BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: LILLY'S CANTINA LLC d/b/a LILLY'S TAQUARIA CANTINA 404 N PINE ST ELLENSBURG, WA 98926-3118 LICENSEE LICENSE NO. 088057-4E AVN 4E0160A	LCB NO. 23,725 OAH NO. 2010-LCB-0062 FINAL ORDER OF THE BOARD

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

1. The Liquor Control Board issued a complaint dated September 21, 2010, alleging that on May 2, 2010 the above-named Licensee, or an employee thereof engaged in disorderly conduct on the licensed premises, contrary to WAC 314-11-015(3)(a); or permitted a disorderly person to remain on the licensed premises, contrary to WAC 314-11-015(3)(b); or the Licensee or an employee thereof engaged in behavior that provokes conduct which presents a threat to public safety, contrary to WAC 314-11-015(3)(c).

2. A prehearing conference was scheduled for November 15, 2010 at the licensee's timely request for a formal administrative hearing.

3. The licensee did not appear for the prehearing conference nor did a representative appear on its behalf. The Education and Enforcement Division of the Board was represented by Assistant Attorney General Brian Considine.

4. On December 30, 2010, Administrative Law Judge Steven C. Smith entered his Initial Order of Default (Failure to Appear at Proceeding) ordering that the licensee was in default and dismissing the request for a hearing.

5. No request to vacate the default was filed.

6. 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 the Board corrects an error in the Initial Order of Default section 1.2. The correct penalty for case 4E0160A is a 7 day license suspension.

IT IS HEREBY ORDERED that the default order for case 23,725 is adopted.

IT IS HEREBY FURTHER ORDERED that the Complaint filed in case 23,725 is sustained and that the liquor license privileges granted to Lilly's Cantina LLC d/b/a Lilly's Taquaria Cantina in Ellensburg, Washington, License 088057-4E are hereby suspended for a term of seven (7) days. Suspension will take place from 10:00 a.m. on February 25, 2011 until 10:00 a.m. on March 4, 2011. Failure to comply with the terms of this order will result in further disciplinary action.

DATED at Olympia, Washington this 18 day of January, 2011.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

Ruthann Kurose

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).

RECEIVED
JAN 14 2011
LIQUOR CONTROL BOARD
BOARD ADMINISTRATION

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

In the Matter of: **Lilly's Cantina, LLC dba Lilly's Taquaria Cantina; 404 N. Pine Street; Ellensburg, WA 98 926,** Licensee. License No. 088057	**OAH DOCKET NO. 2010-LCV-0062** **LCB No. 23, 725** **INITIAL ORDER OF DEFAULT** **(Failure to Appear at Proceeding)**

1. ORDER SUMMARY

1.1 The Licensee was given due notice, but failed to appear for prehearing proceeding (PHC) without first obtaining an order of postponement. Therefore, the Licensee was held in default under RCW 34.05.440. Based on the Licensee's default, the penalties appropriate to the allegations stated in the Complaint and it's attached documents in this matter shall be imposed, subject to further Liquor Control Board action.

1.2 Specifically, the penalty shall be: 5 day license suspension or $500 payment.

1.3 The Licensee's Request for Hearing shall be dismissed.

2. HEARING

2.1 Administrative Law Judge: Steven C. Smith

2.2 Date and Time of Prehearing Proceeding (PHC): November 15, 2010 at 4:00 PM.

2.3 Appearances By Parties:

2.3.1 TheLicensee, Lilly's Cantina, LLC dba Lilly's Taquaria Cantina, did not appear.

2.3.2 No representative appeared for the Licensee.

2.3.3 Washington State Liquor Control Board appeared through Assist. Attorney General Brian Considine.

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (253) 476-6888 • Fax: (253) 593-2200

3. STATEMENT OF THE CASE

3.1 A prehearing proceeding was scheduled for this matter at the date and time above stated. Written notice of the proceeding was timely mailed to the parties by First Class United States Mail, postage prepaid. The notice informed the parties that they were required to attend the proceeding before an Administrative Law Judge of the Washington Office of Administrative Hearings and how to attend. The notice also informed the parties that failure to attend the scheduled proceeding could result in an order of default against the party who failed to attend. The notice provided both parties with instructions on how to apply to the Administrative Law Judge for a postponement of the proceeding.

3.2 The Administrative Law Judge timely convened the proceeding as set forth in the written notice of the proceeding. The Washington State Liquor Control Board timely appeared and was represented by the above-named person. The Administrative Law Judge waited 15 minutes beyond the scheduled start time for the proceeding, but the Licensee did not appear. Therefore, the Administrative Law Judge deemed the Licensee to be in default.

3.3 Based on the Licensee's default, the penalties appropriate to the allegations stated in the Complaint and it's attached documents in this matter shall be imposed, subject to further Liquor Control Board action.

3.4 Specifically, the actions and penalties alleged and the penalties to be awarded by this Initial Order of Default are as follows: "That on or about May 2, 2010, the Licensee or an employee thereof: engaged in disorderly conduct on the licensed premises, contrary to WAC 314-11-015 (3)(a); or permitted a disorderly person to remain on the licensed premises, contrary to WAC 314-11-015 (3); or the Licensee or an employee thereof engaged in behavior that provokes conduct which presents a threat to public safety, contrary to WAC 314-11-015 (3)(c)." Penalties for violations of the foregoing WAC's are stated in WAC 314-29-015 through WAC 314-29-035. The actions alleged in the Complaint are Group One Public Safety Violations under WAC 314-29-020. As the Complaint does not allege any prior public safety violations, the alleged misconduct is deemed a first occurrence for which the penalty is a 5 day license suspension, or alternatively the payment of $500 from the licensee to the Liquor Control Board. By reason of the Licensee's default, there was no evidence presented as to any mitigating circumstances. Further, the Complaint alleged no aggravating circumstances. Therefore, the 5 day license suspension or $500 payment option shall be the penalty imposed in this case.

3.5 The Licensee's Request for Hearing shall be dismissed.

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (253) 476-6888 • Fax: (253) 593-2200

4.0 **THEREFORE, IT IS ORDERED:**

4.1 The above-named Licensee is in DEFAULT.

4.2 Under WAC 314-29-020, and subject to further action by the Liquor Control Board, a 5 day license suspension or $500 payment option shall be the penalty imposed in this case against the Licensee.

4.3 The Licensee's Request for Hearing is dismissed.

Signed and Issued at Tacoma, Washington, on the date of mailing.

Steven C. Smith
Administrative Law Judge
Office of Administrative Hearings

NOTICE OF APPEAL RIGHTS – PLEASE READ CAREFULLY

Motion to Vacate Default: RCW 34.05.440 provides, "(3) Within seven days after service of a default order under subsection (2) of this section, or such longer period as provided by agency rule, the party against whom it was entered may file a written motion with the Administrative Law Judge who issued the Initial Order of Default requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the presiding officer may adjourn the proceedings or conduct them without the participation of that party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. By agency rule (WAC 10-08-110), service is complete upon mailing of this order; therefore, **any motion to vacate a default order must be made within a total of seven (7) days after the date of the mailing of the default order.**

Petition for Review of Initial Order: The foregoing order is an "initial order" as that term is intended by WAC 314-42-095. **Any party may file a petition for review of the initial order with the Liquor Control Board within twenty days of the date of service of the initial order.** RCW 34.05.464, WAC 10-08-211, and WAC 314-42-095(2)(a). The petition for review must (a) identify the parts of the initial order two which the petitioner objects and (b) refer to the evidence in the record that supports the petitioner's position.

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (253) 476-6888 • Fax: (253) 593-2200

A petitioner must mail a copy of the petition for review to each of the other parties and their representatives at the same time the petitioner files the petition. Within ten days after service of the petition for review, any other parties may file a response to the petition. WAC 314-42-095(2)(b). A responding party must likewise mail a copy of the response to each of the other parties and their representatives at the same time the responding party files the response.

The members of the Liquor Control Board will review the administrative record, the initial order, the petition for review, and any responses. WAC 314-42-095(3). Following this review, the Board will enter a final order WAC 314-42-095(4). Within ten days of when the Board issues the final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. RCW 34.05.470(1) and WAC 10.08.215. A party may appeal the Liquor Control Board's final order to the Superior Court under RCW 34.05.510 and following (see especially, RCW 34.05.514).

INITIAL ORDER MAY BECOME FINAL IF NO TIMELY ACTION IS TAKEN: If a party in default does not timely file a Motion to Vacate Default, or a party in disagreement with the Initial Order does not timely file a Petition for Review of Initial Order, the order may become a Final Order.

CERTIFICATE Of SERVICE

I certify that true copies of the foregoing document were mailed to the following parties, US First Class Postage prepaid from Tacoma, Washington on December 30, 2010.

Authorized Representative
Office of Administrative Hearings

Lilly's Cantina, LLC
Anthony Contarino and Christopher Wilhite
404 N Pine St
Ellensburg, WA 98926-3118

Brian Considine
Assistant Attorney General
Office of the Attorney General
GCE division
PO Box 40100
Olympia, WA 98504

Kevin McCarroll
Adjudicative Proceedings Coord.
Washington State Liquor Control Board
PO Box 43076
3000 Pacific Ave
Olympia, WA 98504-3076

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (253) 476-6888 • Fax: (253) 593-2200

Washington State
Liquor Control Board

January 19, 2011

Lilly's Cantina, LLC
d/b/a Lilly's Taquaria Cantina
404 Pine Street
Ellensburg, WA 98926-3118

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***
LICENSEE: Lilly's Cantina, LLC
TRADE NAME: Lilly's Taquaria Cantina
LOCATION: 404 Pine Street, Ellensburg, WA 98926-3118
LICENSE NO. 088057-4E
AVN: 4E0160A
LCB HEARING NO. 23,725
OAH NO. 2010-LCB-0062
UBI: 602 583 448 001 0002

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,

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Spokane and Wenatchee Enforcement and Education Divisions, WSLCB

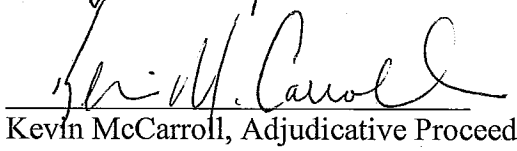
WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: LILLY'S CANTINA, LLC d/b/a LILLY'S TAQUARIA CANTINA 404 PINE STREET ELLENSBURG, WA 98926-3118 LICENSEE LICENSE NO. 088057-4E AVN NO. 4E0160A	LCB NO. 23,725 OAH NO. 2010-LCB-0062 DECLARATION OF SERVICE BY MAIL

I certify that I caused a copy of the *FINAL ORDER OF THE BOARD* 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:

LILLY'S CANTINA, LLC d/b/a LILLY'S TAQUARIA CANTINA 404 PINE STREET ELLENSBURG, WA 98926-3118	BRIAN CONSIDINE, ASSISTANT ATTORNEY GENERAL, GCE DIVISION OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100

DATED this 19th day of January, 2011, at Olympia, Washington.



Kevin McCarroll, Adjudicative Proceedings Coordinator

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