

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

JOHN R CARSELLO d/b/a DIRTY
SHAME SALOON SUNSET BAY
6702 HIGHWAY 291
NINE MILE FALLS, WA 99026-9551

LICENSEE

LICENSE NO. 356900-4Q

LCB NO. 23,603

OAH NO. 2010-LCB-0014

FINAL ORDER OF REVOCATION

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

1. Administrative Law Judge David E. Turplesmith issued Findings of Fact, Conclusions of Law and Initial Order (Initial Order) in this matter on December 30, 2010. The Initial Order included a "Notice to Parties" that a party could file a Petition to challenge the initial order within 20 days of the dates of service of the Initial Order, citing to RCW 34.05.464, WAC 10-08-211 and WAC 314-42-095. The Notice also provides "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 314-42-095(2)(a)and (b)."
2. Assistant Attorney General Gordon Karg filed Licensing Division's Petition for Review of the Initial Order dated January 18, 2011.
3. The licensee, through Attorney Peter Dahlin, by telephone message received by the Board staff on January 31, 2011, and followed by a letter dated February 2, 2011, and faxed to the Board on that date, requested the Board extend the time for filing a reply to Licensing Division's Petition for Review of the Initial Order in this matter by three weeks.
4. The Licensing Division, through Assistant Attorney General Gordon Karg objected to the request for extension as untimely and without basis, as the request provides no reason for needing additional time to file a response.

5. The Board issued an Order Granting Licensee's Motion to Extend Time for Filing a Response to the Petition for Review, allowing the Licensee until close of business on February 8, 2011 to file a response. As of the date of this Order, the Board has not received any Response to the Petition for Review.
6. The Board adopts the portions of the Findings of Fact, Conclusions of Law set out below, reverses the Initial Order, and affirms the determination of the Licensing Director to revoke the license of John Carsella, dba Dirty Shame Saloon.
7. The Board adopts the Statement of the Case, found on pages 1-2 of the Initial Order. The Board adopts Findings of Fact Nos. 1 through 7, and 14 through 16, but does not adopt Findings of Fact Nos. 8 through 13.
8. The Board makes the following additional finding of fact, to be inserted as Finding of Fact No. 8: The Board, in the licensing process, may consider Administrative Violation Notices, and how they may be resolved through the appeal or settlement processes. However the fact that an AVN has been resolved does not determine its effect on the license, unless a settlement agreement or Board order specifically provides that the violation cannot or will not be used against the Licensee in determining the eligibility to hold a liquor license. In this case, no such agreement was made. In addition, the Licensing Division was not aware of, and did not consider, the AVN and how it was resolved, in making the determination to revoke the license.
9. Conclusions of Law: The Board adopts Conclusions of Law Nos. 1, 2 and 3 of the Initial Order. The Board does not adopt Conclusions of Law Nos. 4 through 7.
10. The Board adopts the following replacement Conclusion of Law No. 4: The law and Board rules cited above confirm that the Board has broad discretionary authority to determine whether a requested license shall be granted or denied. WAC 314-07-040 authorizes the Board to consider the applicant's or licensee's criminal history. As noted above, when a licensee or applicant has accumulated eight or more points on the criminal history record, this normally

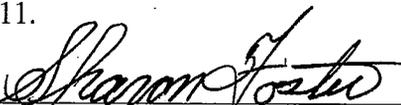
results in a refusal to issue the license. In this case, the Licensee has been convicted of two misdemeanor crimes; First Degree Negligent Driving, Sept. 24, 2007, and Disorderly Conduct, January 28, 2009. Under WAC 314-07-040, this second conviction resulted in the accumulation of eight points within the three-year period.

11. Conclusion of Law No. 5: As noted in Finding of Fact No. 6, the January 28, 2009 conviction was due to the Licensee's conduct on the licensed premises, which in the Board's mind makes it a more serious offense. This Disorderly Conduct conviction was for conduct on December 21, 2008, which included the Licensee consuming alcohol on the licensed premises, after-hours consumption, and assaultive behavior. Although the Licensee was eventually cited for these violations and reached a settlement agreement with the Board, the mitigating factors agreed to, with regard to how the Licensee would operate the premises in the future, do not outweigh the accumulation of criminal history points, based on the facts of this case.
12. Conclusion of Law No. 6: Applying the foregoing to the facts in this case, the Board concludes that the Statement of Intent to Revoke License # 356900 should be upheld. The Spirits/Beer/Wine Restaurant Lounge license of John Carsello, dba Dirty Shame Saloon Sunset Bay, 6702 Highway 291, Nine Mile Falls, WA, 99026, should be REVOKED.

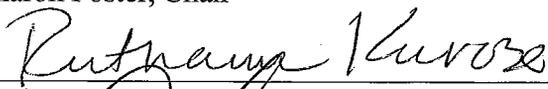
ORDER

IT IS HEREBY ORDERED That the Board's December 14, 2009 Statement of Intent to Revoke should be AFFIRMED. The Licensee shall cease business on or before April 26, 2011.

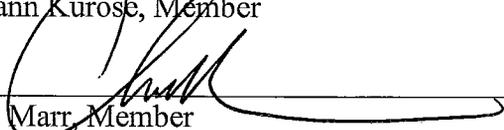
DATED this 22nd day of March 2011.



Sharon Foster, Chair



Ruthann Kurose, Member



Chris Marr, Member

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. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order or (b) there is specific material error of fact or law. 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, 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 Board 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**

March 23, 2011

Peter D. Dahlin, Attorney for Licensee
200 N Mullin Rd, Ste 202
Spokane, WA 99206-3793

John R. Carsello, Licensee
d/b/a Dirty Shame Saloon Sunset Bay Long Lake
6702 Highway 291
Nine Mile Falls, WA 99026-9551

Gordon Karg, AAG
GCE Division, Office of Attorney General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

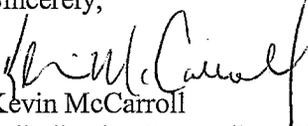
RE: FINAL ORDER OF REVOCATION
LICENSEE: John R. Carsello
TRADE NAME: Dirty Shame Saloon Sunset Bay Long Lake
LOCATION: 6702 Highway 291, Nine Mile Falls, WA 99026-9551
LICENSE NO. 356900-4Q
LCB HEARING NO. 23,603
OAH DOCKET NO. 2010-LCB-0014
UBI: 602 789 719 001 0001

Dear Parties:

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

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

Sincerely,


Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Beth Lehman, Licensing Supervisor, WSLCB
Spokane Enforcement and Education Division, WSLCB

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3 **WASHINGTON STATE LIQUOR CONTROL BOARD**

4 IN THE MATTER OF:

5 JOHN R. CARSELLO
6 d/b/a DIRTY SHAME SALOON
7 SUNSET BAY LONG LAKE
8 6702 HIGHWAY 291
9 NINE MILE FALLS, WA 99026-9551

LCB HEARING NO. 23,603
OAH DOCKET NO. 2010-LCB-0014

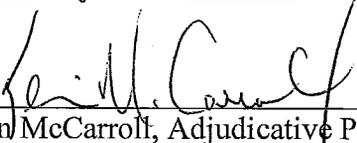
DECLARATION OF SERVICE BY
MAIL

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LICENSEE
LICENSE 356900-4Q

I certify that I caused a copy of the *FINAL ORDER OF REVOCATION* in the above-referenced matter to be served on all parties or their counsel of record by US Mail Postage Prepaid via Consolidated Mail Service for Licensees; by Campus Mail for the Office of Attorney General, on the date below to:

PETER D. DAHLIN, ATTORNEY FOR LICENSEE 200 N MULLIN RD, STE 202 SPOKANE, WA 99206-3793	GORDON KARG, ASSISTANT ATTORNEY GENERAL, GCE DIVISION OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100
JOHN R. CARSELLO, LICENSEE D/B/A DIRTY SHAME SALOON SUNSET BAY LONG LAKE 6702 HIGHWAY 291 NINE MILE FALLS, WA 99026-9551	

DATED this 23rd day of March, 2011, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

DECLARATION OF SERVICE BY
MAIL

1

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

RECEIVED

JAN 18 2011

MAILED

DEC 30 2010

LIQUOR CONTROL BOARD
BOARD ADMINISTRATION

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS

Office of Administrative Hearings
Spokane

FOR THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF THE HEARING OF:)	
)	OAH Docket No. 2010-LCB-0014
Dirty Shame Saloon)	LCB Case No. 23, 603
John Carsello)	
6702 Hwy 291)	
Nine Mile Falls, WA 99026)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW, AND
LICENSEE)	INITIAL ORDER
)	
LICENSE NO. 356900)	
_____)	

STATEMENT OF THE CASE

On December 14, 2009, the Washington State Liquor Control Board (Board) issued a statement of intent to revoke the liquor license of John R. Carsello, dba Dirty Shame Saloon Sunset Bay, License Number 356900 (Licensee). In its written statement of intent to revoke, the Board advised the Licensee that it was moving to revoke his Spirits/Beer/Wine Restaurant Lounge license based on Mr. Carsello's criminal history and the accumulation of 8 points, which is a disqualifying factor. The Board's decision was based upon RCW 66.24.010(2) and WAC 314-07-040(1). Licensee was advised of the option to submit a request for an administrative hearing. The Licensee made a timely request for hearing.

This matter came on for hearing before David E. Turplesmith, Administrative Law Judge, in Spokane, Washington, on September 24, 2010. At hearing, the Board was represented by Gordon Karg, Assistant Attorney General. The Licensee appeared and was represented by Peter Dahlin, Attorney at Law. Appearing as witnesses for the Board were Susan Thomsen, Hearings Officer, Sandra Brown, Liquor License Investigator, Alan Rathbun,

Licensing Director, and Officer Robert Lucas, Liquor Enforcement Officer. Appearing as a witnesses for the Licensee was Diane Chamberlin. The Board's Exhibits 1-5 were admitted and the Licensee's exhibits 1-17 were admitted. The record closed at the conclusion of the hearing.

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

FINDINGS OF FACT

1. The Board has a Licensing Division and an Enforcement Division. These two divisions are separate. The Licensing Division receives and evaluates whether individuals and entities are entitled to a liquor license. The Licensing Division also handles license renewals. The Enforcement Division investigates liquor violations by licensees. The Enforcement Division is involved in day to day enforcement activities and responds to complaints by government entities and individuals.

2. The Licensee, John Carsello, applied for a Spirits/Beer/Wine Restaurant Lounge license as a sole proprietor on January 3, 2008. As part of the application process he was required to report his criminal history.

3. Licensee reported that he was convicted of First Degree Negligent Driving in Spokane County District Court on September 24, 2007. (Board's Exhibit 3). First Degree Negligent Driving is a Misdemeanor crime.

4. Licensee became licensed by the Board as a sole proprietor in February 2008. He has been doing business at the Dirty Shame Saloon, located at 6702 Highway 291 Nine Mile Falls, WA 99026. The Liquor License is number 356900.

5. On October 26, 2009, the Board prepared an interoffice correspondence regarding the Licensee, his license renewal and his criminal history. (Board's Exhibit 1). The interoffice correspondence was emailed on October 27, 2009. (Board's Exhibit 1, p. 2). The correspondence and email reference a criminal conviction of the Licensee for Disorderly Conduct, which occurred on or about December 21, 2008. (Board's Exhibit 1, p. 2). Licensee was convicted of Disorderly Conduct in Stevens County District Court on January 28, 2009. (Board's Exhibit 4). Licensee pleaded guilty to the charge. (Board's Exhibit 4). Disorderly Conduct is a Misdemeanor crime. The incident involving the Disorderly Conduct conviction occurred after the Licensee received his license.

6. On or about December 21, 2008 at approximately 0310 hours, Stevens County Deputy Sheriff J. Wakeman was dispatched to the Dirty Shame Saloon to a possible assault in progress. (Licensee's Exhibit 3). John Carsello had originally reported that he was being assaulted in the bar, but his girlfriend, Diane Chamberlin reported that Mr. Carsello was out of control and threatening and hitting people. (Licensee's Exhibit 3). Additional Deputies arrived on scene. Deputies contacted Mr. Carsello, who stated that he was the owner of the bar and was having an after hours party. (Licensee's Exhibit 3). Law enforcement officers observed that Mr. Carsello had been drinking and also observed a fifth of whiskey next to Mr. Carsello. (Licensee's Exhibit 3). The Deputies talked to witnesses on scene. Mr. Carsello had been drinking and began to yell at people. (Licensee's Exhibit 3). Mr. Carsello called 911 because people would not leave. (Licensee's Exhibit 3). After calling, Mr. Carsello began to yell and swing at people. (Licensee's Exhibit 3). Mr. Carsello hit Ms. Chamberlin in the face and threatened to hit people with a pool cue he had broken on the counter. (Licensee's Exhibit 3). Deputy Wakeman observed part of a broken pool cue in the garbage and seized it as

evidence. (Licensee's Exhibit 3). Mr. Carsello was arrested for Disorderly Conduct and Fourth Degree Assault.

7. Liquor Enforcement Officer Lucas became aware of the Dec 21, 2008 incident on October 21, 2009. Officer Lucas does not have the authority to revoke or suspend a liquor license. The enforcement and licensing sections of the Board are completely separate. Officer Lucas, or any Liquor Enforcement Officer, may issue Administrative Violation Notices (AVNs) to address liquor violations that occur at a location.

8. Officer Lucas issued AVN Number 4Q9300A on October 28, 2009. (Licensee Exhibit 4). AVN 4Q9300A listed three violations related to the December 21, 2008 incident: after hours service of alcohol; Licensee intoxicated on premises; and licensee engaged in disorderly conduct. (Licensee's Exhibit 4). AVN 4Q9300A was not a criminal citation.

9. After an AVN is issued a Licensee has several options to deal with the AVN. The Licensee in this case chose to work out an agreement with the Board. Two settlement conferences were conducted. Licensee stipulated to three violations from AVN 4Q9300A and a different AVN. No revocation action was discussed. The settlement agreement required Licensee to pay \$1,900.00 in monetary penalties. (Licensee Exhibit 6). The payment was due in three installments: \$650.00 on January 29, 2010; \$650.00 on February 26, 2010; and \$600.00 on March 26, 2010. (Licensee Exhibit 6). Timely payment was required to avoid license suspension. (Licensee Exhibit 6). The settlement agreement was finalized on January 5, 2010. (Licensee Exhibit 6).

10. The settlement agreement listed the following mitigating circumstances in section 6: "6.1-Licensee will contact LEO Lucas...to arrange Responsible Liquor and Tobacco Sales (RLTS) training for all employees, including the Licensee. 6.2-Licensee indicated that

the reason for the Hours of Service and Disorderly Conduct violation was because he was trying to get people out of the bar, who would not leave. He admitted to having handled the situation badly. He has changed last call to 1:30 a.m. and the bar is emptied by 2:00 a.m. 6.3-Licensee admitted to having consumed prescription drugs, including opiates for pain, which can affect his behavior adversely. 6.4-Licensee has had this license since February 2008 and was cooperative and motivated to avoid future violations, he clearly understands the penalties of future violations." (Licensee Exhibit 6).

11. Licensee made the first two payments on time. The third payment was untimely. Licensee drove to Olympia, Washington in April 2010. He brought the third and final check to the Board on April 5, 2010. The check was not accepted because it was untimely (it was due on March 26, 2010). The Board refunded the first two payments and a 15 day suspension was issued. The suspension was served in April 2010.

12. Following the suspension, the matter was resolved. No revocation action was taken. The enforcement action involving AVN 4Q9300A and the settlement agreement was separate from any licensing action.

13. No evidence was presented of any violation occurring after the December 21, 2008 incident.

14. On November 18, 2009, Sandra Brown, acting Retail License Manager, recommended revocation of the license held by Mr. Carsello. (Board's Exhibit 2). When Ms. Brown made this recommendation she was not aware of any AVNs issued to the Licensee. On November 24, 2009, Licensing Director Alan Rathbun agreed with that recommendation. (Board's Exhibit 2).

15. On December 14, 2009, the Board issued a statement of intent to revoke the liquor license of Licensee. (Board's Exhibit 5). In its written statement of intent to revoke, the Board advised the Licensee that it was moving to revoke his Spirits/Beer/Wine Restaurant Lounge license based on his criminal history and the accumulation of 8 points, which is a disqualifying factor. (Board's Exhibit 5, p. 2). The Board's decision was based upon RCW 66.24.010(2) and WAC 314-07-040(1). (Board's Exhibit 5, p. 3). The decision to seek revocation of the licensee was based only on Licensee's criminal history. Mr. Rathbun was not aware of the AVNs and the settlement agreement when the decision to revoke the license was made. The Director has the discretion to consider mitigating circumstances and determine if an applicant or a Licensee can obtain or keep a liquor licensee if their criminal history results in an accumulation of 8 or more points.

16. Licensee was advised of the option to submit a request for an administrative hearing. (Board's Exhibit 5). The Licensee made a timely request for hearing.

17. Licensee believed that the settlement agreement regarding AVN 4Q9300A would also resolve the revocation issue. He did not believe that the enforcement and licensing issues were separate.

CONCLUSIONS OF LAW

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

(2) For the purpose of considering any application for a license, the board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. 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 shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation. The provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. The board may, in its discretion, grant or refuse the license applied for. Authority to approve an uncontested or unopposed license may be granted by the board to any staff member the board designates in writing. Conditions for granting such authority shall be adopted by rule. No retail license of any kind may be issued to:

- (a) A person who has not resided in the state for at least one month prior to making application, except in cases of licenses issued to dining places on railroads, boats, or aircraft;
- (b) A copartnership, unless all of the members thereof are qualified to obtain a license, as provided in this section;
- (c) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;
- (d) A corporation or a limited liability company, unless it was created under the laws of the state of Washington or holds a certificate of authority to transact business in the state of Washington.

2. The provisions of WAC 314-07-040(1) apply and state as follows:

(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
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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

3. 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.

- (1) Failure to meet qualifications or requirements for the specific liquor license or privilege, as outlined in this Title 314 WAC and Title 66 RCW.
- (2) Failure to submit information or documentation requested by the board.
- (3) Misrepresentation of fact by any applicant or financier.
- (4) Failure to meet the criminal history standards outlined in WAC 314-07-040.
- (5) Failure to meet the liquor law or rule violation history standards outlined in WAC 314-07-045.
- (6) Source of funds used for the acquisition, startup and operation of the business is questionable or unverified.
- (7) Objection from the local authority or from the public (see WAC 314-09-010 and RCW 66.24.010(8)). The objection must state specific reasons and facts that show issuance of the liquor license at the proposed location or to the applicant business will detrimentally impact the safety, health, or welfare of the community.
- (8) Objection from the following entities if they are within 500 feet of the proposed business: A public school, a private school that meets the requirements of chapter 28A.195 RCW, a church, or a public college or university. See WAC 314-09-010 and RCW

66.24.010(9) for more information. Note: Per RCW 66.24.010(9), the board may not issue a new liquor license if the board receives objection from a public school within 500 feet of the proposed licensed business.

(9) The board determines that the issuance of the liquor license will not be in the best interest of the welfare, health, or safety of the people of the state.

4. The law cited above confirms that the Board has broad discretionary authority to determine whether a requested license or permit shall be granted or denied. In determining whether to grant or deny a requested liquor license, WAC 314-07-040 authorizes the Board to consider an applicant's criminal history. As this regulation makes clear, the fact that an applicant has accumulated eight or more points does not automatically disqualify the applicant, but the regulation simply states that the Board "will not normally issue" a liquor license to an applicant who has accumulated eight or more points. As such, the revocation of the liquor license held by the Licensee, John Carsello, is not required under the applicable law simply because the Licensee, has in fact been convicted of two misdemeanor crimes; First Degree Negligent Driving, September 24, 2007 and Disorderly Conduct, January 28, 2009. Under WAC 314-07-040, this would result in the accumulation of eight points within the prior three-year period. However, as this regulation makes clear, the Board still retains the authority and discretion to grant a liquor license to an applicant, in spite of the fact that the applicant has accumulated eight or more points.

5. After carefully considering the facts in this matter, the undersigned Administrative Law Judge concludes that the Board should exercise its discretion to continue to grant the Spirits/Beer/Wine Restaurant Lounge license to John Carsello. In reaching this conclusion, the undersigned is mindful of the Board's reasonable concern regarding Mr. Carsello's two misdemeanor convictions, particularly the Disorderly Conduct conviction. The

December 21, 2008 incident included alcohol consumption by the Licensee, assaultive behavior and after hours consumption of alcohol. None of these behaviors is appropriate and the Licensee was properly punished by AVN 4Q9300A issued by the Enforcement Division of the Board. Although the enforcement action is completely separate from the licensing action, the AVN settlement agreement, which involved some of the same facts that resulted in the Disorderly Conduct conviction, listed mitigating factors that should be considered by the Board when deciding whether to exercise discretion under WAC 314-07-040. Licensee changed the last call hours, agreed to more training, was cooperative and understood that the situation was handled poorly and that his medications contributed to the situation. Licensee also pleaded

6. guilty to the Disorderly Conduct charge, thus accepting criminal responsibility for his actions. No evidence was presented of any additional violations by the Licensee. This is at least some evidence that the Licensee does in fact retain the ability to comply with legal requirements. This tribunal further notes that all Licensees are subject to continuing monitoring and investigation by the Board and its officers. If the Board chooses to continue to grant the Spirits/Beer/Wine Restaurant Lounge license to John Carsello, the Licensee is clearly on notice that he is fully expected and required to comply with all laws enacted by the State of Washington and the rules adopted by the Board. Failure to do so would subject the Licensee to suspension and/or revocation of the liquor license.

7. Applying the foregoing to the facts in this case the undersigned concludes that the Statement of Intent to Revoke License # 356900, which was issued to the Licensee on December 14, 2009, should be reversed. The Licensee should continue to hold a

Spirits/Beer/Wine Restaurant Lounge license and operate as a sole proprietor at the Dirty Shame Saloon Sunset Bay, 6702 Highway 291, Nine Mile Falls, WA 99026.

INITIAL ORDER

IT IS HEREBY ORDERED, That the Board's, December 14, 2009, Statement of Intent to Revoke should be **REVERSED**. The Board should permit the Licensee to continue to hold liquor license # 356900 in accordance with all applicable laws and regulations.

DATED at Spokane, Washington, this 30 day of December, 2010.

WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS



David E. Turplesmith
Administrative Law Judge

Copy sent to:

Mailed to the following:

LICENSEE:

John Carsello
Dirty Shame Saloon
6702 Hwy 291
Nine Mile Falls, WA 99026

LICENSEE REP:

Peter D Dahlin
Attorney at Law
200 N Mullin Rd, Suite 202
Spokane WA 99206

LIQUOR CONTROL BOARD:

Gordon Karg
Assistant Attorney General
Office of the Attorney General
1125 Washington St SE
PO Box 40100
Olympia, WA 98504-0100
Telephone: (360) 586-0092

NOTICE TO PARTIES

Either the licensee or permit holder or the assistant attorney general may file a petition 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, WAC 10-08-211 and WAC 314-42-095.

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 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 314-42-095(2) (a) and (b). 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, any petition for review, and any replies filed by the parties will be circulated to the board members for review. WAC 314-42-095(3). Following this review, the board will enter a final order. WAC 314-42-095(4). Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific ground 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 34.05.058 (Washington Administrative Procedure Act).

STATE OF WASHINGTON)

) ss.

COUNTY OF SPOKANE)

I hereby certify that I have this day served a copy of this document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent.

DATED at Spokane, Washington, this 30th day of December, 2010.



Representative, Office of Administrative Hearings

RECEIVED

JAN 19 2011

LIQUOR CONTROL BOARD
BOARD ADMINISTRATION

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

JOHN CARSELLO d/b/a
DIRTY SHAME SALOON
6702 HWY 291
NINE MILE FALLS, WA 99026

Licensee

LICENSE NO. 356900

OAH NO. 2010-LCB-0014
LCB NO. 23,603

LICENSING DIVISION'S PETITION
FOR REVIEW OF THE INITIAL
ORDER

The Washington State Liquor Control Board's Licensing Division (Licensing), by and through its attorneys, ROBERT M. MCKENNA, Attorney General, and GORDON KARG, Assistant Attorney General, and pursuant to RCW 34.05.464 and WAC 314-29-010, submits the following exceptions to the Initial Order issued by Administrative Law Judge David E. Turplesmith, on December 30, 2010, in the above-captioned case.

I. PROCEDURAL BACKGROUND

Mr. John Carsello, a sole proprietor doing business as the Dirty Shame Saloon, applied for and was issued a liquor license in February of 2008. On December 14, 2009, Alan Rathbun, Director of Licensing and Regulation issued a statement of intent to revoke liquor license, along with a cover letter, to Mr. Carsello explaining the intent of the Board to revoke the liquor license he holds as a sole proprietor of the Dirty Shame Saloon. Revocation was premised upon Mr. Carsello's misdemeanor criminal convictions taking place both prior to and after issuance of the License.

1 This case was heard and considered by the Administrative Law Judge (ALJ) in Spokane,
2 Washington on September 24, 2010. After a full evidentiary hearing, the ALJ entered Findings
3 of Fact, Conclusions of Law, and Initial Order on December 30, 2010. In the Initial Order, the
4 ALJ ordered reversal of statement of intent to revoke based solely on mitigating factors.
5 Enforcement respectfully takes exception to the Initial Order of the ALJ.

6 II. DISCUSSION

7 The ALJ found that on September 24, 2007, Mr. Carsello was convicted of the crime of
8 Negligent Driving in the First Degree¹, a misdemeanor; and that on January 25, 2009, Mr.
9 Carsello was also convicted of the crime of Disorderly Conduct, also a misdemeanor. Finding of
10 Fact (FOF) 3, 5. The Disorderly Conduct conviction was the result of events which took place at
11 the licensed premise. FOF 6. Namely, in the early morning hours of December 21, 2008, Mr.
12 Carsello was hosting an "after-hours party" on the licensed premise, he was drinking alcohol had
13 began to yell at people to leave, phoned 911 and then threatened guests with a broken pool cue.
14 *Id.* During the course of this conduct Mr. Carsello was found to "yell and swing at people" and
15 at one point struck his girlfriend, Ms. Diane Chamberlin, in the face. *Id.*

16 This conduct not only resulted in a criminal conviction for Mr. Carsello, it also resulted
17 in the Liquor Control Board's Enforcement Division (Enforcement) issuing an Administrative
18 Violation Notice (AVN) No. 4Q9300A for multiple liquor law and rule violations. FOF 8. Mr.
19 Carsello and Enforcement reached a settlement agreement to resolve AVN No. 4Q9300A. FOF
20 9. Originally, the agreement called for a monetary penalty, but when Mr. Carsello failed to make
21 all scheduled payments in a timely fashion, as agreed to, the payments already made were
22 refunded and a fifteen (15) day suspension of the license was imposed. FOF 11. The suspension
23 was served in April 2010 and AVN No. 4Q9300A was fully resolved at that time. FOF 12.

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26 ¹ This conduct took place prior to the application for a liquor license and was properly reported to the
Licensing Division by Mr. Carsello at the time of application.

1 In November 2009, Licensing personnel, based only on Mr. Carsello's two (2) criminal
2 convictions and unaware of the aforementioned AVN No. 4Q9300A or its resolution,
3 recommended revocation of the license at the time of its annual renewal period. FOF 14. The
4 Licensing director concurred and issued the Statement of Intent to Revoke also without
5 knowledge of the aforementioned AVN No. 4Q9300A. FOF 15. At hearing, when challenging
6 the intent to revoke, Mr. Carsello argued that Licensing was estopped from revoking the license.
7 Essentially, Mr. Carsello asserted that the settlement agreement which resolved AVN No.
8 4Q9300A also contractually foreclosed Licensing from revoking the license.

9 The ALJ correctly concluded both factually and legally, that Licensing and Enforcement
10 are separate branches with separate duties and that AVN No. 4Q9300A and the settlement
11 agreement resolving it were completely separate from Licensing's revocation action. FOF 1, 12,
12 15; Conclusion of Law (COL) 5. The ALJ correctly concluded that per RCW 66.24.010(2),
13 WAC 314-07-040(1), and WAC 314-07-065, Licensing was within its authority and discretion to
14 revoke the license based solely on Mr. Carsello's criminal convictions. COL 1-4. However, the
15 ALJ also concluded that license revocation is not an automatic result of WAC 314-07-040(1)
16 when considering Mr. Carsello's conviction history. The ALJ considered the mitigating factors
17 noted in the settlement agreement resolving AVN No. 4Q9300A and concluded that the Board
18 should exercise its discretion and continue to grant a liquor license to Mr. Carsello d/b/a the
19 Dirty Shame Saloon based on those factors. COL 5-7. Licensing respectfully disagrees.

20 Importantly, the ALJ **did not** conclude that Licensing acted outside of its legal authority
21 or abused its discretion in acting to revoke the license based upon the facts it had before it. The
22 mitigating factors the ALJ now looks to were derived from the settlement agreement resolving
23 AVN No. 4Q9300A. FOF 10. Those factors apply only to mitigating the penalty in that matter
24 and as the ALJ concluded, AVN No. 4Q9300A and its resolution are entirely separate from
25 Licensing's actions in the instant matter. FOF 1, 12, 15; COL 5. They were not factors before
26 Licensing when it sought revocation.

1 Factors presented to mitigate the penalty in an enforcement action are considered in the
2 context of the specific violation, or violations, committed. *See* WAC 314-29-015. Mitigating
3 factors generally consider a licensee's willingness to admit responsibility for a specific event and
4 remedy problems contributing to that event. *See Id.* In comparison, when considering whether a
5 person should be issued, or allowed to retain, a liquor license the Board must evaluate whether
6 there is a likelihood of being unable to comply with the many laws and rules which are the
7 responsibility of all liquor license holders.

8 Here, Mr. Carsello was convicted of two (2) criminal violations within three (3) years.
9 FOF 3, 5. This demonstrates to Licensing that Mr. Carsello will more likely than not have
10 difficulty complying with all liquor laws and rules; hence the Board's promulgation of WAC
11 314-07-040(1). Therefore, he is not a positive candidate for holding a liquor license as a sole
12 proprietor at this time. The facts that one conviction arose from Mr. Carsello's inappropriate and
13 dangerous conduct on the licensed premise and that he was unable to make the payments for his
14 settlement agreement in a timely fashion was not considered by Licensing when it acted to
15 revoke the license. However, these facts now found by the ALJ, tend to affirm Licensing's
16 decision to revoke.

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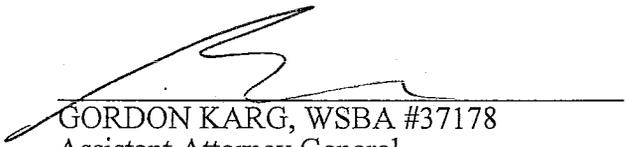
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III. CONCLUSION

While the ALJ is correct in concluding the Board is not required to revoke the license, Mr. Carsello's criminal history is appropriate grounds for discretionary revocation of the license per RCW 66.24.010(2), WAC 314-07-040(1) and WAC 314-07-065. Accordingly, Licensing respectfully requests that the findings and conclusions of the Initial Order be generally adopted in this matter, but reject the ALJ's Conclusions of Law 5-7 and sustain the Statement of Intent to Revoke.

DATED this 18th day of January, 2011.

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