BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: JOE & RITA CASTILLEJA, d/b/a HIDEAWAY RESTAURANT & LOUNGE 401 WAPATO AVENUE SOUTH WAPATO, WA 98951 LICENSEE LICENSE NO. 351337	LCB NO. 22,885 OAH NO. 2009-LCB-0002 FINAL ORDER OF THE BOARD

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

1. Administrative violation notice #4F8245A was issued on October 8, 2008 alleging the licensee allowed an apparently intoxicated person to possess or consume liquor on the licensed premises on September 1, 2008. Complaint No. LCB 22,884 was issued on December 16, 2008, alleging that this conduct was contrary to RCW 66.44.200 and WAC 314-16-150(2). At the hearing, the charges were verbally amended to correct the date of the alleged incident to be August 31, 2008.

2. Administrative violation notice #4F8284B was issued on October 23, 2008 alleging the licensee allowed an apparently intoxicated person to possess or consume liquor on the licensed premises on October 10, 2008. Complaint No. LCB 22,885 was issued on December 16, 2008, alleging that this conduct was contrary to RCW 66.44.200 and WAC 314-16-150(2).

3. The licensee timely requested a settlement conference to discuss resolution of each of the matters, but the informal settlement conference did not resolve the matter and the cases were set for a formal administrative hearing. The two cases were consolidated for hearing.

4. A hearing was held before Administrative Law Judge Randolph F. Bolong on May 28, 2009. At the hearing, the Education and Enforcement Division of the Board was represented by Assistant Attorney General Brian Considine and the Licensee was represented by attorney George Colby. The hearing was reconvened on June 12, 2009, by telephone, to take additional testimony and evidence, but the licensee's attorney informed the Administrative Law Judge and the Assistant Attorney General representing the Education and Enforcement Division that he had been unable to arrange for the testimony of Arnold Jim, the witness he had planned to call to testify on that date, thus no additional testimony was taken.

5. The entire record in this matter was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises;

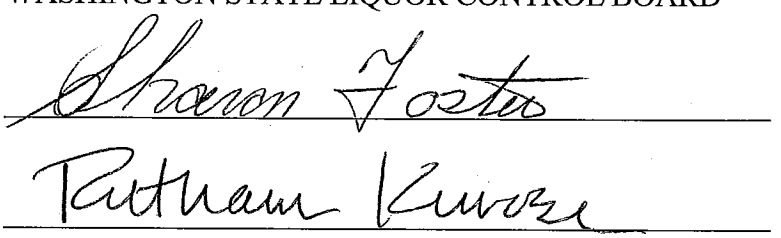
NOW THEREFORE; IT IS HEREBY ORDERED that the Board adopts the Findings of Fact and Conclusions of Law dated August 17, 2009 as its own. The violation charged in LCB No. 22,885 is sustained and the Initial Order is affirmed. The liquor license privileges granted to Joe and Rita Castilleja, d/b/a Hideaway Restaurant & Lounge, under License No. 351337 shall be suspended for a period of ten (10) days effective from 10:00 a.m. on November 20, 2009, until 10:00 a.m. on November 30, 2009; PROVIDED, HOWEVER, that said suspension shall be vacated upon payment of a monetary penalty in the amount of five-thousand dollars ($5,000), due on or before November 16, 2009. Failure to comply with the terms of this order will result in further disciplinary action.

Payment should be labeled in reference to this matter and sent to:

Washington State Liquor Control Board
Enforcement and Education Division
P.O. Box 43085, Olympia, WA 98504-3085

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

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

In the Matter of: **Joe & Rita Castilleja d/b/a** **Hideaway Restaurant & Lounge** **401 Wapato Avenue South** **Wapato, WA 98951** **Licensee** **License No. 351337**	**OAH Docket No. 2009-LCB-0002** **LCB Case No. 22,885** **INITIAL ORDER**

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BOARD ADMINISTRATION

STATEMENT OF THE CASE

The hearing was held before Randolph F. Bolong, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), on May 28 and June 12, 2009, in Yakima, Washington. The Washington State Liquor Control Board (Board) Education and Enforcement Division (Enforcement) was represented by Brian J. Considine, Assistant Attorney General. Lieutenant Kent Williams, Sergeant Gabriel Ramos, Liquor Enforcement Officers, and Officer Mike Deccio of the Wapato Police Department, appeared as witnesses for the Board. The Licensee, Joe and Rita Castilleja, d/b/a Hideaway Restaurant and Lounge, was represented by Attorney at Law, George Colby. Kaleja Castilleja and Max Comenout appeared as witnesses for the Licensees/Appellants.

Based on the record presented, the ALJ makes the following Findings of Fact:

FINDINGS OF FACT

1. The Licensees, Joe and Rita Castilleja, d/b/a Hideaway Restaurant and Lounge (Hideaway), is a restaurant and lounge located at 401 Wapato Avenue South in Wapato, Washington. The premises have been licensed by the Board for the sale of spirits, beer and wine pursuant to License Number 351337.

2. The Licensees have had two previous administrative violations in their history. The Licensees received a violation notice from August of 2006 for supplying or allowing an intoxicated person to possess or consume liquor, and a violation dated August 31, 2007, was issued for allowing an apparently intoxicated person to possess or consume on a licensed premises. It appears that their license was suspended from November 16 through 19, 2007.

3. On the evening of August 31, 2008, at approximately 11:40 p.m., Officer Mike Deccio of the Wapato Police Department was present inside the Licensee's premises conducting a "bar check" after he had observed a person outside the premises with an open container which the person stated he had obtained from the Hideaway. Upon entering the premises, Officer Deccio observed a woman who appeared to be intoxicated. She appeared to be "sleepy-looking", lethargic or disoriented, and having bloodshot, watery eyes. She was drinking liquid that appeared to be beer from a glass. The lighting was subdued but adequate. Officer Deccio contacted the woman and she was identified as Stephanie Albert. Ms. Albert was asked to step outside the premises. As she did so, Officer Deccio observed that she had difficulty maintaining her balance. Once outside, she stated that she had only bought one beer at the Hideaway. A male outside the premises stated that he had bought Ms. Albert the beer. Ms. Albert's speech was slurred and the officer smelled intoxicants on her

breath. He opined that Ms. Albert was extremely intoxicated at the time of contact. A preliminary breath test (PBT) was administered and confirmed her intoxication with a breath/alcohol reading of .305 percent. She was released after this contact.

4. Staff at the Hideaway acknowledge that Ms. Albert entered the premises that evening and that she appeared to be intoxicated, but denied serving her alcohol or that she remained on the premises with their knowledge.

5. On October 8, 2008, the Washington State Liquor Control Board (Board) served an Administrative Violation Notice to Rita Castilleja. In its October 8 Notice, the Board alleged that on September 1, 2008, the Licensee had violated the provisions of Washington Administrative Code (WAC) 314-16-150(2) by allowing an apparently intoxicated person to possess or consume liquor on a licensed premises. The penalty for the administrative violation sought by the Board against the Licensees is a ten day suspension or $5,000.00 fine in lieu of suspension. The Case number of this alleged violation is 4F8245A.

6. The Licensees made a timely request for an informal settlement conference to discuss resolution on October 8, 2008. The informal settlement conference did not resolve the matter and this case was set for a formal administrative hearing.

7. At approximately 12:45 a.m., on October 10, 2008, Sergeant Ramos and Lieutenant Kent Williams of the LCB were working with Officers Deccio, Randy Sperle and Derek Hanson from the Wapato Police Department in conducting a premises check. There was a pool tournament taking place at the Hideaway that day. Lieutenant Williams and Officer Ramos contacted an individual later identified as Arnold Jim. He was in possession of a glass of liquid that appeared to be beer. Mr. Jim identified the beverage as "my beer". His

eyes appeared to be red and watery and "he had a blank stare". His movements were slow and his answers to Officer Ramos' questions were nonresponsive; he could not identify who sold him the drink. He was swaying while sitting in his seat and later appeared to be unsteady while standing. Officer Ramos smelled a strong odor of intoxicants coming from his breath. Later, a sample of Mr. Jim's liquid drink was obtained by Lieutenant Williams which was given to Officer Ramos.

8. On October 10, 2008, Officer Ramos also observed a male subject, later identified as Ted Trujillo, in possession of a bottle of Budweiser Light beer. Mr. Trujillo's eyes appeared red and watery and he also had a blank stare. Mr. Trujillo could not identify who sold him the beer and did not know how long he had been on the premises. Officer Ramos and Deccio eventually escorted Mr. Trujillo outside where he appeared to have trouble with his balance and almost fell to the ground but was steadied by a pole. He was released outside the premises.

9. Also on October 10, 2009, another individual identified as Jose Lopez was contacted when he was observed possessing what appeared to be a mixed drink. He had originally provided a different name when contacted. Mr. Lopez's eyes were red and watery, and his movements were slow and standing unsteady. When questioned who sold him the drink, Mr. Lopez stated that the drink was his nephew's. When asked what he was drinking, he informed Officer Ramos he was drinking a rum and Coke. He was confused by questioning about his name and residence, and did not have identification. No sample of his drink was obtained because he had consumed the beverage.

10. The sample of the drink allegedly obtained from Mr. Jim was left in the trunk of a vehicle until it was sent for testing. An LCB Toxicology Report issued by the Washington State Toxicology Laboratory on December 15, 2008, identified the liquid as containing 3.42 percent ethanol. The sample was received from Officer Ramos by FedEx on December 8, 2008.

11. On October 10, 2008, the bartender saw Mr. Jim on the premises but did not serve him because, even though he did not appear intoxicated, he smelled of alcohol. He was escorted from the premises before the inspection but was later observed on the premises unbeknownst to the Licensees when the police escorted him out. None of the individuals working for the Licensees know Mr. Trujillo or Mr. Jose Lopez.

12. On October 23, 2008, the Washington State Liquor Control Board (Board) served an Administrative Violation Notice to Jonah Sconawah, the bartender at Hideaway. In its October Notice, the Board alleged that on October 10, 2008, the Licensee had violated the provisions of Washington Administrative Code (WAC) 314-16-150(2) by allowing an apparently intoxicated person to possess or consume liquor on a licensed premises. The penalty for the administrative violation sought by the Board against the Licensees is cancellation of the license. The Case number of this alleged violation is 4F8284B.

13. The Licensees made a timely request for an informal settlement conference to discuss resolution on October 24, 2008. The informal settlement conference did not resolve the matter and this case was set for a formal administrative hearing.

14. Since the date of the last alleged incident, security personnel at the door has been changed.

CONCLUSIONS OF LAW

1. As the holders of a retail liquor license, Joe and Rita Castilleja, the owners of Hideaway, are subject to the jurisdiction of the Washington State Liquor Control Board. The Board has the authority pursuant to RCW 66.24.010 to suspend or cancel a license so long as the Licensee is afforded an opportunity for a hearing. RCW 66.08.150, WAC 314-29-010. A proper hearing was provided in this case.

2. The provision of WAC 314-16-150 are applicable and provides as follows:

> (1) No retail licensee shall give or otherwise supply liquor to any person under the age of twenty-one years, either for his/her own use or for the use of his/her parent or of any other person; or to any person apparently under the influence of liquor; nor shall any licensee or employee thereof permit any person under the said age or 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.

3. The preponderance of evidence in the hearing record establishes that on August 31, 2008, Stephanie Albert, a patron who appeared to be and was objectively shown to be intoxicated, was present at the licensed premises of Hideaway. The only issue is whether she possessed liquor on the premises. In this case, the Licensees deny serving Ms. Albert liquor. Though Officer Deccio believed the beverage to be beer, he did not provide testimony that he inspected the contents of the glass in any way. Moreover, though there was heresay testimony that either Ms. Albert or another person had purchased beer for Ms. Albert at the Hideaway, it has not been shown that the contents of the glass which she had in her control was the beer allegedly purchased. There is no corroborating evidence of the hearsay statements. See 34.05.461, and McDaniel v. DSHS, 51 Wn.App. 893, 897, 756 P.2d 143

(1988). It has not been established that the beverage Ms. Albert had within her possession when observed by Officer Deccio was an alcoholic beverage.

4. Because the alleged violation on August 31, 2009, is not established, Case number 4F8245A should be set aside.

5. In the matter of the violations which allegedly occurred on October 10, 2009, the evidence establishes by a preponderance of the evidence that three individuals who appeared to be intoxicated were on the licensed premises. With regard to Mr. Jim's possession of liquor, he identified the beverage as his beer, and a subsequent analysis of the liquid purportedly in his possession established that it contained alcohol. A certified analysis as to the percentage of alcohol contained in any liquid produced before any court is prima facie evidence of the percentage of alcohol contained in the liquid. RCW 66.44.070. Though there is certainly room for doubt that the beverage sent to the Toxicology Laboratory is the same beverage that Mr. Jim had in his possession due to the extensive amount of time between the taking of the sample and the receipt of the sample by the Laboratory and the lack of chain of custody, the standard here is not "beyond a reasonable doubt"; it appears more likely than not that the beverage Mr. Jim possessed at the licensed premises was liquor.

6. The same result is concluded with regard to Mr. Trujillo. He had in his control a bottle which indicated that it contained beer. The testifying parties directly observed the beer bottle. The preponderance of the evidence would lead a reasonable person to conclude that another type of beverage had not been poured into the beer bottle. Possession is established with regard to the second subject. The third subject, however, the purported Mr. Lopez, was by

hearsay testimony alleged to have identified his drink in the glass as a rum and Coke. There was no corroborating evidence of this hearsay testimony.

7. The undersigned therefore concludes that two of the three subjects were in physical possession of liquor on the licensed premises while under the influence of liquor on October 10, 2008. Case number 4F8284B should be affirmed.

8. The Board has the authority to establish an appropriate penalty as a matter of its discretion. RCW 66.24.010. The board in suspending any license may further provide in the order of suspension that such suspension shall be vacated upon payment to the board by the licensee of a monetary penalty in an amount then fixed by the board. RCW 66.24.120. Pursuant to RCWs 66.24.010 and 66.240.120, the Board adopted as rules a set of "standard penalties" which may apply to certain offenses. WAC 314-29-015.

9. WAC 314-29-020 contains the public safety violations, which includes the violation by permitting possession of liquor by an apparently intoxicated person. The standard penalty for a third violation of WAC 314-16-150(2) is a ten (10) day license suspension or five thousand dollars ($5000.00) fine in lieu of suspension. WAC 314-29-020.

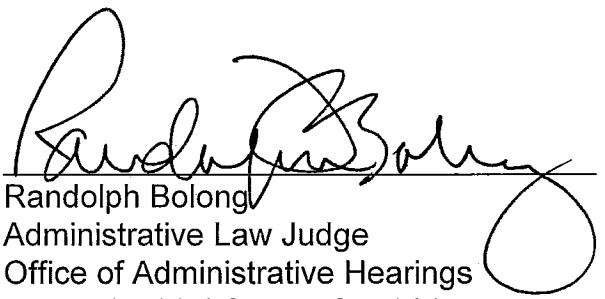
10. In the matter of penalties, WAC 314-29-015(4) sets forth certain examples of mitigating or aggravating circumstances which the Board may wish to consider; however, it does not appear that these examples are exclusive. An example of mitigating circumstances is "[h]aving direct on-site supervision of employees". WAC 314-29-015(4)(a). One example of an aggravating circumstance is "committing the violation willfully." WAC 314-29-015(4)(b). Mitigation or aggravation of the standard suspension period or fine in lieu of suspension may be granted at the discretion of the Board.

11. In this case, the undersigned cannot conclude that there was any mitigating or aggravating circumstances. Accordingly, this tribunal concludes that it is appropriate to recommend a penalty to the Board consisting of a ten-day suspension of the Licensee's liquor license or, in lieu thereof, a civil monetary penalty option in the amount of $5,000.00.

INITIAL ORDER

IT IS HEREBY ORDERED: that the Board's alleged administrative violation in Case number 4F8245A is Set Aside; and that the Board's alleged administrative violation in Case number 4F8284B is Sustained. On a date to be established in the Board's Final Order, the license privileges of Joe and Rita Castilleja, d/b/a Hideaway Restaurant and Lounge, under License Number 351337, shall be suspended for a period of ten (10) days. In lieu of such suspension, the Licensees may pay a civil monetary fine of five thousand dollars ($5,000.00).

Dated and Mailed this 17th day of August, 2009 at Yakima, Washington.



Randolph Bolong
Administrative Law Judge
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RB:jls

Copies mailed to:

Joe and Rita Castilleja, Licensee