

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

YESHASHWORK MAMO BELACHEW
d/b/a GOHA GROCERY
2204 SOUTH JACKSON ST
SEATTLE, WA 98144

APPLICANT

LICENSE APPLICATION NO. 407431
UBI NO. 603-068-424-001-0001

LCB NO. 23,831
OAH NO. 2011-LCB-0041

FINAL ORDER OF THE BOARD

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

1. The Liquor Control Board's Director of Licensing and Regulation issued a Statement of Intent to Deny Liquor License dated May 2, 2011 to Applicant Yeshashwork Mamo Belachew d/b/a Goha Grocery.
2. The Applicant timely requested an administrative hearing on the matter.
3. The Applicant, Yeshashwork Mamo Belachew d/b/a Goha Grocery, appeared through Muluaem Zeleke, the husband of Ms. Belachew. Brian Considine, Assistant Attorney General, represented the Licensing and Regulation Division of the Board.
4. An administrative hearing was held on September 19, 2011 before Thomas P. Rack, Administrative Law Judge from the Office of Administrative Hearings in Tacoma, Washington.
5. On September 23, 2011, Administrative Law Judge Thomas P. Rack entered his Initial Order in this matter, which sustained the license application denial.
6. The parties filed no Petitions for Review.
7. 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;

FINAL ORDER OF THE BOARD
GOHA GROCERY
LCB NO. 23,831

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Washington State Liquor Control Board
3000 Pacific Ave, S.E.
P.O. Box 43076
Olympia, WA 98504-3076
Phone: 360-664-1602

NOW THEREFORE; IT IS HEREBY ORDERED that that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order entered in this matter are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board except for the following modification:

The Initial Order's Conclusion of Law No. 3.8 is MODIFIED to correct a citation to refer to RCW 66.24.010(9)(a).

IT IS HEREBY FURTHER ORDERED that the license application for Yeshashwork Mamo Belachew d/b/a Goha Grocery located at 2204 South Jackson Street in Seattle, Washington, is DENIED.

DATED at Olympia, Washington this 18th day of October, 2011.

WASHINGTON STATE LIQUOR CONTROL BOARD





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**

October 21, 2011

Muluaem Zeleke
Yeshashwork Mamo Belachew
d/b/a Goha Grocery
2204 South Jackson St
Seattle, WA 98144-2339

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

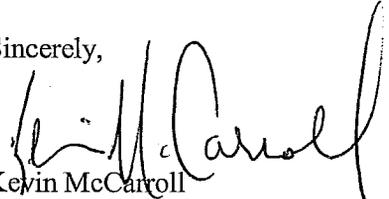
RE: FINAL ORDER OF THE BOARD
LICENSE APPLICANT: Yeshashwork Mamo Belachew
TRADE NAME: Goha Grocery
LOCATION: 2204 South Jackson St, Seattle, WA 98144-2339
LICENSE APPLICANT NO. 407431-2K
LCB HEARING NO. 23,831
OAH NO. 2011-LCB-0041
UBI: 603 068 424 001 0001

Dear Parties:

Please find the enclosed Declaration of Service by Mail and a copy of the Final Order of the Board 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: Tukwila and Seattle Enforcement and Education Divisions, WSLCB
Beth Lehman, Licensing Supervisor, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

YESHASHWORK MAMO
BELACHEW
d/b/a GOHA GROCERY
2204 SOUTH JACKSON ST
SEATTLE, WA 98144-2339
LICENSEE

LICENSE NO. 407431-2K

LCB NO. 23,831
OAH NO. 2011-LCB-0041

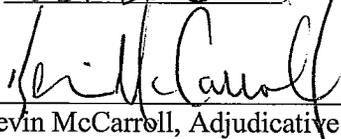
DECLARATION OF SERVICE BY MAIL

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:

MULUALEM ZELEKE
YESHASHWORK MAMO BELACHEW
d/b/a GOHA GROCERY
2204 SOUTH JACKSON ST
SEATTLE, WA 98144-2339

BRIAN CONSIDINE, ASSISTANT ATTORNEY
GENERAL, GCE DIVISION
OFFICE OF THE ATTORNEY GENERAL
MAIL STOP 40100

DATED this 21st day of October, 2011, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

DECLARATION OF SERVICE BY
MAIL

**STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE WASHINGTON STATE LIQUOR CONTROL BOARD
(Licensing and Regulation Division)**

In The Matter Of:

**GOHA GROCERY,
YESHASHWORK MAMO BELACHEW**

**2204 South Jackson St.,
Seattle, WA 98144**

APPLICANT

**License Application # 407431
UBI No. 603-068-424-001-0001**

OAH Docket No. 2011-LCB-0041

LCB No. 23,831

INITIAL ORDER

RECEIVED

SEP 27 2011

Liquor Control Board
Board Administration

1. STATEMENT OF THE CASE

1.1 Hearing:

In response to the May 21, 2011 written Request for Hearing by the Applicant, and pursuant to Washington Administrative Code ("WAC") 314-07-070, WAC 314-09-010, WAC 314-07-121 and Revised Code of Washington ("RCW") 34.05, Administrative Law Judge ("ALJ") Thomas P. Rack conducted a telephonic administrative hearing in this matter on September 19, 2011 from the Office of Administrative Hearings ("OAH"), 949 Market St., Suite 500, Tacoma, WA 98402. The hearing was digitally recorded.

1.2 Issue for Hearing:

Did the Director of the Licensing Regulation Division of the Washington State Liquor Control Board act within his authority and discretion when he denied a liquor license to the Applicant as set forth in his Statement of Intent to Deny Liquor License on May 2, 2011, or did the Director abuse his discretion?

1.2.1 Based upon the Findings of Fact and Conclusions of Law, the Director did not abuse his discretion and the denial of the liquor license was proper under Washington law.

1.3 Appearances and Representation:

The Liquor Control Board ("LCB or Agency") appeared through its Director of Licensing and Regulation Division, Alan E. Rathbun. LCB was represented by Assistant Attorney General Brian Considine.

The Applicant, Goha Grocery and Yeshashwork Mamo Belachew, appeared through Mulualem Zeleke, the husband of Ms. Belachew.

1.4 Witnesses:

The following witnesses appeared, were sworn and testified in this matter; the testimony of each was considered by the ALJ:

Alan E. Rathbun, Director of Licensing and Regulation Division, LCB; Lieutenant Frank Gallegos, Enforcement Education Division (Seattle office), LCB; and Mulualem Zeleke, Goha Grocery.

1.5 Exhibits:

The following exhibits were admitted into evidence on behalf of LCB, without objection from Applicant; each was considered by the ALJ:

1. Copy of Letter from Alan Rathbun dated May 2, 2011, with Statement of Intent to Deny Liquor License and Request for Hearing (6 pages);
2. Copy of Liquor Control Board Application Processing Report and Investigator/Reviewer Recommendation for Goha Grocery (4 pages);
3. Copy of Letter dated February 15, 2011, to Liquor Control Board from Ronald English, Deputy General Counsel for Seattle Public Schools (1 page);
4. Copy of Letter dated January 28, 2011, to Liquor Control Board from Jon Halfaker, Principal of Washington Middle School (2 pages);
5. Copy of Letter dated February 8, 2011, to Liquor Control Board from Al Griswold, Executive Dean of Seattle Vocational Institute (2 pages);
6. Copy of Letter dated February 10, 2011, to Liquor Control Board from Captain James Dermody, Seattle Police Department, and attachments (21 pages); and,

7. Copy of Applicant's letter to Licensing dated February 23, 2011, and attachments (6 pages).

No exhibits were offered or admitted into evidence on behalf of the Applicant.

1.6 Non-Evidentiary Documents Received And Considered By The ALJ:

The following non-evidentiary documents were received and considered:

1. Licensing's Hearing Brief filed on August 15, 2011.
2. Applicant's Hearing Brief filed on September 7, 2011.

2. FINDINGS OF FACT

Based on a preponderance of evidence, I make the following Findings of Fact:

Jurisdictional Facts

2.1 At all relevant times, Applicant, Goha Grocery, is a grocery store located in the City of Seattle at 2204 S. Jackson Street. Goha Grocery is owned and operated by Yeshashwork Mamo Belachew and Mulualem Zeleke.

2.2 At all relevant times, Mulualem Zeleke and Yeshashwork Mamo Belachew were husband and wife and the sole equitable owners of Goha Grocery. As such, Mr. Zeleke and Ms. Belachew were the real parties in interest as to the license application herein discussed. (Goha Grocery, Zeleke and Belachew are jointly referred to as Applicants.)

2.3 On December 10, 2010, the Applicants applied for a Grocery Store-Beverage/Wine with Direct Shipment Receiver-in/out license for 2204 S. Jackson St., Seattle, Washington (the "Store").

2.4 On behalf of the LCB, on May 2, 2011, the Director of Licensing and Regulation Division denied the application for the reasons set forth in his Statement of Intent to Deny Liquor License, specifically: (a) the Store is located within 500 feet of a tax-supported public elementary or secondary school which objected to the application, RCW 66.24.010(9); (b) due consideration was given to the location of the business with respect to the proximity of churches, schools and public institutions, RCW 66.24.010(9). A "public institution" meaning a public college or university, RCW 66.24.010(9)(a), WAC 314-07-010(5); (c) local authority objection to the proposed applicant or location; and (d) the issuance of a license would not be in the best interest of the welfare, health and safety of the people.

2.5 On May 21, 2011, Applicants filed a written request for an administrative hearing in this matter pursuant to WAC 314-09-010 and WAC 314-07-121.

Application Process and Denial of Liquor License

2.6 As part of the application process for the application denied by the Director on May 2, 2011, LCB investigated and considered the Store's location to churches, schools and public institutions.

2.7 As part of the application process, LCB determined the Store was located within the Seattle Central Core Alcohol Impact Area.

2.8 By letter dated January 28, 2011, Jon Halfaker, Principal of Washington Middle School, located at 2101 S. Jackson St., Seattle, Washington, notified LCB of their objection to the issuance of a liquor license to the Applicants. Washington Middle School is a publically funded school of the Seattle School District.

2.9 By letter dated February 8, 2011, Al Griswold, Executive Dean of Seattle Vocational Institute, a division of Seattle Central Community College, notified LCB of their objection to the issuance of a liquor license to the Applicants. The Seattle Vocational Institute is located at 2120 S. Jackson St., Seattle, Washington.

2.10 By letter dated, February 10, 2011, the Seattle Police Department notified LCB of their objection to the issuance of a liquor license to the Applicants. The Seattle Police Department submitted various documents in support of their objections.

2.11 By letter dated, February 15, 2011, Ronald English, Deputy General Counsel for the Seattle School District, notified LCB of the District's objection to the issuance of a liquor license to the Applicants.

2.12 On February 2, 2011, Lieutenant Frank Gallegos, a LCB Enforcement Officer, measured the distance from the entrance of the Store to the double doors of Washington Middle School at 2010 S. Jackson Street, using a "Measure Master". A Measure Master is a wheeled device which measure distance, in feet, by rolling the wheels over the ground. Lt. Gallegos noted the distance to be 470 feet. Lt. Gallegos measured the distance over the sidewalks and cross-walks to arrive at the distance between the school and the Store.

2.13 On September 16, 2011, Lt. Gallegos again measured the distance between the Store and Washington Middle School and noted the distance was 473 feet.

2.14 Lt. Gallegos noted that the Seattle Vocational Institute is closer to the Store than the Washington Middle School.

2.15 Washington Middle School and Seattle Vocational Institute are located within 500 feet of the Store.

3. CONCLUSIONS OF LAW

Based on the above Findings of Fact, I make the following Conclusions of Law:

Law Applicable to Liquor License Applications and Applicants

3.1 A decision by the LCB to deny a liquor license application can only be successfully challenged if the applicant can establish an abuse of discretion by LCB. An abuse of discretion occurs only when a decision is manifestly unreasonable or based on untenable reasons. *Graves v. Department of Employment Security*, 144 Wn. App. 302, 182 P. 3d 1004 (2008).

3.2 LCB may delegate to the licensing and regulation division director the authority to make initial threshold determinations on liquor license applications where objections have been submitted. If the director determines that the board will seek denial of a license application, an aggrieved applicant may request an adjudicative hearing before an administrative law judge. WAC 314-07-121.

3.3 RCW 66.24.010 states:

“(1) Every license shall be issued in the name of the applicant, and the holder thereof shall not allow any other person to use the license.

(2) For the purpose of considering any application for a license, or the renewal of 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, revocation, or renewal or denial thereof, of any license, the liquor control board may consider any prior criminal conduct of the applicant including an administrative violation history record with the board and 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. Subject to the provisions of this section, the board may, in its discretion, grant or deny the renewal or license applied for. Denial may be based on, without limitation, the existence of chronic illegal activity documented in objections submitted pursuant to subsections (8)(d) and

(12) of this section. 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 doing business as a sole proprietor who has not resided in the state for at least one month prior to receiving a license, 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.

(3)(a) The board may, in its discretion, subject to the provisions of RCW 66.08.150, suspend or cancel any license; and all rights of the licensee to keep or sell liquor thereunder shall be suspended or terminated, as the case may be.

(b) The board shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(c) The board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules and regulations as the board may adopt.

(d) Witnesses shall be allowed fees and mileage each way to and from any such inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446. Fees need not be paid in advance of

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appearance of witnesses to testify or to produce books, records, or other legal evidence.

(e) In case of disobedience of any person to comply with the order of the board or a subpoena issued by the board, or any of its members, or administrative law judges, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, shall compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(4) Upon receipt of notice of the suspension or cancellation of a license, the licensee shall forthwith deliver up the license to the board. Where the license has been suspended only, the board shall return the license to the licensee at the expiration or termination of the period of suspension. The board shall notify all vendors in the city or place where the licensee has its premises of the suspension or cancellation of the license; and no employee may allow or cause any liquor to be delivered to or for any person at the premises of that licensee.

(5)(a) At the time of the original issuance of a spirits, beer, and wine restaurant license, the board shall prorate the license fee charged to the new licensee according to the number of calendar quarters, or portion thereof, remaining until the first renewal of that license is required.

(b) Unless sooner canceled, every license issued by the board shall expire at midnight of the thirtieth day of June of the fiscal year for which it was issued. However, if the board deems it feasible and desirable to do so, it may establish, by rule pursuant to chapter 34.05 RCW, a system for staggering the annual renewal dates for any and all licenses authorized by this chapter. If such a system of staggered annual renewal dates is established by the board, the license fees provided by this chapter shall be appropriately prorated during the first year that the system is in effect.

(6) Every license issued under this section shall be subject to all conditions and restrictions imposed by this title or by rules adopted by the board. All conditions and restrictions imposed by the board in the issuance of an individual license shall be listed on the face of the individual license along with the trade name, address, and expiration date.

(7) Every licensee shall post and keep posted its license, or licenses, in a conspicuous place on the premises.

(8)(a) Unless (b) of this subsection applies, before the board issues a

new or renewal license to an applicant it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns.

(b) If the application for a special occasion license is for an event held during a county, district, or area fair as defined by RCW 15.76.120, and the county, district, or area fair is located on property owned by the county but located within an incorporated city or town, the county legislative authority shall be the entity notified by the board under (a) of this subsection. The board shall send a duplicate notice to the incorporated city or town within which the fair is located.

(c) The incorporated city or town through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the board within twenty days after the date of transmittal of such notice for applications, or at least thirty days prior to the expiration date for renewals, written objections against the applicant or against the premises for which the new or renewal license is asked. The board may extend the time period for submitting written objections.

(d) The written objections shall include a statement of all facts upon which such objections are based, and in case written objections are filed, the city or town or county legislative authority may request and the liquor control board may in its discretion hold a hearing subject to the applicable provisions of Title 34 RCW. If the board makes an initial decision to deny a license or renewal based on the written objections of an incorporated city or town or county legislative authority, the applicant may request a hearing subject to the applicable provisions of Title 34 RCW. If such a hearing is held at the request of the applicant, liquor control board representatives shall present and defend the board's initial decision to deny a license or renewal.

(e) Upon the granting of a license under this title the board shall send written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns. When the license is for a special occasion license for an event held during a county, district, or area fair as defined by RCW 15.76.120, and the county, district, or area fair is located on county-owned property but located within an incorporated city or town, the written notification shall be sent to both the incorporated city or town and the county legislative authority.

(9)(a) Before the board issues any license to any applicant, it shall give (i) due consideration to the location of the business to be conducted under such license with respect to the proximity of churches, schools, and public institutions and (ii) written notice, with receipt verification, of the application to public institutions identified by the board as appropriate to receive such notice, churches, and schools within five hundred feet of the premises to be licensed. The board **shall not issue** a liquor license for either on-premises or off-premises consumption covering any premises not now licensed, if such premises are within five hundred feet of the premises of any tax-supported public elementary or secondary school measured along the most direct route over or across established public walks, streets, or other public passageway from the main entrance of the school to the nearest public entrance of the premises proposed for license, and if, after receipt by the school of the notice as provided in this subsection, the board receives written objection, within twenty days after receiving such notice, from an official representative or representatives of the school within five hundred feet of said proposed licensed premises, indicating to the board that there is an objection to the issuance of such license because of proximity to a school. The board may extend the time period for submitting objections. For the purpose of this section, "church" means a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith. For the purpose of this section, "public institution" means institutions of higher education, parks, community centers, libraries, and transit centers.

(b) No liquor license may be issued or reissued by the board to any motor sports facility or licensee operating within the motor sports facility unless the motor sports facility enforces a program reasonably calculated to prevent alcohol or alcoholic beverages not purchased within the facility from entering the facility and such program is approved by local law enforcement agencies.

(c) It is the intent under this subsection (9) that a retail license shall not be issued by the board where doing so would, in the judgment of the board, adversely affect a private school meeting the requirements for private schools under Title 28A RCW, which school is within five hundred feet of the proposed licensee. The board shall fully consider and give substantial weight to objections filed by private schools. If a license is issued despite the proximity of a private school, the board shall state in a letter addressed to the private school the board's reasons for issuing the license.

(10) The restrictions set forth in subsection (9) of this section shall not prohibit the board from authorizing the assumption of existing licenses now located within the restricted area by other persons or licenses or relocations of existing licensed premises within the restricted area. In no

case may the licensed premises be moved closer to a church or school than it was before the assumption or relocation.

(11)(a) Nothing in this section prohibits the board, in its discretion, from issuing a temporary retail or distributor license to an applicant to operate the retail or distributor premises during the period the application for the license is pending. The board may establish a fee for a temporary license by rule.

(b) A temporary license issued by the board under this section shall be for a period not to exceed sixty days. A temporary license may be extended at the discretion of the board for additional periods of sixty days upon payment of an additional fee and upon compliance with all conditions required in this section.

(c) Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing. A temporary license may be canceled or suspended summarily at any time if the board determines that good cause for cancellation or suspension exists. RCW 66.08.130 applies to temporary licenses.

(d) Application for a temporary license shall be on such form as the board shall prescribe. If an application for a temporary license is withdrawn before issuance or is refused by the board, the fee which accompanied such application shall be refunded in full.

(12) In determining whether to grant or deny a license or renewal of any license, the board shall give substantial weight to objections from an incorporated city or town or county legislative authority based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. "Chronic illegal activity" means (a) a pervasive pattern of activity that threatens the public health, safety, and welfare of the city, town, or county including, but not limited to, open container violations, assaults, disturbances, disorderly conduct, or other criminal law violations, or as documented in crime statistics, police reports, emergency medical response data, calls for service, field data, or similar records of a law enforcement agency for the city, town, county, or any other municipal corporation or any state agency; or (b) an unreasonably high number of citations for violations of RCW 46.61.502 associated with the applicant's or licensee's operation of any licensed premises as indicated by the reported statements given to law enforcement upon arrest." (emphasis added)

3.4 WAC 314-09-010 states:

“Objections to liquor license applications.

(1) How can persons, entities, and governmental jurisdictions object to the issuance of a liquor license or permit? Per RCW 66.24.010 (8) and (9), the board will notify certain entities of the following types of annual or special occasion liquor license or permit applications. In addition to the following entities, any person or group may comment in writing to the board regarding an application.

Type of Application Entities the board will notify

- Applications for an annual license or permit at a new location that would allow the sale and/or service of alcohol beverage to the public for on-premises consumption or to-go; and
- Governmental jurisdictions in which the premises is located, and
- Applications to change the class of an existing annual liquor license or permit that allows the sale and/or service of alcohol beverage to the public for on-premises consumption or to-go.
- Schools, churches, and public institutions within 500 feet of the premises to be licensed (as measured according to RCW 66.24.010(9)).
- Applications for any special occasion liquor license that allows the sale and/or service of alcohol beverage; and
- Governmental jurisdictions only.
- Changes of ownership at existing licensed premises.

(2) What will happen if a person or entity objects to a liquor license application? When deciding whether to issue or deny a liquor license application or permit, the board will give due consideration to input from governmental jurisdictions in which the premises is located; private schools, churches, and public institutions within 500 feet of the premises (as measured according to RCW 66.24.010(9)); and other persons or groups. Note: Per RCW 66.24.010(9), the board shall not issue a new retail liquor license if a tax-supported public elementary or secondary school within 500 feet of the premises to be licensed objects to the application (500 feet as measured according to RCW 66.24.010(9)).

(a) If the board contemplates issuing a license over the objection of a governmental jurisdiction in which the premises is located, the government subdivision may request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW). If the board, in its discretion, grants the governmental jurisdiction(s) an adjudicative hearing, the licensee will be notified and given the opportunity to present evidence at the hearing.

(b) If the board denies a liquor license application based on the objection from a governmental jurisdiction; a private school, church, or

public institution within 500 feet of the premises (as measured according to RCW 66.24.010(9)); and/or other persons or groups, the applicant(s) may either:

(i) Reapply for the license or permit no sooner than one year from the original denial date; or

(ii) Submit a written request on a form provided by the board for an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW). The request must be received within twenty days of the date the intent to deny notification was mailed.”

3.5 WAC 314-07-065 states:

“Reasons the board may deny a liquor license application.

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)).

(8) Objection from the following entities if they are within five hundred 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 five hundred 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.”

3.6 WAC 314-07-010 states:

“Definitions.

Following are definitions for the purpose of this title. Other definitions are in WAC 314-01-005 and RCW 66.08.010.

(1) "Applicant" or "liquor license applicant" means any person or business entity who is considered by the board as a true party of interest in a liquor license or permit application, as outlined in WAC 314-07-035.

(2) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs, advertising, etc.

(3) "Financier" means any person or entity who has made or will make an investment in the licensed business of more than ten thousand dollars. A "financier" can be someone who provides money as a gift, someone who loans money to the business and expects to be paid back the amount of the loan without interest, or someone who invests money into the business expecting a percentage of the profits, but accepts the risk that there may not be a full return on the investment. These persons or entities shall submit appropriate investigation level "financier" financial documents.

(4) "Licensee" or "liquor licensee" means any person or entity that holds a liquor license or permit, or any person or entity who is a true party of interest in a liquor license or permit, as outlined in WAC 314-07-035.

(5) "Public institution" means a public college or university. (See WAC 314-07-020 regarding the liquor control board notifying public institutions of liquor license applications.)”

Jurisdiction

3.7 Based upon the Director’s decision to deny the Applicant a liquor license, the Applicants’ written request for an adjudicative hearing before an administrative law judge, and the foregoing authorities, the Office of Administrative Hearings and I have jurisdiction to hear this matter. WAC 314-07-121.

Denial Based On Objection of Public Elementary School Located within 500 Feet of the Premises

3.8 Washington Middle School, a public elementary school of the Seattle School District, is located within 500 feet of the Store. The distance from the entrance of the Store to the school's entrance was measured twice by a LCB Enforcement Officer. Each measurement showed the Store was located within 500 feet of the Washington Middle School. Therefore, pursuant to RCW 66.24.101(9)(a), the Liquor Control Board had no discretion but to deny licensure to a new applicant if the school filed written objections to the license application. Such was the case here.

Denial Based On Objection of a Public Institution

3.9 Seattle Vocational Institute, a division of Seattle Community College, objected to the Applicants' application for licensure. Seattle Vocational Institute is located within 500 of the Store. Seattle Vocational Institution is a public college, by definition. WAC 314-07-010(5). The Director gave due consideration to Seattle Vocational Institute's objection to the issuance of the liquor license.

3.10 The Applicant did not establish an abuse of that discretion. Therefore, the Director's denial on this basis will not be disturbed. *Graves v. Department of Employment Security*, 144 Wn. App. 302, 182 P. 3d 1004 (2008).

Denial Based On Objections of a Local Authority

3.11 The City of Seattle, through the Seattle Police Department, provided written objection to the application. The Director, on behalf of LCB, gave the objections due consideration. Those objections were not insignificant. The objections included the Store's proximity to both Washington Middle School and the Seattle Vocational Institute; the Seattle Vocational Institutes issues with intoxicated people and the trouble caused thereby; and the community's concerns with problems caused by alcohol-fueled violence and the proximity of children.

3.12 Accordingly, the Director, acting for the Liquor Control Board, was within his authority and discretion to deny the application for a liquor license to the Applicant based on objection of the City of Seattle to the application of Applicant. RCW 66.24.010(8), WAC 314-09-010(2) and 314-07-065(7), (8).

3.13 The Applicant did not establish an abuse of that discretion. Therefore, the Director's denial on this basis will not be disturbed. *Graves v. Department of Employment Security*, 144 Wn. App. 302, 182 P. 3d 1004 (2008).

4. INITIAL ORDER

Based on the foregoing Conclusions of Law, IT IS ORDERED:

4.1 The Liquor Control Board's May 2, 2011 denial of a liquor license to Applicant Goha Grocery and Yeshashwork Mamo Belachew on the basis of an objection of a public elementary school located within 500 feet of the premises is hereby **SUSTAINED**.

4.2 The Liquor Control Board's May 2, 2011 denial of a liquor license to Applicant Goha Grocery and Yeshashwork Mamo Belachew on the basis of an objection of a public institution located within 500 feet of the premises is hereby **SUSTAINED**.

4.3 The Liquor Control Board's May 2, 2011 denial of a liquor license to Applicant Goha Grocery and Yeshashwork Mamo Belachew on the basis of a local authority's objection is hereby **SUSTAINED**.

Signed and Issued at Tacoma, Washington on September 23, 2011.



Thomas P. Rack
Administrative Law Judge
Office of Administrative Hearings

NOTICE TO PARTIES OF FURTHER APPEAL RIGHTS

Either the applicant, licensee or permit holder, or the Assistant Attorney General may file a Petition for Review 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. Documents are deemed filed with the Board upon actual receipt by the Board, during office hours, at the Board's headquarters office in Olympia, Washington (P.O. Box 43075, 3000 Pacific Avenue, S.E., Olympia, WA 98504-3075). If the Board does not receive a petition for review within twenty (20) days, the Board will review and make this order its final order.

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 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 Reply 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 Petitions 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 day 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 File 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).