

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

DK MARKET, INC
d/b/a DK MARKET
31325 STATE RT 20
OAK HARBOR, WA 98277

LICENSEE

LICENSE NO. 356400-3D
AVN: 3D1216A

OAH NO: 2011-LCB-0060
LCB NO. 23,883

FINAL ORDER OF THE BOARD

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

1. The Liquor Control Board issued a Complaint dated September 30, 2011, and alleged that on or about July 16, 2011 the above-named licensee or employee(s) thereof, supplied liquor to an apparently intoxicated person in violation of RCW 66.44.200(1) and WAC 314-16-150.
2. An administrative hearing was held at the licensee's timely request.
3. A hearing was held on March 21, 2012, conducted by the Office of Administrative Hearings. Assistant Attorney General Timothy Ford represented the Education and Enforcement Division of the Board and the Licensee DK Market, Inc. appeared *pro se*, through Ki Hwan Kim, a corporate officer and owner.
4. On March 26, 2012, Administrative Law Judge Thomas P. Rack entered his Findings of Fact, Conclusions of Law and Initial Order in this matter, which sustained the Complaint.

5. No petition for review was filed by the parties.

The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises; NOW THEREFORE; IT IS HEREBY ORDERED that that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order heretofore made and entered in this matter be, and the same hereby are, AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board, except for the following changes:

a. Short Answer 1.2.4 on page 2 of the Initial Order is modified to read, "In the absence of any mitigating or aggravating circumstance, a five (5) day suspension or a monetary penalty of \$500.00 in lieu of suspension is the appropriate penalty under WAC 314-29-020."

b. Conclusion of Law 3.7 on page 5 is modified to reflect that the penalty set forth in WAC 314-29-020 for a Group 1 violation within a two-year period for service of alcohol to an apparently intoxicated person is "a five (5) day license suspension or a monetary penalty of \$500.00 in lieu of suspension, unless mitigating or aggravating circumstances are shown."

c. Initial Order 4.2 on page 6 is modified to read, "A five (5) day suspension or a monetary penalty of \$500.00 in lieu of suspension is appropriate under the circumstances."

IT IS HEREBY FURTHER ORDERED that the liquor license privileges granted to DK Market, Inc. d/b/a DK Market at 31325 State Route 20 in Oak Harbor, Washington, License Number 356400-3D, are hereby suspended for a term of five (5) days. In lieu of a license suspension, the Licensee may pay a monetary penalty in the amount of five hundred dollars (\$500.00) due within 30 days of this order. If timely payment is not received, suspension will take place from 10:00 a.m. on June 21, 2012 until 10:00 a.m. on June 26, 2012. Failure to comply with the terms of this order will result in further disciplinary action.

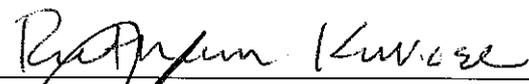
Payment in reference to this order should be sent to:

**Washington State Liquor Control Board
Enforcement and Education Division
PO Box 43085
Olympia, WA 98504-3085**

DATED at Olympia, Washington this 24th day of April, 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

April 25, 2012

DK Market Inc, Licensee
d/b/a DK Market
31325 State Rt 20
Oak Harbor, WA 98277-3170

Timothy Ford, 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: DK Market Inc
TRADE NAME: DK Market
LOCATION: 31325 State Rt 20, Oak Harbor, WA 98277-3170
LICENSE NO. 356400-3D
ADMINISTRATIVE VIOLATION NOTICE NO: 3D1216A
LCB HEARING NO. 23,883
OAH NO. 2011-LCB-0060
UBI: 602 495 472 001 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.

The applicable monetary penalty is due by May 25, 2012 or suspension will take place on the dates indicated in the order. The address for payments is WSLCB, P.O. Box 43085, Olympia, WA 98504-3085. Please label the check with your License Number and Administrative Violation Notice Number listed above. If you have any questions, please contact me at (360) 664-1602.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin McCarroll".

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Mount Vernon Enforcement and Education Division, WSLCB
Teresa Young, WSLCB

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

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3 **WASHINGTON STATE LIQUOR CONTROL BOARD**

4 IN THE MATTER OF:

5 DK MARKET INC
6 d/b/a DK MARKET
7 31325 STATE RT 20
8 OAK HARBOR, WA 98277-3170

9 LICENSEE

LICENSE NO. 356400-3D
AVN NO. 3D1216A

LCB NO. 23,883
OAH NO. 2011-LCB-0060

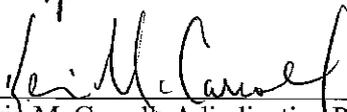
DECLARATION OF SERVICE BY MAIL

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

15
16 DK MARKET INC
17 d/b/a DK MARKET
18 31325 STATE RT 20
19 OAK HARBOR, WA 98277-3170

OFFICE OF THE ATTORNEY GENERAL
MAIL STOP 40100, GCE DIVISION
TIMOTHY FORD, ASSISTANT ATTORNEY
GENERAL

20 DATED this 25th day of April, 2012, at Olympia, Washington.

21 
22 Kevin McCarroll, Adjudicative Proceedings Coordinator

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DECLARATION OF SERVICE BY
MAIL

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

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE WASHINGTON STATE LIQUOR CONTROL BOARD
(Education and Enforcement Division)

In The Matter Of:

DK MARKET, INC. dba DK MARKET,

Licensee.

License No. 356400

AVN No. 3D1216A

OAH Docket No. 2011-LCB-0060

LCB No. 23,883

INITIAL ORDER

RECEIVED

APR 12 2012

Liquor Control Board
Board Administration

TRANSLATION INTO KOREAN:

If you need a Korean translation of this decision, call Paik Cook at (208) 365-2622.

1. STATEMENT OF THE CASE

1.1 Hearing:

In response to the August 10, 2011 written Request for Hearing by the Licensee, and pursuant to Washington Administrative Code ("WAC") 314-16-150, WAC Chapter 314-29, and Revised Code of Washington ("RCW") Chapters 34.05, and 66.44, Administrative Law Judge ("ALJ") Thomas P. Rack conducted a telephonic administrative hearing in this matter on March 21, 2012 from the Office of Administrative Hearings ("OAH"), 949 Market St., Suite 500, Tacoma, WA 98402. The hearing was digitally recorded.

1.2 Issue(s) for Hearing:

1.2.1 Did the Licensee, or its employee(s), or both, violate RCW 66.44.200(1) by selling, giving, or supplying liquor to an apparently intoxicated person on July 16, 2011?

1.2.2 If Licensee did violate RCW 66.44.200(1), what is the appropriate penalty?

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Short Answer

1.2.3 Licensee, through its employee, did violate RCW 66.44.200(1) on July 16, 2011 by selling, giving, or supplying liquor to an apparently intoxicated person.

1.2.4 In the absence of any mitigating or aggravating circumstance, a five (5) suspension is the appropriate penalty under WAC 314-29-020.

1.3 Appearances and Representation:

The Liquor Control Board ("LCB") appeared through its Liquor Enforcement Officer, Bud Fish. LCB was represented by Assistant Attorney General Timothy Ford. Observing, but not participating in the hearing, was Assistant Attorney General Marissa Broggel.

The Licensee, DK Market, Inc. ("DK Market"), appeared, *pro se*, through Ki Hwan Kim, a corporate officer and owner of DK Market, Inc.

Mr. Paik Cook, Korean Interpreter.

1.4 Witnesses:

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

Officer Jennifer Gravel¹ (formerly known as Rutledge), Oak Harbor Police Department; Officer Bud Fish, Liquor Enforcement Officer; Heidi Moran, DK Market employee; and Ki Hwan Kim, DK Market owner.

1.5 Exhibits:

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

1. Administrative Violation Notice No. 3D1216A (2 pages);
2. Narrative report of Officer Bud Fish (2 pages);
3. Incident Report of Officer Fish (2 pages);
4. Incident Report of Officer Jennifer (Rutledge) Gravel, Oak Harbor Police Department (3 pages).

¹ Officer Rutledge was married after July 16, 2011 and took her spouse's last name, hence the reference to Officer Gravel.

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

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

The following non-evidentiary documents were received and considered:

1. LCB Complaint No. 23,883, dated September 30, 2011.

2. FINDINGS OF FACT

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

- 2.1 At all relevant times, Licensee, DK Market, Inc., was a grocery store located at 31325 State Route 20, Oak Harbor, Washington and possessed a Beer/Wine liquor license issued by the LCB.
- 2.2 At all relevant times, Ki Hwan Kim was the owner and corporate officer of DK Market, Inc.
- 2.3 On the evening of July 16, 2011, Heidi Moran was the clerk on duty at DK Market. Mr. Kim was not present on the evening of July 16, 2011.
- 2.4 On July 16, 2011, on approximately three occasions before 10:54PM Officer Gravel had encounters with Bill James (James") in the general vicinity of DK Market. During each encounter, Officer Gravel believed James was intoxicated based upon her experience as a police officer; training she received at the police academy; and her numerous encounters with James on other occasions. Officer Gravel based her belief that James was intoxicated on July 16, 2011 because she noticed an odor of alcohol emanating from James; James had bloodshot and watery eyes; James' skin was flushed; James' balance was impaired; and James' speech was slurred.
- 2.5 Shortly before 11:00PM, Officer Gravel responded to a radio call regarding James and a trespass in the vicinity of Windjammer Park. At approximately 10:54 PM, Officer Gravel contacted James near the Dairy Queen on SW Barlow Street. Officer Gravel observed James and noted signs of intoxication, namely, James had an odor of alcohol, his speech was slurred, he was swaying while standing, he was belligerent, he had bloodshot eyes, and he was incoherent. Fearing for James' safety, Officer Gravel had James sit down while she conducted her investigation.
- 2.6 While investigating the matter, Officer Gravel noticed that James was carrying a plain, black plastic bag, similar to the ones used by DK Market. Upon further examination, she discovered three unopened cans of malt liquor or beer

in the bag. The cans were very cold and had condensation on them. The bag contained 2 cans of "High Gravity" lager and 1 can of "Earthquake" lager.

2.7 After questioning James, Officer Gravel proceeded to DK Market and made contact with Heidi Moran ("Moran"), the clerk on duty at DK Market. Moran admitted selling James the 3 cans of alcoholic beverages at approximately 10:45PM, or some nine (9) minutes before Officer Gravel last contacted James on the night of July 16, 2011.

2.8 The Oak Harbor Police Department referred Officer Gravel's incident report of the July 16, 2011 James' incident to the Liquor Control Board.

2.9 On August 2, 2011, Officer Bud Fish², a fourteen year Liquor Enforcement Officer with the Liquor Control Board, met with Mr. Kim at DK Market. Mr. Kim showed Officer Fish a recording from DK Market's security cameras showing the July 16, 2011 sale to James.

2.10 The video recording showed James sprawled over the counter at DK Market; showed James swaying and being unsteady on his feet; and showed James flailing his arms. The video recording did not contain audio, so Officer Fish could not hear what was being said during the transaction.

2.11 Based upon his extensive training and experience as a State Trooper and as a Liquor Enforcement Officer, Officer Fish believed James was intoxicated based upon the actions he observed on the July 16, 2011 DK Market video.

2.12 Officer Fish spoke with Moran who indicated that James was always like that.

2.13 Moran testified that James was homeless and lacked personal hygiene. As a result, James smelled very bad, yet she was approximately 24 inches from James' face and did not smell any odor of alcohol during the July 16, 2011 transaction.

2.14 This incident was DK Market's first alleged violation of RCW 66.44.200(1).

3. CONCLUSIONS OF LAW

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

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² Officer Fish previously served for 30 years as a Washington State Patrol Trooper and was trained in DUI and alcohol intoxication identification and testing.

3.1 RCW 66.44.200 states, in pertinent part:

“Sales to persons apparently under the influence of liquor — Purchases or consumption by persons apparently under the influence of liquor on licensed premises — Penalty — Notice — Separation of actions.

(1) No person shall sell any liquor to any person apparently under the influence of liquor.”

3.2 At the hearing, Ms. Moran's testimony was deemed less than credible upon careful consideration and weighing of the evidence, her demeanor (as determined by voice, straightforwardness, hesitancy or lack of hesitancy in responses), her motivations, the reasonableness and consistency of her testimony throughout the hearing, and the totality of the circumstances presented.

3.3 For example, despite repeated details of James' body odor, Moran alleged she was close enough to James and did not detect the odor of alcohol. The logical inference would be that one would attempt to place as much distance between oneself and an individual who reeked of unpleasant body odor.

3.4 Based upon Officer Gravel's several contacts with James before and after the sale of the alcoholic beverages on July 16, 2011 and her observations of James; the preponderance of the evidence established that James was apparently intoxicated before, during, and after he purchased the alcoholic beverages from DK Market at 10:45 PM.

3.5 Based upon Officer Fish's observations of James' actions as shown on DK Market's video of the July 16, 2011 transaction; the preponderance of the evidence established that James was apparently intoxicated when he purchased the alcoholic beverages from DK Market.

3.6 Based upon the foregoing Findings and Conclusions, DK Market, Inc. violated RCW 66.44.200(1) when, through its employee, sold alcoholic beverages to an apparently intoxicated person on July 16, 2011.

3.7 WAC 314-29-020 sets out the penalties for various Group 1 violations. Under this administrative rule, a first offence for the sale or service of alcohol to an apparently intoxicated person is punishable by a five (5) day suspension, unless mitigating or aggravating circumstances are shown.

3.8 The evidence in this case did not demonstrate any mitigating or aggravating circumstances. Therefore, a five day suspension is the appropriate sanction in this case.

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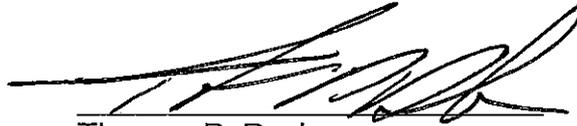
4. INITIAL ORDER

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

4.1 The Liquor Control Board's Complaint No. 23,883 is hereby **SUSTAINED**.

4.2 A five day suspension of DK Market Inc.'s liquor license is appropriate under the circumstances. The Liquor Control Board shall set the dates of the suspension.

Signed and Issued at Tacoma, Washington on March 26, 2012.



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 (Washington State Liquor Control Board, Attention: Kevin McCarroll, 3000 Pacific Avenue, S.E., P.O. Box 43076, Olympia, WA 98504-3076). If the Board does not receive a petition for review within twenty (20) day period, 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 in the 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).