

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

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.

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.

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). 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. The monetary penalty must be paid within 30 days of this order, but in the event payment is not received within 30 days, the violation shall be noted on the Board's record for the principals on the license, and no future license may be issued unless and until the above-stated monetary penalty is paid.

DATED at Olympia, Washington this 10 day of August, 2010.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

Roberta Kurose

Linda D. Bremer

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**

August 11, 2010

Steve and Starlare Hovander
Holy Smoke Bar and 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: FINAL ORDER OF THE BOARD
ADMINISTRATIVE VIOLATION NOTICE NO. 3A9189A
LICENSEE: Holy Smoke Bar and 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-LCB0059
UBI: 6025873010010001**

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 is due by September 10, 2010.

Please mail payment to Washington State Liquor Control Board, P.O. Box 43085, Olympia, WA 98504-3085 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,

A handwritten signature in black ink, appearing to read "Kevin McCarroll".

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: 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 AND
7 GRILL
8 8794 KENDALL RD
9 SUMAS, WA 98295

LICENSEE

10 LICENSE NO. 360777-3A
11 AVN 3A9189A

LCB NO. 23,563
OAH NO. 2009-LCB-0059

DECLARATION OF SERVICE BY
MAIL

12 I certify that I caused a copy of the FINAL ORDER OF THE BOARD in the above-
13 referenced matter to be served on all parties or their counsel of record by US Mail Postage
14 Prepaid via Consolidated Mail Service on the date below to:

15
16 HOLY SMOKE BAR & GRILL LLC
17 D/B/A HOLY SMOKE BAR AND GRILL
18 5268 OLSON RD
19 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

20 DATED this 11th day of August, 2010, at Olympia, Washington.

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22 
23 Kevin McCarroll, Adjudicative Proceedings Coordinator

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25
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DECLARATION OF SERVICE BY
MAIL

RECEIVED

JUN 25 2010

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

**LIQUOR CONTROL BOARD
BOARD ADMINISTRATION**

IN THE MATTER OF :

Holy Smoke Bar and Grill
5268 Olson Road
Ferndale, WA 98248

Licensee.

License No. 360777
AVN No. 3A9189A

OAH No. 2009-LCB-0059
Agency No. 23,563

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

STATEMENT OF THE CASE

On July 9, 2009 the Washington State Liquor Control Board, Education and Enforcement Division (Board hereafter) issued an Administrative Violation Notice (AVN) to the licensee, Holy Smoke Bar and Grill, located at 5268 Olson Road, Ferndale, in Whatcom County, Washington, alleging that on or about June 11, 2009 an employee of the licensee was apparently intoxicated on the licensed premises in violation of WAC 314-11-015(3), and assessing as the penalty a five (5) day license suspension or a civil monetary penalty in the amount of two thousand five hundred dollars (\$2,500) in lieu of suspension.

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)." ¹

The licensee filed a request for an administrative hearing on August 17, 2009.²

¹Exhibit 1A.

²Exhibit 1C. Such requests are to be filed within 20 days of the date on which the AVN is served; however, the Board waives any challenge to the timeliness of the late hearing request.

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

The matter came on for hearing pursuant to due and proper notice at Bellingham, Washington, on March 30, 2010 before Christy Gerhart Cufley, Administrative Law Judge, Office of Administrative Hearings.

The Education and Enforcement Division of the Washington State Liquor Control Board appeared and was represented by Brian Considine, Assistant Attorney General. Liquor Enforcement Officer Darren Tinnerstet, and Whatcom County Deputy Sheriffs Jason Karb and Jeff Turner appeared and presented testimony on behalf of the Board.

The licensee, Holy Smoke Bar and Grill, appeared and was represented by Steve and Starlare Hovander, Owners; their son, Guy Harlan Hovander and Mark Dyne, employee, also appeared and presented testimony on behalf of the licensee.

Based upon the evidence presented, the undersigned administrative law judge makes the following:

FINDINGS OF FACT

1. Steve and Starlare Hovander are the owners of Holy Smoke Bar and Grill, located at 5268 Olson Road, Ferndale, in Whatcom County, Washington. Such establishment is the subject premises in this matter, and at the time of the alleged violation, was licensed to sell beer, wine, and spirits for on premises consumption.
2. Guy Hovander is the son of Starlare and Steve Hovander. They reside together in a trailer located approximately 200 to 300 yards from the business (the licensed premises).
3. Jason Karb and Jeff Turner are employed as deputy sheriffs by Whatcom County. Deputy Karb has been employed by Whatcom County for approximately five years while Deputy Turner has been employed by Whatcom County for approximately 10 years. Both deputies each have a total of 14 years of law enforcement experience, and each has received prior training in recognizing the signs of apparent intoxication.
4. On June 11, 2009 at approximately 3:00 p.m. the two deputies were on routine patrol in separate marked patrol vehicles en route along Kendall Highway (in front of the licensed establishment); Deputy Turner was following Deputy Karb. As they drove by the establishment, Deputy Karb observed Guy Hovander (one of the sons of the owners) directly across the highway from the establishment maneuvering an "open" business sign on the shoulder of the road, placing an orange cone alongside the sign, and then proceeding to enter the establishment through the front door.

PROPOSED
FINDINGS OF FACT
CONCLUSIONS OF LAW
AND INITIAL ORDER

5. Deputy Karb contacted Deputy Turner by radio suggesting the two conduct a brief "bar check" (an unannounced visit to determine if a licensed establishment is in compliance with applicable liquor laws and to determine if any liquor laws are being violated). The two deputies subsequently pulled into a side parking lot and observed Guy Hovander exiting the premises and knocking on the door of a small wooden shed located directly behind the establishment. Thereafter the bartender and employee, Mark Dyne, exited the shed appearing disheveled, and he and Guy Hovander proceeded to enter the establishment followed by both deputies.

6. Upon entry, the deputies observed the doors were open, the lights were on, and neither of the owners nor any patrons were present. Guy Hovander was initially behind the bar with an open container of Coors Light beer on the bar in front of him. Neither Deputy observed Guy Hovander drink the beer, but both indicate he poured the beer out and then continued the conversation while sitting in a pew.³

7. Deputy Turner primarily engaged in the ensuing conversation with Guy Hovander which lasted approximately 20 minutes. Both deputies observed him to have blood shot watery eyes, slurred speech, to stumble as he walked, and smelled a strong odor of intoxicants on his breath. When the deputies inquired as to much he had to drink, Guy Hovander responded, "Enough to talk to you." Guy Hovander indicated business was slow, and the owners (his parents) had just departed for Glacier (approximately 30 minutes away) and were expected to return later than afternoon. Deputy Turner did not speak directly with Mr. Dyne, and did not inquire specifically as to who was working; he believes Guy Hovander stated Mr. Dyne was working, but Deputy Turner "can't say for certain" whether or not he was advised that Mr. Dyne was working. At some point during the conversation, Mr. Dyne went behind the bar where he remained.

8. Both deputies observed Mark Dyne with "sleep lines" on his face and looking disheveled as though he had just been wakened. Although he has never been inside, Deputy Turner has contacted other individuals on prior occasions at the shed and believes it is a former tool shed converted to a dwelling with a bed and refrigerator.

9. Deputy Turner concluded Guy Hovander was working because he was the only person in the business, was putting out a sign for the business, and was standing behind the bar in an area where the deputies believed patrons would not customarily be allowed to remain.

³The subject premise is a church which has been converted to a bar and retains the original church pews as seating for patrons.

10. Darren Tinnerstet is a Liquor Enforcement Officer employed by the Washington State Liquor Control Board (WSCLB) in that capacity for approximately two years. His employment responsibilities include enforcing applicable liquor laws in licensed establishments, and he routinely receives referrals of potential violations from law enforcement agencies such as the Whatcom County Sheriff. As part of his current and regular duties, he reviews information provided to the Board by local law enforcement authorities regarding alleged violations of liquor control laws to determine if issuance of an Administrative Violation Notice (AVN) is warranted.

11. On June 11, 2009, Officer Tinnerstet received a telephone call from Deputy Karb shortly after their visit communicating the observations made by himself and Deputy Turner and relaying his belief that Guy Hovander appeared to be intoxicated and appeared to be running the business by himself until he summoned Mr. Dyne. Officer Tinnerstet requested Deputy Karb provide a written report describing in detail the specific observations made.⁴

12. After receiving and reviewing the written report completed by Deputy Karb several days later, Officer Tinnerstet himself subsequently visited the licensed premises on June 25, 2009 with two other officers (Officer Russom and Sgt. Lucatero) both to conduct a random premises check and to discuss the June 11, 2009 incident. Officer Tinnerstet noted a "strong odor of intoxicants coming from his (Guy Hovander's) person, but he was not displaying any further signs of intoxication."⁵

13. On June 25, 2009 Officer Tinnerstet spoke with Guy Hovander and Mark Dyne. Mr. Hovander indicated he was exiting the premises on June 11, 2009 to retrieve mail and picked up the "open" sign which had blown over; Mr. Dyne indicated he did not recall the specific details of that day (June 11, 2009).

14. Based on his review of the facts as he understood them, Officer Tinnerstet concluded there existed sufficient evidence to warrant the issuance of an AVN to the licensee for allowing an employee to be apparently intoxicated on the licensed premises (allegedly occurring on June 11, 2009). Officer Tinnerstet made the determination to issue the AVN based on the totality of the circumstances including: Guy Hovander being the only person in the establishment on June 11, 2009, being apparently intoxicated, being behind the bar, and summoning Mr. Dyne from the shed where it is believed Mr. Dyne had been sleeping.

⁴Exhibit 3; Deputy Turner did not prepare a written report.

⁵Exhibit 2.

15. On July 9, 2009 Officer Tinnerstet served the AVN at issue herein on the licensee at the subject premises, and explained the various options. The licensee subsequently requested a formal administrative hearing

16. Following receipt of the request for hearing by the licensee, Officer Tinnerstet prepared a written Narrative Report. Such reports are customarily prepared following receipt of a licensee's request for an administrative hearing.⁶

17. Steve and Starlare Hovander have been the owners of the subject establishment since it opened in approximately December 2007. The maximum occupancy for the establishment is 60, and their only employee is Mark Dyne.

18. Mark Dyne has been employed as a bartender at the subject establishment from the date of its opening in approximately 2007 until on or about August 19, 2009 when the business closed. He is the holder of a MAST (Mandatory Alcohol Server Training) Permit, and was present on June 11, 2009 scheduled to work his customary shift from 2:30 p.m. until 11:00 p.m. He asserts he was in the shed getting supplies which are stored there when he was advised by Guy Hovander that there were deputy sheriffs present. He denies utilizing the shed as a dwelling, denies being asleep, and resides in a separate residence several miles away from the establishment. He further states he only places the "open" sign directly in front of the premises and never across the highway.

19. Guy Hovander denies performing any services for the business or otherwise participating as an employee on June 11, 2009. He states he was outside having a cigarette and checking the mail when he also picked up the "open" sign and replaced it across the highway from the establishment. When he saw the two patrol vehicles, he went into the business to notify Mark Dyne and went to the nearby shed who was in the nearby shed allegedly getting supplies. He acknowledges being in possession of a beer provided to him by his father, Steve Hovander, shortly before Steve Hovander left the premises with Starlare Hovander to drive to Glacier. He states he continued to consume the beer while speaking with the deputies, and denies being intoxicated.

20. Steve Hovander asserts he provided a bottle of Coors Light beer to his son, Guy Hovander, on June 11, 2009 approximately ten minutes before he and Starlare Hovander left the premises to drive to Glacier,⁷ and, further, that Guy paid \$3 for the beer. Steve Hovander

⁶Exhibit 2.

⁷Information contained in the exhibits suggests that the Hovanders may be applying for a new liquor license at a location in Glacier. Exhibit 4.

asserts he and his spouse had departed from the premises immediately prior to the arrival of the Deputies.

21. On October 19, 2007 the Board issued a Final Order stating in relevant part that evidence presented at an administrative hearing held on June 6, 2007 regarding another AVN "...calls into question the credibility of the applicants' testimony..." (that their children are not involved in the business project consisting of Holy Smoke Bar and Grill) and further imposing upon the approved liquor license the condition that the four children (including Guy 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. 36077."⁸ Violation of said condition may subject the licensee to further enforcement action and/or sanctions by the Board including monetary penalties, license suspension, licence revocation, or license cancellation.

22. By letter dated December 5, 2007 the Board issued a license (valid through November 30, 2008) to sell liquor to the licensee with the specific prohibition that "...Guy Hovander ...may not be (an owner) of, participate in or otherwise by (sic) involved with the operation of the licensee's business *Holy Smoke Bar and Grill*, License No. 36077."⁹

23. Although the license stipulation allows Guy Hovander to consume liquor in the subject establishment, other applicable liquor laws do not allow him to do so if he is apparently intoxicated or if he is the only one present in the establishment. No other AVNs were issued based on the subject incident.¹⁰

24. The Board has issued prior AVNs to the licensee within the prior two years,¹¹ including an AVN for a licensee apparently intoxicated on the licensed premises alleging a violation date of April 17, 2009 (AVN No. 3A9107A).¹²

⁸Exhibit 6.

⁹Exhibit 6A.

¹⁰It is not uncommon for the Board to issue AVNs to various individuals/employees/licensees based on the same incident.

¹¹Other AVNs issued to the licensee were not considered by the Board in determining this penalty because such involved violations of a different type than the one charged herein.

¹²The named individual was Steve Hovander, and the licensee elected to serve a 15-day license suspension. Exhibit 4.

25. As of the date of the administrative hearing, the licensee no longer possessed a valid liquor license, and all sales and service of liquor at the Holy Smoke Bar and Grill location were discontinued on or about August 19, 2009.¹³

26. The Washington State Liquor Control Board seeks to prevent the misuse of alcohol and tobacco and promote public safety through controlled retail and wholesale distribution, licensing, regulation, enforcement, and education.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter pursuant to chapters 66.44, 34.12, and 34.05 RCW, and chapters 10-08, 314-11, 314-16, and 314-29 WAC.

2. As the holder of a liquor license, the licensee, Holy Smoke Bar and Grill, is subject to the jurisdiction of the Washington State Liquor Control Board. The license is subject to the conditions and restrictions imposed by Title 66 RCW, and chapters 314-11, 314-16, and 314-29 WAC. Proceedings involving agency action are adjudicative proceedings under chapter 34.05 RCW. The Board has authority to assign such proceedings to an administrative law judge pursuant to chapter 34.12 RCW. A proper hearing was provided in this case.

3. RCW 66.44.200(1) prohibits the sale of liquor to any person apparently under the influence of liquor. The definition of liquor includes spirits. RCW 66.04.010(23). RCW 66.44.200 further provides in relevant part as follows:

(2)(a) No person who is apparently under the influence of liquor may purchase or consume liquor on any premises licensed by the board.

(b) A violation of this subsection is an infraction punishable by a fine of not more than five hundred dollars.

4. Chapter 314-11 WAC sets forth general requirements for liquor licenses (WAC 314-11-005) and outlines the responsibilities of a liquor licensee and employees of a liquor licensee (WAC 314-11-015). Further, WAC 314-11-015(3) specifically references restrictions against consumption of alcohol on the licensed premises by licensees or employees, and provides the definition of an employee as "any person performing service on a licensed premises for the benefit of the licensee."

¹³Exhibit 7.

5. WAC 314-11-015(1)(a) states as follows:

Any violations committed or permitted by *employees* will be treated by the board as violations committed by the licensee.

Emphasis supplied.

6. As the holder of a liquor license and a seller of alcohol, the licensee is charged with the responsibility to control the licensed premises at all times, and to ensure full compliance with all properly promulgated laws regarding the sale and service of liquor. Licensees have the responsibility to control their conduct and the conduct of employees and patrons on the premises at all times, including the prevention of over service of alcohol to patrons.. Except as otherwise provided by law, licensees or employees may not be disorderly or apparently intoxicated on the licensed premises or consume liquor of any kind while working on the licensed premises. WAC 314-11-015(3)(a) and (c). The licensee is further charged with the responsibility for ensuring the actions of its employees comply with all applicable liquor laws.

7. The question for resolution by the undersigned is whether or not Guy Hovander was a person performing *service on* a licensed premises for the benefit of the licensee (hence, an *employee* of the licensee), and whether he was apparently intoxicated at the licensed premises on or about June 11, 2009 in violation of WAC 314-11-015(3) which prohibits licensees and employees from consuming liquor of any kind while working on the licensed premises.

8. Initially the undersigned notes that Deputies Turner and Karb are experienced law enforcement officers, and their testimony regarding their observations of Guy Hovander on June 11, 2009 are deemed credible.¹⁴ They observed Guy Hovander to exhibit the following: blood shot, watery eyes, slurred speech, impaired motor skills (i.e., stumbling), and both officers detected a strong odor of intoxicants on his breath.

9. The preponderance of credible evidence does establish that Guy Hovander was apparently intoxicated at the subject premises at approximately 3:00 p.m. on June 11, 2009. Both deputies observed a variety of mannerisms and behavior that, particularly when viewed collectively, are indicia of an apparently intoxicated individual.

10. While the applicable regulations define an employee as an individual performing services for the benefit of the business on the licensed premises, unfortunately the regulations

¹⁴To find otherwise would require a conclusion that their testimony is not credible, and there is no basis in this record for doing so

contain no definition as to what constitutes "service." Moreover, this situation is complicated by the fact that the licensees/owners and their son reside together in the same dwelling located on the same property within several hundred yards of the subject establishment.

11. Other than picking up and placing an "open" sign across the highway from the establishment, and drinking a beer alone in the establishment (arguably provided to him by his father), there is no evidence that Guy Hovander performed duties that would constitute those of an employee. There were no customers present, no evidence that he served alcohol to any patrons or engaged in any other tasks specific to providing service (accounting functions, cleaning, stocking, etc.) or performed any other duties for the benefit of the licensee. Moreover, repositioning the "open" sign either across the highway from or even in front of the licensed premises is arguably not "on" the licensed premises as anticipated by the regulation.

12. Had Guy Hovander served alcohol or performed any other tasks specific to those of an employee, the decision herein would be different. However, even concluding that the observations of the two deputies are credible and clearly establish that Guy Hovander was an apparently intoxicated person present on the licensee premises, the evidence is simply insufficient to establish that he was an *employee* pursuant to the regulatory definition.¹⁵

13. Accordingly, based upon careful consideration of the evidence, including the demeanor and motivation of the parties, the reasonableness of the testimony, and the totality of the circumstances presented, and based on the above findings and conclusions, the undersigned concludes the preponderance of credible evidence does not establish that Guy Hovander was performing the services of an employee on June 11, 2009 at the subject establishment. Therefore, the licensee is not subject to imposition of any civil monetary penalty.¹⁶

14. The undersigned has considered all arguments made by the parties. Arguments that are not specifically addressed herein have been duly considered but are found to have no merit or to not substantially affect a party's rights.

¹⁵The fact that the licensee is no longer in business was not considered by the undersigned; had the evidence established the alleged violation, the penalty requested by the Board would have been imposed.

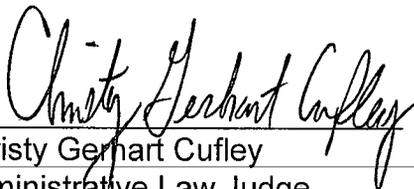
¹⁶Based on these facts, the Board could have elected to issue an AVN to the licensee based on RCW 66.44.200(2)(a) which prohibits the possession or consumption of liquor on any premises licensed by the board.

From the foregoing conclusions of law, NOW THEREFORE,

INITIAL ORDER

IT IS HEREBY ORDERED, that the Board's Complaint dated October 14, 2009 alleging that on or about June 11, 2009 the licensee, Holy Smoke Bar and Grill or an employee thereof was apparently intoxicated on the licensed premises contrary to WAC 314-11-015(3) is SET ASIDE. The licensee is not subject to the imposition of any sanctions or civil monetary penalties.

Dated at Seattle, Washington this 23rd day of June, 2010.

By 
Christy Gerhart Cufley
Administrative Law Judge

A copy of the Proposed Findings of Fact, Conclusions of Law, and Initial Order was mailed on June 23, 2010 to the following parties and representatives:

Holy Smoke Bar and Grill, LLC
dba Holy Smoke Bar and Grill
c/o Steve and Starlare Hovander
5268 Olson Road
Ferndale, WA 98248

Brian Considine
Assistant Attorney General
Office of the Attorney General
PO Box 40100
Olympia, WA 98504-0100

Kevin McCarroll
Adjudicative Proceedings Coordinator
Liquor Control Board
3000 Pacific Avenue
PO Box--(Mail Stop) 43076
Olympia, WA 98504-3076

PROPOSED
FINDINGS OF FACT
CONCLUSIONS OF LAW
AND INITIAL ORDER

