

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

ALCANTAR ENTERPRISES, INC
d/b/a SU MERCADITO #2
108 MAIN STREET
GRANGER, WA 98932-9306

LICENSEE

LICENSE NO. 401817-4C
AVN 4F1105A

LCB NO. 23,860

OAH NO. 2011-LCB-0076

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 December 11, 2011, alleging that on April 15, 2011 the above-named Licensee, or employee(s) thereof, gave, sold and/or supplied liquor to a person under the age of twenty-one (21), contrary to RCW 66.44.270.
2. The Licensee timely submitted a request for an administrative hearing.
3. A prehearing conference was scheduled for February 16, 2012 at 2:00 p.m. Maria Alcantar, owner and representative for the Licensee did not appear. Marissa Broggel, Assistant Attorney General appeared for the Enforcement and Education Division of the Board.
4. Administrative Law Judge Mark H. Kim issued his Initial Order of Default Dismissing Appellant's Appeal for Failure to Appear (Default Order) on February 17, 2012.
5. The Licensee filed an untimely request to vacate the default order on February 28, 2012.
6. The Enforcement and Education Division of the Board filed its opposition to the Licensee's request to vacate the default order on April 20, 2012.

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; NOW THEREFORE; IT IS HEREBY ORDERED that the default order for case 23,860 is adopted.

IT IS HEREBY FURTHER ORDERED that the Complaint filed in case 23,860 is sustained and that the liquor license privileges granted to Alcantar Enterprises, Inc. d/b/a Su Mercadito #2 located at 108 Main Street in Granger, Washington, License 401817, are hereby suspended for a term of thirty (30) days which shall take place from 10 a.m. on Wednesday, September 19, 2012 until 10 a.m. on Friday, October 19, 2012. Failure to comply with the terms of this order will result in further disciplinary action.

DATED at Olympia, Washington this 14 day of August 2012.

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**

August 14, 2012

Maria Alcantar, Representative
Alcantar Enterprises Inc, Licensee
d/b/a Su Mercadito #2
PO Box 987
Granger, WA 98932-0987

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

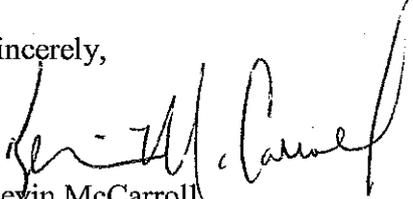
RE: FINAL ORDER OF THE BOARD
LICENSEE: Alcantar Enterprises Inc
TRADE NAME: Su Mercadito #2
LOCATION: 108 Main St, Granger, WA 98932
LICENSE NO. 401817-4C
ADMINISTRATIVE VIOLATION NOTICE NO: 4F1105A
LCB HEARING NO. 23,860
OAH NO. 2011-LCB-0076
UBI: 6020417060010002

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: Spokane and Pasco Enforcement and Education Divisions, WSLCB
Teresa Young, WSLCB

PO Box 43076, 3000 Pacific Ave. SE, Olympia WA 98504-3076, (360) 664-1602 www.liq.wa.gov

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

ALCANTAR ENTERPRISES INC
d/b/a SU MERCADITO #2
108 MAIN ST
GRANGER, WA 98932

LICENSEE

LICENSE NO. 401814-4C
AVN NO. 4F1105A

LCB NO. 23,860
OAH NO. 2011-LCB-0076

DECLARATION OF SERVICE BY MAIL

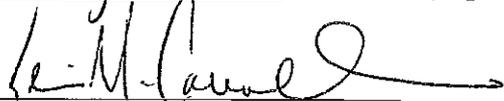
I certify that I caused a copy of the FINAL ORDER OF THE BOARD in the above-referenced matter to be served on all parties or their counsel of record by US Mail Postage Prepaid via Consolidated Mail Service for Licensees, by Campus Mail for the Office of Attorney General, on the date below to:

MARIA ALCANTAR, REPRESENTATIVE
ALCANTAR ENTERPRISES INC,
LICENSEE
D/B/A SU MERCADITO #2
PO BOX 987
GRANGER, WA 98932-0987

OFFICE OF THE ATTORNEY GENERAL
MAIL STOP 40100, GCE DIVISION
MARISA BROGGEL, ASSISTANT ATTORNEY
GENERAL

MARIA ALCANTAR, REPRESENTATIVE
ALCANTAR ENTERPRISES INC,
LICENSEE
1007 CONESTOGA WAY
GRANDVIEW, WA 98930-9458

DATED this 14th day of August, 2012, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

RECEIVED

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AUG 06 2012

MAY 01 2012

Liquor Control Board
Board Administration

Office of Administrative Hearings
Spokane

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

In The Matter Of:

ALCANTAR ENTERPRISES, INC.
dba SU MERCADITO #2,

Licensee/Respondent.

License No. 401817

**OAH Docket No. 2011-LCB-0076
Agency No. 23,860**

**INITIAL ORDER
RE: MOTION TO VACATE DEFAULT**

RECITALS

A telephonic motion hearing in the above-entitled matter was conducted on April 25, 2012 by Mark H. Kim, Administrative Law Judge, with the Washington State Office of Administrative Hearings, at Spokane, Washington. The Licensee/Respondent, Alcantar Enterprises, Inc. dba Su Mercadito #2, appeared by and through its representative, Maria Alcantar, Owner. The Washington State Liquor Control Board, was represented by Marisa Broggel, Assistant Attorney General. The parties argued their respective positions.

AFTER REVIEW OF THE CASE FILE, PLEADINGS, AND EVIDENCE IN THIS MATTER, THE UNDERSIGNED MAKES THE FOLLOWING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INITIAL ORDER:

FINDINGS OF FACT

1. Alcantar Enterprises, Inc. dba Su Mercadito #2 (Licensee) holds a license issued by the Washington State Liquor Control Board (Board) with a license number of 401817.
2. On December 07, 2011, the Chief of the Enforcement and Education Division of the Board issued a Complaint against the Licensee alleging that the Licensee had violated a statute as follows: "That on or about April 15, 2011, the above-named Licensee, or an employee(s) thereof, gave, sold and/or supplied liquor to a person under the age of twenty-one (21), contrary to RCW 66.44.270."
3. The matter was not resolved between the Board and the Licensee. Consequently, on December 21, 2011, the Board, through the Attorney General's office, requested the Office of Administrative Hearings (OAH) to schedule the matter for an

administrative hearing.

4. On January 12, 2012, the OAH issued a Notice of Conference scheduling the matter for a telephonic prehearing conference to be conducted on February 16, 2012 at 2:00 p.m. The Notice informed the Licensee that **"[y]ou must participate in the conference. If you do not, a default may be entered. This means you lose the opportunity to further challenge the agency action. RCW 34.05.440."**
5. Maria Alcantar, Owner and representative for the Licensee received the Notice of Conference.
6. On February 16, 2012, the Board appeared by and through Marisa Broggel, Assistant Attorney General. The Licensee did not appear for the conference. The Board moved for an order of default against the Licensee.
7. On February 17, 2012, the undersigned issued, by mail, an Initial Order of Default Dismissing Appellant's Appeal for Failure to Appear (Default Order). The Default Order informed the Licensee that "[t]he defaulted party may file a written motion requesting the Office of Administrative Hearings vacate the Default Order. Such a motion must be filed within seven (7) days from the date that the default order was mailed and must include the reason why the default order should be vacated. RCW 34.05.440; WAC 10-08-110."
8. On February 28, 2012, the OAH received the Licensee's letter requesting for another hearing date. In essence, a request to vacate the default order. Ms. Alcantar, the author of the letter, states that she had mistakenly believed the conference date was the day after the actual scheduled date, i.e., February 17, 2012.
9. On April 20, 2012, the Board filed its opposition to the Licensee's request to vacate.
10. Ms. Alcantar did not appear for the conference scheduled for February 16, 2012 because she had mistakenly calendared the date on her phone for February 17, 2012.
11. Ms. Alcantar did not file her request to vacate within seven days of the issuance of the Default Order because she was busy with the operation of her four businesses.
12. Ms. Alcantar asserts that she is unfamiliar with the administrative hearing process.

CONCLUSIONS OF LAW

1. The undersigned Administrative Law Judge has jurisdiction to hear and decide this matter pursuant to the Administrative Procedure Act (APA) chapter 34.05 of

Revised Code of Washington (RCW) and chapter 10-08 Washington Administrative Code (WAC).

2. If a party fails to appear or participate in a hearing or other stage of an adjudicative proceeding, the Administrative Law Judge (ALJ) may enter an order of default. *RCW 34.05.440(2)*. The party upon which a default order was issued against may file a written motion to vacate the default order pursuant to *RCW 34.05.440(3)*.

3. A decision on a motion to vacate a default judgment is discretionary. *Hwang v. McMahill, 103 Wn. App. 945, 949, 15 P. 3d 172 (2000), review denied, 144 Wn. 2d 1011 (2001)*. There is no Agency statute, rule or regulation providing specific requirements for vacating a default judgment. Thus, it is unclear whether the petitioning party must show good cause in order to have a default judgment set aside. The APA provides that the petitioning party must state the grounds relied upon to set aside a default order. *RCW 34.05.440(3)*.

4. *RCW 34.05.440(3)* 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 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.

(emphasis added).

5. For additional guidance, this Tribunal looks to the Washington State Superior Court Civil Rules (CR) 60, Relief from Judgment or Order. CR 60(b) provides in pertinent part:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party for his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order:

(11) Any other reason justifying relief from the operation of the judgment.

6. After considering all guidance cited-above, this Tribunal concludes that the petitioning party needs to show that the reason(s) for the failure to appear for the scheduled conference must be more than just mere mistake or inadvertence. Otherwise, it would dramatically diminish the effect of the summons to appear for an adjudicative proceeding. The reason(s) must be of a nature of an act or omission not within the petitioner's control.

7. In the Licensee's case, the mistake in calendaring the date of the conference would not meet the requirements of good cause as found by the Court of Appeals in *Graves v. Employment Sec. Dep't*, 114 Wn. App. 302, 311, 182 P.3d 1004 (2008). Further, the mistake also does not meet the standard set by this Tribunal as it was not an act not within the Licensee's control. Even if this Tribunal considered that the Licensee's reason could meet the standard for setting aside a default judgment, the Licensee failed to petition her request to vacate in a timely manner.

8. As provided in RCW 34.05.440(3), the petition to vacate a default order must be filed within seven days from the service of the default order.

9. WAC 10-08-080 provides:

Computation of time.

In computing any period of time prescribed or allowed by any applicable statute or rule, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

10. WAC 10-08-110 provides in pertinent part:

Adjudicative proceedings — Filing and service of papers.

(1) Filing.

(a) Papers required to be filed with the agency shall be deemed filed upon actual receipt during office hours at any office of the agency. *Papers required to be filed with the presiding officer shall be deemed filed upon actual receipt during office hours at the office of the presiding officer.*

.....

(2) Service.

.....
(c) Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed. Service by fax shall be regarded as completed upon production by the fax machine of confirmation of transmission. Service by commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.
.....

(emphasis added).

11. In the present matter, the default order was mailed on February 17, 2012. This is the date of service upon the Licensee pursuant to WAC 10-08-110(2). The OAH received the Licensee's petition to vacate on February 28, 2012. This is the date of filing pursuant to WAC 10-08-110(1). Thus, in computing the seven days for filing a petition pursuant to WAC 10-08-080, the seventh day is February 24, 2012. Therefore, it is concluded that the Licensee's petition to vacate the Default Order is untimely. Additionally, the Licensee's reason for the late filing is not justifiable. Accordingly, the Licensee's petition to vacate should be denied as untimely. Even if the petition was timely, the Licensee would not prevail to set aside the Default Order as the reason for the failure to appear does not meet the standard to vacate the Default Order as addressed above.

ORDER

NOW THEREFORE, IT IS ORDERED:

1. The Licensee's motion to vacate the Initial Order of Default Dismissing Appellant's Appeal for Failure to Appear issued on February 17, 2012 is hereby denied as the motion was untimely filed.
2. This Licensee's appeal is hereby dismissed.

Sign and dated at Spokane, Washington, this 1st day of May, 2012.



Mark H. Kim
Administrative Law Judge

NOTICE OF APPEAL RIGHTS

Petition for Review of Initial Order:

Either the licensee or permit holder or the assistant attorney general may file a petition for the 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.

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 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 of the other parties and their representatives at the time the petition is filed. Within ten (10) 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.

Address for filing a petition for review with the board:

Washington State Liquor Control Board
Attention: Kevin McCarroll,
3000 Pacific Avenue, PO Box 43076
Olympia, Washington 98504-3076.

CERTIFICATION OF MAILING IS ATTACHED

CERTIFICATE OF MAILING

The undersigned certifies that true copies of the foregoing document(s) were served from Spokane, Washington by First Class US Mail, postage prepaid on the date indicated below upon the following:

Licensee/Respondent

Maria Alcantar
Alcantar Enterprises, Inc.
Su Mercadito #2
PO Box 987
Granger, WA 98932-0987

Maria Alcantar
1007 Cocestoga way
Grandview, WA 98930

WSLCB Representative

Marissa Broggel, AAG
Office of the Attorney General
MS: 40100
Olympia, WA 98504-0100

Dated this 1st day of May, 2012.


Elaine Hanks, Legal Secretary
Office of Administrative Hearings

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APR 17 2012

Liquor Control Board
Board Administration

ATTORNEY GENERAL
OF WASHINGTON

FEB 21 2012

GOVERNMENT COMPLIANCE
& ENFORCEMENT

MAILED

FEB 17 2012

Office of Administrative Hearings
Spokane

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

In The Matter Of:

ALCANTAR ENTERPRISES, INC. dba
SU MERCADITO #2,

Respondent/Licensee.

OAH Docket No. 2011-LCB-0076
Agency No. 23,860

INITIAL ORDER OF DEFAULT
DISMISSING APPELLANT'S
APPEAL FOR FAILURE TO
APPEAR

The above-captioned matter was scheduled for a prehearing conference by telephone on February 16, 2012, at 2:00 p.m. pursuant to due and proper notice to all interested parties.

The Appellant, Alcantar Enterprises, Inc., dba Su Mercadito #2, did not appear for the prehearing conference or request a continuance. The Liquor Control Board appeared and was represented by Marissa Broggel, Assistant Attorney General.

The Liquor Control Board moved for an order of default dismissing this matter.

Now, therefore, it is ORDERED that the Appellant is in DEFAULT pursuant to RCW 34.05.440 and the appeal is hereby **DISMISSED**.

Signed and Issued at Spokane, Washington, this 17th day of February, 2012.



Mark H. Kim
Administrative Law Judge
Office of Administrative Hearings

NOTICE OF RIGHT TO FILE A MOTION TO VACATE THE DEFAULT ORDER

The defaulted party may file a written motion requesting the Office of Administrative Hearings vacate the Default Order. Such a motion must be filed within seven (7) days from the date that the default order was mailed and must include the reason why the

default order should be vacated. RCW 34.05.440; WAC 10-08-110.

Mail the Motion to Vacate Default to:

The Office of Administrative Hearings
221 N. Wall Street, Suite 540
Spokane, WA 99201

CERTIFICATION OF MAILING IS ATTACHED

CERTIFICATE OF MAILING

The undersigned certifies that true copies of the foregoing document(s) were served from Spokane, Washington by First Class US Mail, postage prepaid on the date indicated below upon the following:

Appellant

Maria Alcantar
Alcantar Enterprises, Inc.
Su Mercadito #2
108 Main Street
Granger, WA 98932

Maria Alcantar
Alcantar Enterprises, Inc.
Su Mercadito #2
PO Box 987
Granger, WA 98932-0987

Maria Alcantar
1007 Corestoga way
Grandview, WA 98930

Assistant Attorney General

Marissa Broggel, AAG
Office of the Attorney General
MS: 40100
Olympia, WA 98504-0100

Dated this 17th day of February, 2012.



Kristen Du Bruille, Legal Extern for ALJ Kim
Office of Administrative Hearings