

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

LICENSEE

LICENSE NO. 360777

LCB NOS. 22,865 and 23,502

OAH NO. 2009-LCB-0009

FINAL ORDER OF THE BOARD

FINDINGS OF FACT

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

1. The issue for hearing in this case was whether the Board appropriately declined to renew the licensee's liquor license pursuant to RCW 66.24.010(2), WAC 314-12-020(3) and WAC 314-07-040(1), and further, whether the Board's complaint in LCB No. 23,865 should be sustained.
2. The Board notified the licensee that it was ineligible to continue to hold a liquor license by Notice of Nonrenewal dated January 29, 2009. The licensee timely requested a hearing on the Notice of Nonrenewal.
3. The Board issued a Complaint dated April 23, 2009, in LCB No. 22,865, alleging that on or about April 10, 2008, licensee became ineligible to retain a liquor license pursuant to WAC 314-12-020(3) and WAC 314-07-040. The evidence shows that Starlane Hovander, one of the members of the LLC, was convicted of disorderly conduct on or about April 10, 2008. The licensee requested a hearing on the Complaint.

4. A prehearing conference was held by telephone on June 23, 2009. At the prehearing conference, the Assistant Attorney General requested that the hearings for Docket Nos. 2009-LCB-0009 and LCB 2009-LCB-0020 be consolidated. An order consolidating the matters for hearing was mailed on August 24, 2009, and the ALJ's Initial Order was issued under OAH Docket No. 2009-LCB-0009.
5. On September 3, 2009, the Board's Licensing Division moved to dismiss the licensee's appeal, as the establishment is closed; the Licensees acknowledged that they are not currently operating the licensed premises. The Licensing Division argued that because the Licensee is no longer operating the premises, that the licensee lacked standing to pursue the appeal.
6. The Licensee did not object to the dismissal of the appeal, based on its understanding that an order sustaining the Complaint and the Notice of Nonrenewal would not impede their ability to obtain a liquor license in the future.
7. On March 9, 2010, the Administrative Law Judge issued a Proposed Order of Dismissal.

CONCLUSIONS OF LAW

1. The Board determines at the time of application whether an applicant is eligible to be issued a liquor license, based on numerous factors. One factor that is considered is the criminal history of the applicants, including any "true party in interest" in the licensed premises or its operations. Although the issuance of an order dismissing the appeal will not, in and of itself, impede the applicant's ability to obtain a liquor license for this or another premises, an applicant that has 8 or more criminal history record points will generally be ineligible to receive a liquor license.
2. By conviction dated on or about April 10, 2008, Starlare Hovander had accumulated 9 criminal history points.
3. The Board's Notice of Nonrenewal, and the Complaint, should be sustained.

4. 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 liquor license issued to Steve and Starlare Hovander and Holy Smoke Bar & Grill, dba Holy Smoke Bar & Grill, is cancelled.

IT IS FURTHER ORDERED that the liquor license issued to Steve and Starlare Hovander and Holy Smoke Bar & Grill, d/b/a Holy Smoke Bar & Grill, is nonrenewed. The Licensees are prohibited from operating an establishment requiring a liquor license at this location unless a new application is made and granted by the Board.

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

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

Linda D. 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

Holy Smoke Bar & Grill, LLC
d/b/a Holy Smoke Bar & 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. 3X7341A and Liquor License Non-Renewal
LICENSEE: Holy Smoke Bar & Grill, LLC
TRADE NAME: Holy Smoke Bar & Grill
LOCATION: 8794 Kendall Rd, Sumas, WA 98295-8204
LICENSE NO. 360777-3A
LCB HEARING NO. 22,865 and 23,502
OAH NO. 2009-LCB-0009
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. If you have any questions, please contact me at (360) 664-1602.

Sincerely,

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Alan Rathbun, Director of Licensing and Regulation
Bellingham Enforcement and Education Division, WSLCB
Amber Harris, WSLCB

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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

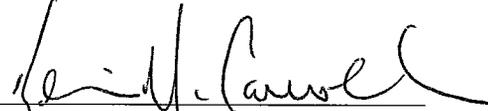
LCB NOS. 22,865
23,502

OAH NO. 2009-LCB-0009

DECLARATION OF SERVICE BY
MAIL

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

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

16 
17 Kevin McCarroll, Adjudicative Proceedings Coordinator
18

19 HOLY SMOKE BAR & GRILL, LLC
20 d/b/a HOLY SMOKE BAR & GRILL
21 5268 OLSON RD
22 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

23 HOLY SMOKE BAR & GRILL, LLC
24 d/b/a HOLY SMOKE BAR & GRILL
25 8794 KENDALL RD
26 SUMAS, WA 98295-8204

DECLARATION OF SERVICE BY
MAIL