

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

THE SPAGHETTI ESTABLISHMENT,
INC
d/b/a THE SPAGHETTI
ESTABLISHMENT
2107 W 4TH AVE
KENNEWICK, WA 99336

LICENSEE

LICENSE NO. 360072

LCB NO. 23,573
OAH NO. 2010-LCB-0003

FINAL ORDER OF THE BOARD

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

1. An administrative hearing was held on April 29, 2010 at the Applicant's timely request for a hearing regarding a Statement of Intent to Deny Liquor License Application issued by the Licensing and Regulation Division of the Liquor Control Board on August 20, 2009.
2. At the hearing, the Licensing and Regulation Division of the Board was represented by Assistant Attorney General Brian Considine and Stephen Bibe represented the appellant, The Spaghetti Establishment, Inc.
3. On May 19, 2010 Administrative Law Judge Chris Blas entered his Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the application denial.
4. No petitions for review were filed by the parties.
5. 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 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 2009 Change of Corporate Officers Application for The Spaghetti Establishment Inc. d/b/a The Spaghetti Establishment located at 2107 W 4th Avenue in Kennewick, Washington, License 360072 is hereby denied.

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

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

Richard Kuvell

Dianna J. 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).

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

In the Matter of:

**THE SPAGHETTI ESTABLISHMENT
INC. dba THE SPAGHETTI
ESTABLISHMENT**

Appellant.

**OAH Docket No. 2010-LCB-0003
LCB Case No. 23,573**

INITIAL ORDER

RECEIVED

MAY 21 2010

**LIQUOR CONTROL BOARD
BOARD ADMINISTRATION**

A prehearing conference was scheduled for February 2, 2010 at 4:30 p.m. to be held by telephone conference. Due and proper notice was mailed to the parties at least 7 days prior to the date of the conference. The appellant did not appear for the prehearing conference. The Licensing and Regulation Division's representative appeared. An Order of Default was issued on February 11, 2010 based on the appellant's failure to appear and was sent to the parties. The Order of Default explained the appellant's right to file a motion to vacate the default within seven days under RCW 34.05.440. The appellant filed a motion to vacate on February 18, 2010. After notice and a hearing on the appellant's motion to vacate, an Order Vacating Default order was issued on March 9, 2010 setting aside the default order and reinstating the hearing under the authority of RCW 34.05.440. Notice of the hearing was mailed to the parties on March 17, 2010.

This matter came on for hearing before Washington State Office of Administrative Hearings, Administrative Law Judge, Chris Blas, in Yakima, Washington, by telephone conference on April 29, 2010. At hearing, the Licensing and Regulation Division of the Board was represented by Assistant Attorney General, Brian Considine. Director Alan Rathbun and Project Specialist Susan Reams testified for the Licensing and Regulation Division. Stephen

Bibe appeared, testified and represented the appellant, The Spaghetti Establishment Inc.. Four exhibits were entered into evidence before the completion of the hearing.

FINDINGS OF FACT

1. The Spaghetti Establishment Inc. is a corporation doing business as the restaurant known as The Spaghetti Establishment at 2107 West 4th Avenue, Kennewick, Washington 99336. Its sole shareholders now are husband and wife Stephen and Jolene Bibe who purchased the corporation and restaurant. Mr. Bibe owns 50 percent of the stock of the corporation and his wife owns 50 percent. Mr. Bibe is the president of the corporation and Mrs. Bibe is the vice-president.

2. On March 31, 2009, Mr. and Mrs. Bibe applied for a change of corporate officers and shareholders with the Licensing and Regulation Division (hereafter referred to as the Division). Mr. Bibe completed and filed with the Division a Personal/Criminal History Statement form which authorized the Division to check his criminal history or lack thereof.

3. The Division issued a Statement of Intent to Deny Liquor License on August 20, 2009 finding Mr. Bibe did not disclose a misdemeanor criminal conviction and that due to the misdemeanor conviction plus the nondisclosure of such conviction, he incurred eight points under WAC 314-07-040. The Statement of Intent to Deny Liquor License sought denial of the appellant's application.

4. Mr. Bibe stipulates that he has a misdemeanor conviction for lewd conduct entered on August 22, 2007. He explains that his criminal history has been subject to review by other organizations and knows that this conviction always appears on the results from the organizations' checks. He knew that his misdemeanor criminal conviction would appear on

the check performed by the Division and knew the Division would have such information when making its decision on the liquor application.

5. Mr. Bibe concluded that since the assault charge and the lewd conduct charge were part of the same incident and arrest, he would write them down on the Personal/Criminal History Statement to the Division as one incident. In the block entitled "Criminal History Statement" on the Personal/Criminal History Statement completed by Mr. Bibe, it asks:

Have you EVER: 1. Been arrested or cited? 2. Been charged with a crime? 3. Been convicted? 4. Been jailed? 5. Been placed on probation? 6. Forfeited bail or paid a fine over \$25 (include traffic fines).

6. Mr. Bibe answered the question by checking the box marked "yes". This answer was accurate as he had been arrested and charged with (a) crime(s) and had been convicted of a crime. However, directly below his answer the block explains:

"You must answer "YES" if any of the above have occurred; even if charges were dismissed; deferred or changed. Explain each charge fully below and attach additional sheets as needed. False or incomplete information may result in denial; suspension or revocation of a license. You must include events that occurred while you were a juvenile."

7. In the block provided on the Personal/Criminal History Statement where an explanation of the "yes" answer had to be provided, Mr. Bibe listed the offense date (July 5, 2007), the offense committed (assault), the city, county and state where the offense occurred and the disposition (noting the charge was "dropped Aug 07"). Mr. Bibe did not make any reference to the charge or conviction for lewd conduct. Just below the criminal history information, the Personal/Criminal History Statement required Mr. Bibe to sign under the penalty of perjury attesting to the information therein being "true, correct and complete". The

form also required him to acknowledge that he understood that untruthful or misleading answers would be cause for denial of a license and/or revocation of any license granted.

CONCLUSIONS OF LAW

1. There is jurisdiction to hear and decide this matter pursuant to RCW 66.08.150, chapter 34.05 RCW and WAC 314-07-070.

2. A new application for a liquor license must be filed with the Board when there is a change in ownership of a corporation who is licensee. *WAC 314-07-080*. A change in ownership includes a change in shareholders or a change in corporate officers. The application filed by the appellant was necessary to obtain a valid license from the Board.

3. RCW 66.24.010 gives the Board broad discretionary authority to approve or deny a liquor license application. A license may be denied for failure of an applicant to meet the criminal history standards in *WAC 314-07-040*. *WAC 314-07-065(4)*. The Board may delegate authority to make initial threshold determinations on liquor license applications to the licensing and regulation division director. Such authority includes denial of applications based on failure to meet the requirements under statute or rule. *WAC 314-07-121*. This includes data obtained through a criminal background check or criminal history record information (CHRI) report.

4. Here, *WAC 314-07-040* authorizes the use of a point system to determine if a person qualifies for a license. It specifically states in part: "The board will not normally issue a liquor license to an applicant who has accumulated eight or more points. . ." Under this regulation, points are assigned to various events. A "misdemeanor conviction" within the last three years is assigned four points. Additionally, a "nondisclosure" of any of the events listed

in the regulation (including a misdemeanor conviction) is assigned four additional points. Neither the statutes nor the regulations governing the liquor control laws define the word "nondisclosure" as used in this regulation. Its common or ordinary definition should be used as its definition here.

5. The word "nondisclosure" is defined in two parts. First, the prefix "non" is a combining form meaning "not" freely used as an English formative, usually with a simple negative force as implying mere negation or absence of something (rather than the opposite or reverse of it as expressed by "un". *Webster's Encyclopedia Unabridged Dictionary of the English Language, Pg 971 (1989)*. Lastly, the word "disclosure" is a form of disclose which means to make known; reveal or uncover or to cause to appear; allow to be seen; lay open to view or to open up; unfold. *Webster's Encyclopedia Unabridged Dictionary of the English Language, Pg 409 (1989)*. Therefore, the word "nondisclosure" means not freely made known or not freely revealed or not freely uncovered. The word "nondisclosure" does not require the intent to hide or deceive. Mere inadvertence to reveal, mistake or mere neglect may suffice for nondisclosure of a criminal conviction.

6. Although the appellant asserts he had no intent to deceive and knew the information about his conviction would be revealed once the Division performed the background check, according to the instructions on the Personal/Criminal History Statement, it was his duty to reveal the conviction on the form itself. His mistake or misunderstanding does not change the fact that he did not disclose the conviction himself when asked to do so. According to WAC 314-07-040, four points must be assigned for his nondisclosure. With the misdemeanor conviction being assigned four points, Mr. Bibe has accumulated a total of eight

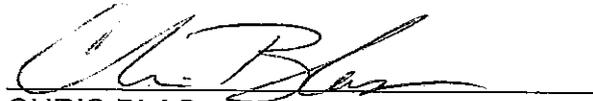
points.

7. The Board or the Board's designee has authority to exercise discretion when an applicant has accumulated eight or more criminal history (including nondisclosure) points. WAC 314-07-040. There is no affirmative duty stated which requires the Board or its designee to allow an exception. Based on the broad language in WAC 314-07-040 and RCW 66.24.010, the Board or its designee may chose to apply the criminal history point system without allowing for any exception to the rule. There has been no showing that the Division based its decision to deny the license for reasons which would violate public policy or are unconstitutional or illegal.

INITIAL ORDER

The application for a liquor license is subject to denial.

Dated and Mailed this 19th day of May, 2010 at Yakima, Washington.



CHRIS BLAS
Administrative Law Judge
Office of Administrative Hearings
32 North Third Street, Ste 320
Yakima, WA 98901

NOTICE TO PARTIES

Either the appellants, or the assistant attorney general 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. With notice to all parties the board may change the time for filing a petition for review of the initial order. The board may extend or shorten the filing time based on a voluntary stipulation of the parties or upon motion of a party that demonstrates a clear and convincing showing of exigent circumstances. The petition for review must: (i) Specify the portions of the initial order to which exception is taken; and (ii) Refer to the evidence of record which is relied upon to support the petition. Within ten days after service of the petition for review, any party may file a reply with the liquor control board and copies of the reply must be mailed to all other parties

or their representatives at the time the reply is filed. WAC 314-42-095.

Copies mailed to:

The Spaghetti Establishment Inc., appellant
Stephen Bibe, appellant
Jolene Bibe, appellant
Brian Considine, AAG



**Washington State
Liquor Control Board**

June 23, 2010

Stephen Bibe and Jolene Bibe, Applicants
The Spaghetti Establishment, Inc.
d/b/a The Spaghetti Establishment
2107 W 4th Ave
Kennewick, WA 99336-4760

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
APPLICANTS: The Spaghetti Establishment, Inc.
TRADE NAME: The Spaghetti Establishment
LOCATION: 2107 W 4th Ave, Kennewick, WA 99336
LICENSE NO. 360072-4J
LCB HEARING NO. 23,573
OAH NO. 2010-LCB-0003
UBI: 601 066 682 001 0001

Dear Parties:

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

If you have any questions, please contact me at (360) 664-1602.

Sincerely,

A handwritten signature in black ink that reads "Kevin McCarroll".

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Alan Rathbun, Director of Licensing and Regulation
Spokane and Pasco Enforcement and Education Divisions, WSLCB
Amber Harris, WSLCB

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3 **WASHINGTON STATE LIQUOR CONTROL BOARD**

4 IN THE MATTER OF:

LCB NO. 23,573

5 THE SPAGHETTI ESTABLISHMENT,
6 INC.
7 d/b/a THE SPAGHETTI
8 ESTABLISHMENT
9 2107 W 4TH AVE
10 KENNEWICK, WA 99336-4760

DECLARATION OF SERVICE BY
MAIL

11 LICENSEE
12 LICENSE NO. 360072-4J

13 I declare under penalty of perjury under the laws of the state of Washington that on
14 June 23, 2010, I served a true and correct copy of the FINAL ORDER OF THE BOARD in the
15 above-referenced matter, by placing a copy of said documents in the U.S. mail, postage
16 prepaid, to all parties or their counsel of record.

17 DATED this 23rd day of June, 2010, at Olympia, Washington.

18 
19 Kevin McCarroll, Adjudicative Proceedings Coordinator

20 STEPHEN BIBE AND JOLENE BIBE
21 THE SPAGHETTI ESTABLISHMENT, INC.
22 d/b/a THE SPAGHETTI ESTABLISHMENT
23 2107 W 4TH AVE
24 KENNEWICK, WA 99336-4760

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

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DECLARATION OF SERVICE BY
MAIL

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Washington State Liquor Control Board
3000 Pacific Avenue SE,
PO Box 43076
Olympia, WA 98504-3076
(360) 664-1602