smoke").

2.2. On July 19, 2008, Lieutenant Blair Smith and Liquor Enforcement Officer Kevin Russom conducted an undercover investigation at Holy Smoke. Lt. Smith entered the premises in an undercover capacity while Officer Russom remained outside in his vehicle. Lt. Smith was wearing casual clothing, and was not identified as a Liquor Enforcement Officer. He entered the premises at about 12:01 a.m., went to the bar, ordered a drink, and sat down.

2.3. Lt. Smith noticed a man seated four stools to his right, later identified as Scott Emory. Mr. Emory had a drink of amber liquid in front of him that was approximately 2/3 full. Lt. Smith observed that Mr. Emory had droopy eyes, and when he rose from his stool to select some music from the juke box, he appeared unsteady. When Mr. Emory returned to his stool, he spoke briefly to Lt. Smith, and told him he was drinking "bourbon and seven". Lt. Smith noted that Mr. Emory's speech seemed slurred, he had a flushed face, his eyes were very watery and bloodshot, and his eyelids were droopy. He spoke with slow, mush-mouthed speech. He also showed mood swings ranging from what Lt. Smith described as "happy-go-lucky" to argumentative in a short amount of time. Overall, Lt. Smith observed Mr. Emory for approximately 30 minutes. Lt. Smith was concerned about Mr. Emory's apparent level of intoxication and he did not believe that Mr. Emory was capable of driving safely.

2.4. The bartender on July 19, 2008 was Sonya Buckner. She has completed the Mandatory Alcohol Server (MAST) training, and possessed a valid MAST permit. As part of the MAST training class, she received training on recognizing common signs of intoxication. She testified that based on that training, she would consider someone apparently intoxicated if they had a flushed face, red droopy eyes, and mush-mouth speech.

2.5. Mr. Emory engaged in a spirited conversation with another male patron who came to the bar to order a drink. Lt. Smith only heard bits and pieces of the conversation, but described it

as “heated” and that it had something to do with the treatment of women. While Mr. Emory was engaged in this conversation, he had possession of his beverage, and consumed liquid from it several times. This conversation occurred near the bar behind which Sonya Buckner was working.

2.6. The male patron with whom Mr. Emory had engaged in conversation went out on the deck, and Mr. Emory followed him out onto the deck. Lt. Smith asked Officer Russom to join him inside, and Lt. Smith broke cover and both officers contacted the bartender, Sonja Buckner. Lt. Smith told her of his observations of Mr. Emory, and Ms. Buckner stated she had served Mr. Emory 4 bourbon-based beverages. Ms. Buckner gave Mr. Emory’s drink to Lt. Blair, and a sample was obtained and later tested. The sample tested positive for alcohol.

2.7. Ms. Buckner disagreed with Lt. Smith’s assessment of Mr. Emory’s condition, but said that she or another employee would drive Mr. Emory home. During the period that Lt. Smith was in the bar, Ms. Buckner was more preoccupied with cleaning up than serving patrons, as few patrons were ordering drinks at that time of night.

2.8. The Licensee is no longer in business at this location.

III. CONCLUSIONS OF LAW

3.1. The Board has authority to issue violation notices to premises licensed to sell alcohol when an apparently intoxicated person is allowed to possess or consume liquor on the premises.

RCW 66.44.200 and WAC 314-16-150.

3.2. WAC 314-16-150 states, in relevant part:

(1) No retail licensee shall give or otherwise supply liquor to ...any person apparently under the influence of liquor; nor shall any licensee or employee thereof permit any person ...in said condition to consume liquor on his/her premises, or on any premises adjacent thereto and under his/her control.

(2) No retail licensee shall permit any person apparently under the influence of liquor to physically possess liquor on the licensed premises.

A violation of this rule occurs when a licensee and/or an employee permits an apparently intoxicated person to consume and/or possess liquor on the licensed premises.

3.3 Given Lt. Smith's observations and his description of Mr. Emory's appearance, the licensee's employee had adequate opportunity to observe Mr. Emory. Mr. Emory showed several signs of apparent intoxication, which Ms. Buckner, with her MAST training, should have been aware of. Mr. Emory was seated at, and engaged in conversations, in close proximity to the bar where Ms. Buckner was working.

3.4. Mr. Emory appeared to be intoxicated, and was allowed to consume and possess liquor on the licensed premises while intoxicated. Ms. Buckner's subjective belief that Mr. Emory's size and amount of food and alcohol that he consumed while on the premises would not render him intoxicated is not the legal standard. The visible signs of intoxication that Mr. Emory displayed, coupled with Ms. Buckner's training and the knowledge that he had been served at least four drinks should have informed her to remove his drink when he showed signs of intoxication.

3.5 This is the Licensee's second sustained violation of this nature within a two year period. Based on the Findings and Conclusions herein, the Board reverses the Initial Order and sustains the Board's complaint. Normally the penalty for this violation would be a five day suspension of the liquor license or a monetary penalty in the amount of \$2,500. However, by order issued this day in LCB No. 23,509 and 22,865, the Board has determined not to renew the liquor license, as Starlare Hovander, one of the members of the LLC that owns the Holy Smoke Bar and Grill, is ineligible to hold a liquor license. The Licensee is no longer in business at this location.

IT IS HEREBY ORDERED that the Complaint is sustained.

IT IS FURTHER ORDERED that Steve and Starlare Hovander, as the owners of the LLC doing business as Holy Smoke Bar and Grill, shall pay a monetary penalty in the amount of \$2,500. Payment must be made within 30 days of this order. 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
PO Box 43085
Olympia, WA 98504-3085**

DATED at Olympia, Washington this 15 day of June, 2010.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

Linda J. Bremer

Ruthann Kurose Kevin McCarroll
Per telephonic approval

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. 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 Mary M. Tennyson, Senior 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).



Washington State
Liquor Control Board

June 17, 2010

Steve and Starlare Hovander
Holy Smoke Bar & Grill LLC
d/b/a Holy Smoke Bar and Grill
5268 Olson Rd
Ferndale, WA 98248-9551

Brian Considine, AAG
GCE Division, Office of Attorney General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

**RE: FINAL ORDER OF THE BOARD
ADMINISTRATIVE VIOLATION NOTICE NO. 3N8201A
LICENSEE: Holy Smoke Bar & Grill LLC
TRADE NAME: Holy Smoke Bar and Grill
LOCATION: 8794 Kendall Rd, Sumas, WA 98295-8204
LICENSE NO. 360777-3A
LCB HEARING NO. 22,860
UBI: 602 587 301 001 0001**

Dear Parties:

Enclosed please find a Declaration of Service by Mail and a copy of the Final Order in the above referenced matter.

The applicable monetary penalty is due by July 17, 2010 as indicated in the Final Order.

When you are sending in payment, please send it to the mailing address indicated in the Final Order and label the check with your License and Administrative Violation Notice numbers listed above. If you have any questions, please contact me at (360) 664-1602.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin McCarroll".

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Bellingham Enforcement and Education Division, WSLCB
Amber Harris, WSLCB

PO Box 43076, 3000 Pacific Ave. SE, Olympia WA 98504-3076, (360) 664-1602 www.liq.wa.gov

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3 **WASHINGTON STATE LIQUOR CONTROL BOARD**

4 IN THE MATTER OF:

5 HOLY SMOKE BAR & GRILL LLC
6 d/b/a HOLY SMOKE BAR & GRILL
7 8794 KENDALL RD
8 SUMAS, WA 98295-8204

9 LICENSEE

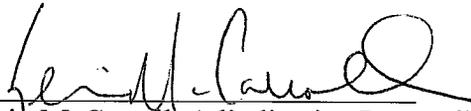
10 LICENSE NO. 360777-3A
11 AVN NO. 3N8201A

LCB NO. 22,860
OAH NO. 2009-LCB-0021

DECLARATION OF SERVICE BY
MAIL

12 I declare under penalty of perjury under the laws of the state of Washington that on
13 June 17, 2010, I served a true and correct copy of the FINAL ORDER OF THE BOARD in the
14 above-referenced matter, by placing a copy of said documents in the U.S. mail, postage
15 prepaid, to all parties or their counsel of record.

16 DATED this 17th day of June, 2010, at Olympia, Washington.

17 
18 Kevin McCarroll, Adjudicative Proceedings Coordinator

19 STEVE AND STARLARE HOVANDER
20 HOLY SMOKE BAR & GRILL LLC
21 d/b/a HOLY SMOKE BAR AND GRILL
22 5268 OLSON RD
23 FERNDALE, WA 98248-9551

BRIAN CONSIDINE, ASSISTANT
ATTORNEY GENERAL, GCE DIVISION
OFFICE OF THE ATTORNEY GENERAL
1125 WASHINGTON STREET SE
PO BOX 40100
OLYMPIA, WA 98504-0100

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