

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

TALL MAN'S SALOON, INC.
d/b/a TALL MAN'S SALOON
105 W YACOLT ROAD
YACOLT, WA 98675

LICENSEE

LICENSE NO. 074656

LCB NO. 22,898

OAH NO. 2009-LCB-0014

FINAL ORDER OF THE BOARD

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

1. The Liquor Control Board's Complaint, dated April 8, 2009, alleged that on January 2, 2009 the above-named Licensee, or employee(s) thereof, sold, gave, or otherwise supplied alcohol to an apparently intoxicated person(s) on a licensed premises, contrary to WA 314-16-150(1); or in the alternative, that on January 2, 2009 the above named Licensee, or employee(s) thereof, allowed or permitted an apparently intoxicated person(s) to possess alcohol on a licensed premises, contrary to WAC 314-16-150(2).

2. An administrative hearing was held on June 26, 2009 at the licensee's timely request.

3. At the hearing, the Education and Enforcement Division of the Board was represented by Assistant Attorney General Gordon Karg and the Licensee, Gary Felkel, represented himself.

4. On October 13, 2009 Assistant Deputy Chief Administrative Law Judge Gina L. Hale entered her Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the Complaint.

5. No petitions for review 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; NOW THEREFORE; IT IS HEREBY ORDERED that the Assistant Deputy Chief Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order 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 Tall Man's Saloon, Inc. d/b/a Tall Man's Saloon located at 105 W Yacolt Road in Yacolt, WA 98675, License Number 074656, are hereby suspended for a term of five (5) days. In lieu of a license suspension, the Licensee may pay a monetary penalty in the amount of five-hundred dollars (\$500) due within 30 days of this order. If timely payment is not received, suspension will take place from 10:00 a.m. on December 18, 2009 until 10:00 a.m. on December 23, 2009. 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 3 day of November, 2009.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

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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. 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).

RECEIVED

OCT 14 2009

**LIQUOR CONTROL BOARD
BOARD ADMINISTRATION**

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

MAILED

OCT 13 2009

**VANCOUVER OFFICE OF
ADMINISTRATIVE HEARINGS**

In the Matter of:

Gary Felkel - Tall Man's Saloon Inc dba
Tall Man's Saloon

Licensee

License No. 074656

OAH No. 2009-LCB-0014
LCB No. 22,898

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

TO: Gary Felkel, Tall Man's Saloon, Inc., Licensee
Gordon Karg, Assistant Attorney General

Gina L. Hale, Administrative Law Judge (ALJ), conducted a hearing on June 26, 2009. The Licensee, Gary Felkel - Tall Man's Saloon, Inc., d.b.a. Tall Man's Saloon, appeared and represented himself. Gordon Karg, Assistant Attorney General, appeared and represented the Liquor Control Board (Board). Present as witnesses were: Lt. Marc Edmonds, Christina Letts, and Officer Kendra Ogren.

STATEMENT OF THE CASE

At issue is the whether the Licensee a) gave, sold and / or supplied liquor to an apparently intoxicated person on a licensed premises in violation of WAC 314-16-150(1). Or in the alternative, b) allowed or permitted an apparently intoxicated person to possess alcohol on a licensed premises in violation of WAC 314-16-150(2). The Licensee holds license number 074656.

Based upon the record presented, the undersigned Administrative Law Judge makes the following Findings of Fact:

FINDINGS OF FACT

1. Gary Felkel - Tall Man's Saloon, Inc., d.b.a. Tall Man's Saloon, is the holder of license number 074656. This license was issued by the Washington State Liquor Control Board under the provisions of the Revised Code of Washington (RCW) 66.24. The establishment is located at 105 W. Yacolt Road, Yacolt, Washington.
2. The Liquor Control Board (Board) monitors licensees through a continuing program of premises checks. These checks use plainclothes officers who enter licensed establishments to determine whether a Licensee is serving apparently intoxicated patrons, or allowing apparently intoxicated patrons to possess alcohol in violation of the regulations.
3. On or about January 2, 2009, Liquor Board officers Lieutenant Marc Edmonds and Officer Kendra Ogren, were conducting premises checks in the Amboy, Washington and Yacolt, Washington areas. The Licensee was one of several establishments checked during the course of the evening.
4. At approximately 9:30 p.m., the officers entered the bar where 15 to 20 patrons were also present. The only staff member present was the bartender, Christina Letts.
5. The officers believed that some of the patrons were getting loud and boisterous. The officers saw patrons they believed were intoxicated. Officer Ogren saw a "youthful" looking young man drinking beer. She identified herself and asked for his identification. His eyes were red and glassy. She then saw another patron who appeared intoxicated. He staggered as he walked and swayed when he stood in place. Lt. Edmonds was close enough to the patron to hear that his speech was slurred as if he had a "thick tongue." Both Officer Ogren and Lt. Edmonds observed that the patron was in the line of sight of the bartender, Ms. Letts. This patron was later identified as Richard Descloux.

6. When Mr. Descloux sat down his eyes were red and drooped. He drank a beer after sitting at the bar near the youthful looking man.
7. The officers discussed their concern as to whether Ms. Letts would cut off any of the patrons who appeared intoxicated. Lt. Edmonds discussed his concerns with Ms. Letts and suggested that she cut off those patrons, one of whom was Mr. Descloux, and she agreed.
8. At some point, Mr. Descloux stepped outside. He left at his place at the bar his beer and a shot glass. Officer Ogren remained at the bar to insure that Ms. Letts would cut off Mr. Descloux.
9. When Mr. Descloux returned from outside, Ms. Letts had one hand on his beer and the other on the shot glass. She informed him that he was cut off. As she turned to walk away, Mr. Descloux became angry and reached for the beer. Ms. Letts informed him that the shot was not his, but that the beer was. She sat the beer back on the bar and Mr. Descloux drank it. Officer Ogren reminded Ms. Letts that Mr. Descloux was to have been cut off. Ms. Letts attempted to get the beer back from Mr. Descloux and Lt. Edmonds assisted her.
10. Following the incident, the officers identified themselves to Mr. Descloux and asked for his identification. He refused several times. After Lt. Edmonds threatened to arrest him, he produced his identification. The officers cited Mr. Descloux with being intoxicated and in possession of alcohol. He was released into the custody of the youthful man, who was his son, and another male patron.
11. Lt. Edmonds asked Ms. Letts why she had "allowed so many individuals to become intoxicated." Exhibit 4, page 2. She offered no explanation, but confirmed that she knew they were intoxicated. Lt. Edmonds offered her the opportunity to make a voluntary written statement and she accepted the offer.
12. In her written statement, Ms. Letts acknowledged that she did not know Mr. Descloux, but that he had appeared intoxicated while he was on the premises. Exhibit 6, page 1.

13. In the hearing, Ms. Letts indicated that Mr. Descloux was not being boisterous until the officers identified themselves to him. As of the date of the incident, Ms. Letts had been an employee for only a few weeks. She had knowledge of the bar as a prior patron, but was new to the operations as an employee. She completed her training in October 2008. Her work at the time of the premises check was her first time working as a bartender.

From the foregoing Findings of Fact, the Administrative Law Judge now enters the following Conclusions of Law:

CONCLUSIONS OF LAW

1. The undersigned Administrative Law Judge has jurisdiction in this matter pursuant to Revised Code of Washington (RCW) 34.12, Chapter 34.05 and Washington Administrative Code (WAC) 10-08 and WAC 314-42.
2. The Washington State Liquor Control Board has jurisdiction over the Licensee Gary Felkel-Tall Man's Saloon, Inc., d.b.a. Tall Man's Saloon, who is the holder of license number 074656, which was issued under the provisions of RCW 66.24.
3. A licensee is a privilege and not a vested right. WAC 314-12-010.
4. Under the provisions of WAC 314-11-015(1)(a), liquor licensees are responsible for operation of the licensed premises in compliance with the liquor laws and rules of the board. If the licensee chooses to employ others in the operation of the business, any violations committed, or permitted, by those employees shall be treated by the board as violations committed, or permitted, by the licensee.

5. It is the duty and responsibility of the licensees to control the conduct of employees and patrons on the premises at all times. WAC 314-11-015(3).
6. Under the provisions of WAC 314-16-150(1), it is a violation to give, sell and / or supply liquor to an **apparently intoxicated** person on a licensed premises. It is also a violation to allow or to permit an **apparently intoxicated** person to possess alcohol on a licensed premises. WAC 314-16-150(2). Emphasis added.
7. It need not be shown that the individual was actually intoxicated or not. The purpose of the regulation is to discourage and to prevent licensees and their staff from over-serving individuals. If a person has had enough to drink such that they appear intoxicated, the regulation is designed to guard against over-serving that individual.
8. In order for the AVN to be affirmed and the complaint sustained, the Board must show that the alleged violations occurred by a preponderance of the evidence.
9. In the present case, both officers provided credible testimony that Mr. Descloux appeared intoxicated on the night of the premises check. Additionally, Ms. Letts agreed with Lt. Edmonds that Mr. Descloux appeared intoxicated in a statement she made close in time to the incident.
10. The undersigned concludes that all the required elements have been met by a preponderance of the evidence presented and that it is more likely than not that Mr. Descloux did appear intoxicated on the night of the premises check.
11. A preponderance of the credible evidence presented has established that the Licensee did violate the provisions of WAC 314-16-150(1) and WAC 314-16-150(2)

From the foregoing conclusions of law, NOW THEREFORE,

ORDER

IT IS HEREBY ORDERED That the Board's AVN is **AFFIRMED** and the Complaint is **SUSTAINED** and that the liquor license privileges granted to Licensee, Gary Felkel - Tall Man's Saloon, Inc., d.b.a. Tall Man's Saloon, located at 105 W. Yacolt Road, Yacolt, Washington, license number 074656, shall be subject to suspension for a term of five (5) days, or a fine of \$500 as a first offense.

DATED and mailed at Olympia, Washington, this 13th day of October, 2009.

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS



GINA L. HALE
Assistant Deputy Chief
Administrative Law Judge
5300 MacArthur Blvd, Suite 100
Vancouver, WA 98661
Telephone: (360) 690-7189 or 1-800-243-3451
FAX: (360) 696-6255

NOTICE TO THE PARTIES

Either the licensee or permit holder or the assistant attorney general may file a petition for review of the initial order with the liquor control board within twenty (20) days of the date of service of the initial order. RCW 34.05.464 and WAC 10-08-211, 314-29-010(4)(b) and 314-42-080(1).

The petition for review must:

- (i) Specify the portions of the initial order to which exception is taken;
- (ii) Refer to the evidence of record which is relied upon to support the petition; and
- (iii) Be filed with the liquor control board and within twenty (20) days of the date of service of the initial order.

A copy of the petition for review must be mailed to all of the other parties and their representatives at the time the petition is filed. Within (10) ten days after service of the petition for review, any of the other parties may file a response to that petition with the liquor control board. WAC 314-42-080(3). Copies of the reply must be mailed to all other parties and their representatives at the time the reply is filed.

The administrative record, the initial order, and any exceptions filed by the parties will be circulated to the board members for review. WAC 314-29-010(4)(c).

Following this review, the board will enter a final order WAC 314-29-010(4)(d). Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. RCW 34.05.470 and WAC 10-08-215.

The final decision of the board is appealable to the Superior Court under the provisions of RCW 34.05.510 through 34.05.598.

Mailed to:

Gary Felkel
Tall Man's Saloon, Inc.
PO Box 37
Yacolt, WA 98675

Gordon Karg
Office of the Attorney General
1125 Washington St SE
PO Box 40100
Olympia, WA 98504-0100

Barb Cleveland, OAH
Mail Stop: 42488



**Washington State
Liquor Control Board**

November 6, 2009

Gary Felkel, Licensee
Tall Man's Saloon, Inc.
d/b/a Tall Man's Saloon
PO Box 37
Yacolt, WA 98675-0199

Gordon Karg, 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. 1J9002B
LICENSEE: Tall Man's Saloon, Inc.
TRADENAME: Tall Man's Saloon
LOCATION: 105 W Yacolt Rd, Yacolt, WA 98675
LICENSE NO. 074656
LCB HEARING NO. 22,898
OAH No. 2009-LCB-0014**

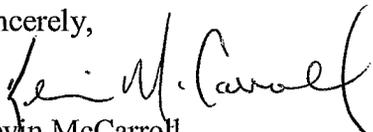
Dear Parties:

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 option is due by 5:00 pm on December 7, 2009 or suspension will take place on the dates specified in the Final Order.

If you are sending in payment, please send it to the mailing address referenced 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,


Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Tacoma and Vancouver Enforcement and Education Divisions, WSLCB
PO Box 43076, 3000 Pacific Ave. SE, Olympia WA 98504-3076, (360) 664-1602
www.liq.wa.gov

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

LCB NO. 22,898
OAH NO. 2009-LCB-0014

TALL MAN'S SALOON, INC
d/b/a TALL MAN'S SALOON
105 W YACOLT RD
YACOLT, WA 98675-5527

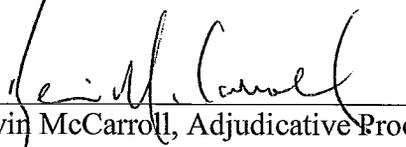
DECLARATION OF SERVICE BY
MAIL

LICENSEE

LICENSE NO. 074656

I declare under penalty of perjury under the laws of the state of Washington that on November 6, 2009, I served a true and correct copy of the FINAL ORDER OF THE BOARD in the above-referenced matter, by placing a copy of said documents in the U.S. mail, postage prepaid, to all parties or their counsel of record.

DATED this 6th day of November, 2009, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

TALL MAN'S SALOON, INC
d/b/a TALL MAN'S SALOON
PO BOX 37
YACOLT, WA 98675-0199

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

TALL MAN'S SALOON, INC
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105 W YACOLT RD
YACOLT, WA 98675-5527