

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
AVN NO. 3A9189A

LCB NO. 23,563

OAH NO. 2009-LCB-0059

AMENDED FINAL ORDER OF
THE BOARD

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

1. On July 9, 2009, the Washington State Liquor Control Board, Education and Enforcement Division (Enforcement hereafter) issued an Administrative Violation Notice (AVN) to the licensee, Holy Smoke Bar and Grill, located at 8794 Kendall Rd, Sumas, Washington, alleging that on or about June 11, 2009, an employee of the licensee was apparently intoxicated on the license premises in violation of WAC 314-11-015(3). The Board assessed a penalty of a five (5) day suspension of the liquor license or a civil monetary penalty in the amount of two thousand five hundred dollars (\$2,500) in lieu of suspension.
2. On October 14, 2009, the Board issued a formal written complaint alleging that "on or about June 11, 2009, the above-named Licensee, or an employee thereof, was apparently intoxicated on the licensed premises, contrary to WAC 314-11-015(3). The licensee filed a request for a hearing, and an administrative hearing was held before Administrative Law Judge (ALJ) Christy Gerhart Cufley on March 20, 2010.

3. On June 25, 2010, the ALJ entered Proposed Findings of Fact, Conclusions of Law and Initial Order in which she recommends that the Complaint be set aside.
4. The entire record in the proceedings was presented to the Board for decision, and the Board entered its Final Order on August 10, mailed to the parties on August 11, 2010. On August 20, 2010, the Board received the Licensee's Petition for Reconsideration. Having reviewed the record, the Board determines that the Proposed Findings of Fact, Conclusions of Law and Initial Order is adopted by the Board, except the Board does not adopt Conclusions of Law Nos. 10, 11, 12, or 13.
5. Final Order of the Board in Case No. 22,741 dated 10/19/2007 states;

“Aron Hovander, Guy Hovander, Hal Hovander and Holly Hovander may not be owners of, participate in or otherwise be involved with the operation of the licensee's business Holy Smoke Bar and Grill, License No. 360777.
Violation of the above condition may subject the licensee to enforcement action by the Board's Enforcement Division and to sanctions including monetary penalties, license suspension, license revocation or license cancellation.”
6. The Board substitutes the following Conclusions of Law in lieu of Conclusions of Law Nos. 10 through 13 of the Initial Order:

CONCLUSIONS OF LAW

10. Guy Hovander was the sole individual present in the premises at the time the officers initially approached. Guy Hovander was performing duties of an employee for the establishment by setting up the “open” sign and orange cones near the highway. The officers observed Guy Hovander enter the premises through the front door, and exit through the back door to contact Mark Dyne, who was in a shed behind the licensed premises. When the officers entered the premises, only Mark Dyne and Guy Hovander were present.
11. The testimony of the officers shows that it is more likely than not that Mark Dyne was asleep, and not simply getting supplies from the shed at the time the officers approached the premises.

The officers' testimony and reports were clear that Guy Hovander knocked on the door of the shed, and Mr. Dyne exited the shed with a disheveled appearance consistent with him having just been wakened. They also testified that his appearance was consistent with a person who had just wakened from sleep, and it is not credible to believe that he had been performing services as an employee prior to the time the officers observed him exit the shed. According to testimony presented at the hearing, there is a bed in the shed. The officer's observations of the actions of Guy Hovander, and the appearance of Mark Dyne, support the officer's conclusions that Mark Dyne was not actively working on the premises prior to Guy Hovander summoning him from the shed.

12. Mark Dyne did not serve Guy Hovander the beer that was observed on the bar, and no other person was in the premises other than Guy Hovander. Guy Hovander poured out the beer that he was consuming, indicating that he was aware that the law does not allow a person working on the premises to consume liquor while working. The Board concludes that Guy Hovander was the person left in charge of the premises at the time the officers arrived. Guy Hovander was performing services for the licensee at the time the officers arrived. WAC 314-11-015(3) prohibits an employee from being apparently intoxicated on the premises, thus the violation was proven. Guy Hovander working on the premises also violates the Board's Order in Case No. 22,741, but that was not charged as a violation or adjudicated in this proceeding, thus no sanction is imposed based on the violation of that Order.

IT IS HEREBY ORDERED that the complaint is sustained, and the License privileges of HOLY SMOKE BAR AND GRILL, LLC, d/b/a HOLY SMOKE BAR AND GRILL, 8794 Kendall Rd, Sumas, WA 98295 are hereby suspended for a period of 5 days. In lieu of license suspension, the Licensee may pay a monetary penalty of two thousand five hundred dollars (\$2,500.00) within 30

days of the date of mailing of this Order. As the Initial Order recites, and the Board is aware, the Licensee has discontinued business at this location as of August 19, 2009, and no longer possesses a valid liquor license at this location. If the Licensee chooses not to pay the monetary penalty, the Board's records will reflect the Board's sanction imposed by this Order as a five day (5 day) suspension of the liquor license. The violation shall be noted on the Board's record for the principals on the license, should they apply for a license at another location.

No application for a liquor license may be made by Steve and Starlane Hovander, or any principals in Holy Smoke Bar and Grill, LLC, until the monetary penalty is paid.

DATED at Olympia, Washington this 22 day of September, 2010.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

Ratnam Kuvoze

Reconsideration. As the Board is issuing this order on the Licensee's Petition for Reconsideration, there is no further opportunity for Reconsideration of this order.

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

September 22, 2010

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: *AMENDED FINAL ORDER OF THE BOARD
ADMINISTRATIVE VIOLATION NOTICE NO. 3A9189A
LICENSEE: Holy Smoke Bar & Grill LLC
TRADE NAME: Holy Smoke Bar and Grill
LOCATION: 8794 Kendall Rd, Sumas, WA 98295
LICENSE NO. 360777-3A
LCB HEARING NO. 23,563
OAH NO. 2009-LCB-0059
UBI: 602 587 301 001 0001***

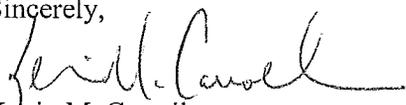
Dear Parties:

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

The applicable monetary penalty is due by October 22, 2010.

When you are sending in payment, please use 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,


Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Mt Vernon Enforcement and Education Division, WSLCB
Amber Harris, WSLCB
Beth Lehman, WSLCB

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

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
AVN No. 3A9189A

LCB NOS. 23,563

OAH NO. 2009-LCB-0059

BOARD NOTICE TO PARTIES OF
RECONSIDERATION OF FINAL
ORDER

The Board issued its Final Order, modifying the Initial Order, and reversing the ALJ's recommended decision, on August 10, 2010, which was served on the parties by mail on August 11, 2010. On August 20, 2010, the Board received a request for Reconsideration from the Licensee.

The Board will consider the Licensee's request for Reconsideration. The Education and Enforcement Division may, but is not required to, file a response to the request for Reconsideration, no later than September 10, 2010. No reply by the Licensee shall be filed without further request by the Board. The Final Order of the Board is hereby stayed, pending further order of the Board. The Board will issue its decision on Reconsideration on or before September 22, 2010.

DATED at Olympia, Washington this 31 day of August, 2010.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

Ruthann Kurose

Linda J. Bremer

Service. This Order was served on you the day it was deposited in the United States mail. RCW

34.05.010(19).

FINAL ORDER OF THE BOARD
LCB NOS. 23,563
HOLY SMOKE BAR AND GRILL

STEVE & STAR HOVANDER
5268 OLSON RD.
FERNDALE, WA. 98248

RECEIVED

AUG 20 2010

LIQUOR CONTROL BOARD
BOARD ADMINISTRATION

August 19, 2010
Kevin McCarroll
Adjudicative Proceedings Coordinator

Dear Kevin,

Reconsideration... Pursuant to RCW 34.05.470,

Grounds on which relief is requested. We request reconsideration due to the facts:

* Liquor board failed to rationally consider the judges conclusion.

"We believe this to be a conspiracy against the non- basis judge and the Hovanders"

*Guy was not performing duties of an employee for the establishment by setting up the "open" sign and orange cones near the highway. Instead Guy Hovander simply and clearly noticed the sign as a public hazard as it had fell onto the public highway and merely did as a good citizen would do by placing the sign from danger to the public. While Guy was outside getting mail from the mail box as he was expecting personal mail.

* Guy Hovander did not perform any duties while the officers were inside the building and that the officers had confliction stories on what guy was doing while inside the building.

* Guy Hovander was not the sole person the the premises when the officers arrived.

* Mark Dyne stated he was the person in charge.

*The Officers made many assumptions about Mark Dyne including Him sleeping while Steve Hovander stated that he left Mark Dyne and he wasn't sleeping but performing duties. I believe this to be a he said she said, the clear picture is that Mark Dyne was on the premises of the Holy Smoke.

*There were no duties being performed period other than a good citizen looking out for public safety.

*Guy Hovander was not intoxicated on the premises, thus the officers knowing this would have asked the person in charge to dispose of the drink, but instead had a long and very clear conversation with Guy Hovander. The duty of an officer is to a drink removed if they believe that a person is intoxicated.

*It is very apparent to me that many assumption.were made and the burdedrnof proof that a violation had not occurred. .

Sincerely,

Steve and Star Hovander

