

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

JOEY S. EVALT AND WILLIAM D.
EVALT d/b/a
LONE ROCK GROCERY AND DELI
11195 SEABECK HWY NW
SEABECK, WA 98380-9558

LICENSE APPLICANTS

LICENSE NO. 356206

LCB NO. 23,524
OAH NO. 2009-LCB-0024

FINAL ORDER OF THE BOARD

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

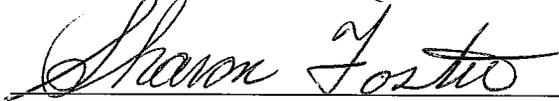
1. On or about March 17, 2009, the Washington State Liquor Control Board notified the applicants of the decision to disapprove the liquor license application for a Grocery Store Beer/Wine license submitted by Joey S. Evalt and William D. Evalt d/b/a Lone Rock Grocery and Deli due to the criminal history of applicant William D. Evalt based on RCW 66.24.010(2).
2. A timely request for a formal hearing before an administrative law judge was received by the applicant Joey S. Evalt.
3. The hearing took place on August 6, 2009. The Licensing and Regulation Division of the Board was represented by Assistant Attorney General Ruth Ammons. The applicants Joey S. Evalt and William D. Evalt represented themselves.
4. On August 7, 2009 Administrative Law Judge Cindy L. Burdue entered her Findings of Fact, Conclusions of Law and Initial Order affirming the denial of the license application.

5. No petitions for review were received by the parties.

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 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 application for Joey S. Evalt and William D. Evalt d/b/a Lone Rock Grocery and Deli, License 356206 is hereby denied.

DATED at Olympia, Washington this 16th day of September, 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 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).

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

In Re:

Joey Evalt and William Evalt
d/b/a Lone Rock Grocery & Deli

Licensees.

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**DOCKET NO. 2009- LCB-0024
Case No. 23,524**

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

STATEMENT OF THE CASE

On March 17, 2009, the Washington State Liquor Control Board (Board) issued written notice of its decision to disapprove the application for a Grocery Store Beer/Wine license, submitted by Lone Rock Grocery and Deli, Joey S. Evalt, and William D. Evalt, Licensees (Licensees).

In its written denial, the Board advised the Licensees that it had denied the application for a Grocery Store Beer/Wine license on the basis of the criminal history of Licensee William D. Evalt. This denial letter states the denial is based upon RCW 66.24.010(2).

The Licensees were advised they could either reapply for a license no sooner than one year from the date of the denial, or they could submit a request for an administrative hearing. The Licensees made a timely request for hearing with the Office of Administrative Hearings. (Ex. 9)

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**LIQUOR CONTROL BOARD
BOARD ADMINISTRATION**

The telephonic hearing was held before Cindy L. Burdue, Administrative Law Judge, on August 6, 2009. At hearing, the Board was represented by Ruth Ammons, Assistant Attorney General, with Susan Reams, Licensing Manager. The Licensees, Joey S. Evalt and William D. Evalt, appeared and represented themselves.

Appearing as witnesses for the Board were: Susan Reams, Licensing Manager; and as witnesses for the applicants/Licensees, Joey S. Evalt and William D. Evalt.

The following Exhibits offered, and the disposition of these is below:

By the Board, Ex. 1 through Ex. 9, **all admitted** without objection;

By the Licensees: Ex. A through G offered, with some objections, and the following disposition:

Ex. A, pages 1-2, was **converted to a Pre-Hearing Memorandum which is retained in the file**, but it is **not admitted** as an Exhibit;

Ex. B, page 1, **admitted** without objection;

Ex. B, pages 2-3, objected to as irrelevant; objection sustained, **not admitted**;

Ex. C, pages 1-3 objected to as irrelevant; objection overruled, **All admitted**;

Ex. D, pages 1-2, objected to as irrelevant; objection sustained, **not admitted**;

Ex. E, pages 1-2, **admitted**, no objection;

Ex. F., pages 1-4, **admitted**, no objection;

Ex. G, pages 1-2, objected to as irrelevant; objection sustained, **not admitted**.

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

FINDINGS OF FACT

1. Joey and William Evalt were married on January 25, 2002, and recently purchased a grocery and deli in the small community of Seabeck. They have taken out a \$50,000 loan and made substantial improvements to the leased building. (See Ex. E, pages 1-2)

2. The store and deli business is in the name of Joey S. Evalt as a "sole proprietorship." (Ex. 1, page 1) Both spouses intend to work in the store, however, and William D. Evalt has already been spending "18 hours a day" working in the business, along with two of the family's oldest children who "help out" in the store.

3. In 2001, William Evalt was arrested for Manufacture of Marijuana, and charged with Possession of a Controlled Substance - Felony Marijuana, for having possessed over 40 grams of marijuana. (Ex. 4) According to the Probable Cause Statement, the arresting officer found 53 marijuana plants growing on the property, which Evalt told the officer were a "friend's" plants. Mr. Evalt admitted to growing another 15 plants himself outdoors the prior summer, at another location, and to having previously had a small growing operation on his property inside a trailer. (Ex. 4, page 4)

4. On January 23, 2002, William Evalt pled guilty to Possession of a Controlled Substance (Felony Marijuana). (Ex. 5) This is a Class C felony.

5. After his guilty plea, Mr. Evalt entered substance abuse treatment and successfully completed that treatment, and credibly claims he has maintained his sobriety and drug-free status since that time. (Ex. C)

6. The Licensees have been granted Washington State licenses to sell tobacco; Lottery tickets; and hunting and fishing licenses in their store. These agencies also conducted a background check and criminal history check on Joey and William Evalt, according to the Licensees.

7. The Board denied the license based only on the felony conviction of Mr. Evalt which occurred only within the prior 7 years. The Board staff strictly applied the regulation allocating 12 points to any felon during the a ten year period after such conviction. The Board staff *routinely* apply the Board's felony rule to all felons in the same way, and do not consider as mitigation the drug/alcohol rehabilitation or law-abiding behavior of the felon during the time since the conviction, nor do these factors decrease the exclusionary period of ten years. Based on the preponderance of evidence, the rule is applied strictly in all but the most extraordinary cases. During her tenure as Licensing Manager, Ms. Reams does not recall even one instance in which a felon with 12 points received a recommendation to grant a liquor license by her office, or where remaining law abiding or drug/alcohol free caused the Board staff to recommend a license be granted to a felon who had over 8 points and a conviction within the ten year period.

8. The Licensing Investigator, her supervisor, and Ms. Reams all considered the information provided by Ms. Evalt as to her husband's rehabilitation after the conviction, as

well as his law abiding behavior thereafter. (Ex. 6, page 2) These factors are set forth in the investigation report and were all read by each person considering the application.

9. The Board also knew about Mr. Evalt's law abiding behavior and substance abuse rehabilitation after the conviction when it upheld the recommendation of Ms. Reams to deny the license. The Board is routinely provided with the Investigator's report, which states that Mrs. Evalt had represented that, ". . .Mr. Evalt has kept his record clean for the last 6 years, and he has made significant improvements (i.e. making sure to participate in the necessary programs to get things back on the right track). However, we do not feel that this information is enough to mitigate his criminal history." (Ex. 6, page 2) The Board did not choose to exercise its discretion to waive the "normal" rule for felons in this case, despite the law abiding behavior of Mr. Evalt or his ability to remain clean and sober since the conviction.

10. The credible evidence shows that Mr. Evalt has remained law-abiding and clean and sober since his January 2002 conviction. He feels he is being punished again, which the Licensees describes as a sort of "double jeopardy" for the crime in 2002. His wife also feels she is being unfairly punished by the Board, since she was not involved in the crime, nor married to Mr. Evalt when the arrest occurred. She did know about his conviction when she married him just days after the guilty plea was entered in 2002.

11. The Evalts would like an exception to the general policy of the Board's staff, who strictly and uniformly apply the regulation regarding the points and number of years during which a felony "counts against" the applicant.

12 In sum, the Evalts point to the rehabilitation of Mr. Evalt in terms of his drug and alcohol use, and his sustained sobriety in the last 7.5 years. They point out that he has had no further criminal arrest, conviction, or even a traffic citation since this conviction in January 2002. They provided letters of reference from friends and neighbors who believe the store is a nice addition to the community and who believe the Evalts would handle the liquor sales responsibly. (Ex. F)

CONCLUSIONS OF LAW

1. The provisions of RCW 66.24.010(2) are applicable and state as follows:

For the purpose of reviewing any application for a license and for considering the denial, suspension or revocation of any license, the liquor control board may consider any prior criminal conduct of the applicant including a criminal history record information check. The board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. . . . **The board may, in its discretion, grant or refuse the license applied for.** . . . (Emphasis added).

William Evalt is a spouse of the sole proprietor and therefore an applicant and a true party of interest:

2. Also, under WAC 314-07-020(5), the Board may investigate the criminal history of the "applicant." An "applicant" is defined as "any person who is a true party of interest," under WAC 314-07-010(1).

3. The term "true party of interest" is defined based on the *type of business* to be licensed and the *type of business structure* in place for that entity.

WAC 314-07-035 states:

What persons or entities have to qualify for a liquor license?

Per RCW 66.24.010(1), a liquor license must be issued in the name(s) of the true party(ies) of interest.

(1) **True parties of interest** - For purposes of this title, "true party of interest" means, where the "type of entity" applying for the licence is a *sole proprietorship*, a "spouse" of the sole proprietor. (Emphasis added).

4. Under the cited law, above, all of the business entities which are not corporations include the *wives* as "true parties of interest" (partnerships and limited liability companies, as well as sole proprietorship). Thus, in this case, William Evalt, as the "spouse" of Joey Evalt, sole proprietor of the Lone Rock Grocery & Deli, is a "true party of interest," and he must be considered equally as an "applicant" for the Grocery Beer/Wine license with his sole proprietor wife.

William Evalt's Criminal History is a bar to the granting of a license prior to expiration of ten years from the conviction date:

5. WAC 314-07-040 provides:

What criminal history might prevent a liquor license applicant from receiving or keeping a liquor license?

(1) When the board processes a criminal history check on an applicant, it uses a point system to determine if the person qualifies for a license. The board **will not**

normally issue a liquor license to an applicant who has accumulated eight or more points as indicated below:

Description	Time period during which points will be assigned	Points assigned
Felony conviction	Ten Years	12 Points
Gross misdemeanor conviction	Three years	5 Points
Misdemeanor conviction	Three years	4 Points
Currently under federal or state supervision for a felony conviction	n/a	8 Points
Nondisclosure of any of the above	n/a	4 Points each

6. The provisions of WAC 314-07-065 apply and state as follows:

Following is a list of reasons the board may deny a liquor license application. Per RCW 66.24.010, the board has broad discretionary authority to approve or deny a liquor license or permit application.

(4) Failure to meet the criminal history standards outlined in WAC 314-07-040 {cited above}.

... (other factors listed, but not relevant here, have been omitted). (Emphases added).

7. The law cited above confirms that the Board has broad discretionary authority to determine whether a license shall be granted or denied. In determining whether to grant or

deny a requested liquor license, including a Grocery Beer/Wine license, both the statute and WAC 314-07-040 authorize the Board to consider an applicant's criminal history.

8. William Evalt's felony conviction for possession of marijuana in 2002 is not ten years old, and was less than 8 years old when the Licensees applied for the license at issue.

9. Thus, the Board "normally" considers a felony criminal history until ten years from the conviction date have passed, and allocates twelve points to the felon for that history, under the cited regulation. The law says that the Board "will not normally" issue a license if the criminal history amounts to more than 8 points in that ten year period. The Board therefore has the discretion to make an exception and grant a license in the event that factors indicate this is appropriate.

10. Making this exception was not deemed appropriate by the Board here, based on the facts; and, the evidence shows that the Board *did* have all the *basic facts*. According to the Licensing Manager, a recommendation to grant a license to a felon prior to the ten years expiring, who has over 8 points, is virtually never made by her department, so the Board likely makes such an exception very rarely, if at all, thereby making it an "exception" and not the rule.

11. The Licensees complain that the Board staff making the recommendations did not seek more information at each level where a denial recommendation was made. However, the staff and later, the Board, knew the basics: Mr. Evalt had been law abiding and clean and sober for the 7.5 years since his felony conviction. This was not deemed to warrant an exception to the "normal" denial which would follow a felony conviction after only 7 years.

12. Based on the felony conviction only seven years ago, the Board's action in

denying the Evalts this license cannot be said to have been an abuse of discretion. There is no evidence that the Board has applied its rule more harshly to Mr. Evalt than to other felon applicants similarly situated. In fact, the Licensing Manager confirmed that the Board staff uniformly and fairly applies the regulation's point system and number of exclusionary years to *all felons* the same way.

12. The Board has set, in its regulations, a ten year "waiting" period during which an applicant's felony conviction will "normally" bar him or her from being approved for a liquor license. While it is understandable that the Licensees would like this waiting period to be shorter, and feel that Mr. Evalt is being "punished" again for a crime for which he has "paid his dues," it is within the statutory authority and discretion of the Board to set a ten year wait period for felons during which the conviction is a bar to obtaining a liquor license.

13. Further, the fact that *other* State agencies or departments have set different rules or standards by which to judge felons in the granting of their licenses (e.g., to sell Lottery tickets, tobacco, or hunting licenses), is not relevant to *this* Board's ten year period. This Board, acting within its statutory authority, simply chose a longer period during which to ensure that the prior criminal behavior and conviction is less likely to affect the operation of a business where liquor is sold.

14. Based on the above, the Board's denial of the Grocery Beer/Wine license due to a felony conviction of William D. Evalt within the last 7 years, must be affirmed.

THEREFORE, IT IS HEREBY ORDERED:

The decision of the Liquor Control Board under review, dated March 17, 2009, is **AFFIRMED**. The application of Joey S. Evalt and William D. Evalt, d/b/a/ Lone Rock Grocery & Deli, for a Grocery Beer/Wine license, was properly **DENIED**.

DATED at Olympia, Washington, this 7th day of August, 2009.



Cindy L. Burdue
Administrative Law Judge
P.O. Box 9046
Olympia, WA 98507
(360) 753-7328; 800-843-7712

APPEAL RIGHTS

Any party may file a petition for review of the initial order with the Liquor Control Board **within twenty days of the date of service of the initial order**. RCW 34.05.464, WAC 10-08-211, WAC 314-42-095(2)(a) and WAC 314-42-080(1). The petition for review must (a) identify the parts of the initial order the petitioner objects to and (b) refer to the evidence in the record that supports the petitioner's position.