

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

NICHOLAS D. SQUIRES
d/b/a THE RIFF
215 W MAIN AVE
SPOKANE, WA 99201

LICENSEE

LICENSE NO. 403063-4R
AVN NO. 401323A

LCB NO. 23,922
OAH NO. 2012-LCB-0020

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 April 4, 2012, alleging that on or about November 19, 2011, the Licensee or an employee(s) thereof, gave, sold and/or supplied liquor to an apparently intoxicated person, contrary to RCW 66.44.200 and/or WAC 314-16-150(1). In the alternative, than on or around November 19, 2011, the above-named Licensee or an employee(s) thereof permitted an apparently intoxicated person to possess and/or consume liquor on the licensed premises, contrary to WAC 314-16-150(2);
2. The Licensee submitted a timely request for an administrative hearing;
3. A status conference was scheduled for September 24, 2012. The Licensee did not appear for the status conference. Assistant Attorney General Marisa Broggel represented the Enforcement Division of the Board;
4. On September 24, 2012, Administrative Law Judge (ALJ) Mark H. Kim issued an Initial Order of Default Dismissing Licensee's Appeal for Failure to Appear;

5. On October 2, 2012, the Licensee filed a request to vacate the default and reinstate the hearing;

6. ALJ Kim determined that the Licensee's request was untimely. On November 21, 2012, ALJ Kim issued his Initial Order RE: Motion to Vacate Default and Reinstatement Hearing, which denied the Licensee's request to vacate the default;

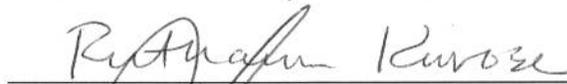
7. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises; NOW, THEREFORE, IT IS HEREBY ORDERED that the default order for case 23,922 is adopted.

IT IS HEREBY FURTHER ORDERED that the Complaint filed in case 23,922 is sustained and that the liquor license privileges granted to Nicholas D. Squires d/b/a The Riff at 215 W Main Avenue in Spokane, Washington, License 403063, are hereby suspended for a term of seven (7) days. Suspension will take place from 6:30 p.m. on Thursday, February 21, 2013 until 6:30 p.m. on Thursday, February 28, 2013. Failure to comply with the terms of this order will result in further disciplinary action.

DATED at Olympia, Washington this 3rd day of JANUARY, 2013.

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

January 9, 2013

Nicholas Squires, Licensee
d/b/a The Riff
215 W Main Ave
Spokane, WA 99201-0111

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: Nicholas Squires
TRADE NAME: The Riff
LOCATION: 215 W Main Ave, Spokane, WA 99201
LICENSE NO. 403063-4R
ADMINISTRATIVE VIOLATION NOTICE NO: 401323A
LCB HEARING NO. 23,922
OAH NO. 2012-LCB-0020
UBI: 602 806 927 001 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,

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

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Spokane Enforcement and Education Division, WSLCB
Teresa Young, WSLCB

1 **WASHINGTON STATE LIQUOR CONTROL BOARD**

2 IN THE MATTER OF:

LCB NO. 23,922
OAH NO. 2012-LCB-0020

3 NICHOLAS SQUIRES
4 d/b/a THE RIFF
5 215 W MAIN AVE
6 SPOKANE, WA 99201-0111

DECLARATION OF SERVICE BY
MAIL

7 LICENSEE

8 LICENSE NO. 403063-4R
9 AVN NO. 401323A

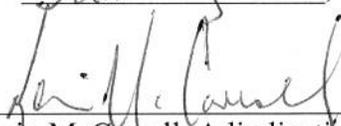
10 I certify that I caused a copy of the FINAL ORDER OF THE BOARD in the above-
11 referenced matter to be served on all parties or their counsel of record by US Mail Postage
12 Prepaid via Consolidated Mail Service for applicants and licensees, by campus mail for state
13 offices, on the date below to:

14
15 NICHOLAS SQUIRES
16 d/b/a THE RIFF
17 215 W MAIN AVE
18 SPOKANE, WA 99201-0111

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

19 NICHOLAS SQUIRES
20 d/b/a THE RIFF
21 1815 E 9th AVE
22 SPOKANE, WA 99202-3423

23 DATED this 9th day of January, 2013, at Olympia, Washington.

24 
25 _____
26 Kevin McCarroll, Adjudicative Proceedings Coordinator

DECLARATION OF SERVICE BY
MAIL

1

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

RECEIVED

SEP 26 2012

Liquor Control Board
Board Administration

MAILED

SEP 24 2012

Office of Administrative Hearings
Spokane

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

In The Matter Of:

NICHOLAS D. SQUIRES
dba THE RIFF,

Licensee/Respondent.

OAH Docket No. 2012-LCB-0020
Agency No. 23,922

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

The above-captioned matter was scheduled for a status conference by telephone on September 24, 2012, at 8:00 a.m. pursuant to due and proper notice to all interested parties.

The Licensee/Respondent, Nicholas D. Squires dba The Riff, did not appear for the status conference or request a continuance. The Liquor Control Board appeared by and through its representative, Marisa Broggel, Assistant Attorney General.

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

NOW, THEREFORE, IT IS ORDERED that the Licensee/Respondent, Nicholas D. Squires dba The Riff, is in DEFAULT pursuant to RCW 34.05.440 and the appeal is hereby dismissed. The hearing scheduled for October 02, 2012 is stricken.

Dated this 24th day of September, 2012 at Spokane, Washington.



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

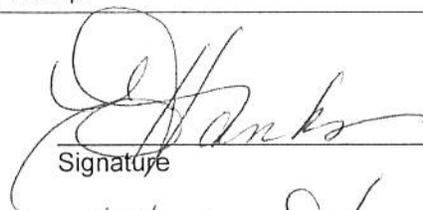
CERTIFICATION OF SERVICE IS ATTACHED

Certificate of Service

I certify that true copies of this document were served from Spokane, Washington upon the following as indicated:

Address: Nicholas D. Squires dba The Riff 215 W. Main Ave. Spokane, WA 99201-0111	<input checked="" type="checkbox"/> First Class US Mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid Certified mail, return receipt
Address: Marisa E. Broggel, AAG Office of the Attorney General, GCE Division P.O. Box 40100 Olympia, WA 98504-0100	<input checked="" type="checkbox"/> First Class US Mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid Certified mail, return receipt
Address: Kevin McCarroll Adjudicative Proceedings Coordinator WA State Liquor Control Board P.O. Box 43076 Olympia, WA 98504	<input checked="" type="checkbox"/> First Class US Mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid Certified mail, return receipt

Date this 24th day of Sept, 2012.



Signature

Elaine Hanks

Print Name
Office of Administrative Hearings

RECEIVED

DEC 20 2012

Liquor Control Board
Board Administration

MAILED

NOV 21 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:

NICHOLAS D. SQUIRES
dba THE RIFF,

Licensee/Respondent.

OAH Docket No.: 2012-LCB-0020

Agency No.: 23,922

INITIAL ORDER

**RE: MOTION TO VACATE DEFAULT
AND REINSTATE HEARING**

RECITALS

On November 20, 2012, a telephonic motion hearing in the above-entitled matter was conducted by Mark H. Kim, Administrative Law Judge, with the Washington State Office of Administrative Hearings, at Spokane, Washington. The Licensee/Respondent, Nicholas D. Squires dba The Riff, appeared and represented himself. The Agency, Washington State Liquor Control Board, appeared by and through its representative, Marisa Broggel, Assistant Attorney General. The parties argued their respective positions.

AFTER REVIEW OF THE CASE FILE, PLEADINGS, AND HEARING ARGUMENT FROM THE PARTIES, THE UNDERSIGNED MAKES THE FOLLOWING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INITIAL ORDER:

FINDINGS OF FACT

1. Nicholas D. Squires dba The Riff is the Licensee in this matter.
2. The Licensee holds a spirits, beer, and wine license issued by the Liquor Control Board (hereinafter referred to as "Board"). His establishment is located at 215 West Main, Spokane, Washington 99201.
3. On November 19, 2011, an enforcement officer with the Board's Enforcement & Education Division issued an Administrative Violation Notice (AVN) to the Licensee alleging that the Licensee sold or served liquor to an apparently intoxicated person.

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4. On December 02, 2011, the Licensee filed his request for hearing. In his request, he stated his mailing address as the same as the physical address of his establishment.
5. On April 04, 2012, the Board issued its Complaint No. 23,922 alleging the same allegation as provided in the AVN.
6. On April 13, 2012, the Attorney General's office filed with the Office of Administrative Hearings (OAH) its request to assign an administrative law judge to schedule and conduct a hearing in this matter.
7. On April 25, 2012, OAH issued a Notice of Conference to the Licensee and the Board scheduling a telephonic prehearing conference for June 12, 2012. This Notice of Conference was mailed to the Licensee's address at 215 West Main, Spokane, Washington 99201.
8. On June 12, 2012, the Licensee and the Assistant Attorney General, Marisa Broggel, appeared for the conference conducted by the undersigned.
9. On June 13, 2012, the undersigned issued a Notice of Hearing and Scheduling Order to the parties scheduling the hearing for October 02, 2012. This Notice of Hearing and Scheduling Order was mailed to the Licensee to his address at 215 West Main, Spokane, Washington 99201.
10. On September 07, 2012, the Board, through Ms. Broggel, requested OAH to schedule a status conference to address whether a witness may testify telephonically at the hearing.
11. On September 12, 2012, OAH issued a Notice of Telephonic Status Conference to the Licensee setting the status conference for September 24, 2012, at 8:00 a.m. Pacific Time. This Notice of Telephonic Status Conference was mailed to the Licensee to his address at 215 West Main, Spokane, Washington 99201.
12. On September 20, 2012, the Board, through Ms. Broggel, filed its Motion to Continue Hearing.
13. On September 24, 2012, the undersigned conducted a status conference. Ms. Broggel appeared for the Board. The Licensee did not appear for the conference. The Board moved for an order of default.
14. On September 24, 2012, the undersigned issued an Initial Order of Default Dismissing Licensee's Appeal for Failure to Appear. This Order was mailed on September 24, 2012, to the Licensee to his 215 West Main, Spokane, Washington 99201 address. The Order also provided the Licensee with the following appeal rights:

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

15. On October 02, 2012, the Licensee filed his request to vacate the default and reinstate his hearing.

16. The Licensee asserts that he did not receive some of the mailings from OAH. He asserts that he did not receive any mailings from OAH after the prehearing conference conducted on June 12, 2012. Specifically, he asserts that he did not receive the Notice of Telephonic Status Conference scheduled for September 24, 2012. The Licensee is unsure why he did not receive some of the mailings. The Licensee did receive the Order of Default.

17. Seven days after the mailing of the Initial Order of Default Dismissing Licensee's Appeal for Failure to Appear was October 01, 2012.

18. None of the mailings from OAH to the Licensee were returned for lack of delivery.

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)*.

3. Here, the Licensee did not appear for the status conference scheduled for September 24, 2012. Consequently, the undersigned issued an order of default.

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4. The party against whom a default order was issued may file a written motion to vacate the default order. *RCW 34.05.440(3)*.

5. Decision on a motion to vacate a default judgment is discretionary. *Hwang v. McMahon*, 103 Wn. App. 945, 949, 15 P. 3d 172 (2000), review denied, 144 Wn. 2d 1011 (2001). Further, there is no Agency regulation providing specific requirements for vacation of a default judgment.

6. RCW 34.05.440(3) provides in pertinent part:

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....

(emphasis added).

7. 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.

(emphasis added).

8. 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).

9. In the present matter, the Initial Order of Default Dismissing Licensee's Appeal for Failure to Appear was issued on September 24, 2012, to the Licensee's valid address of record. This is the date of service of said Order pursuant to WAC 10-08-110(2). Not counting the date of service, seven days after the date of service was October 01, 2012, which was not a Saturday, Sunday, or a holiday. Therefore, the Licensee's deadline to file his request to vacate was October 01, 2012. The Licensee filed his request to vacate on October 02, 2012, one day past his deadline. Therefore, his request is untimely. Accordingly, his request to vacate the order or default should be denied.

10. Even if the Licensee's request to vacate the order of default was timely filed, his request would be denied. He has not shown a legally sufficient basis to vacate the default. There are no requirements that actual notice of a proceeding be made to a party. Notice of a proceeding is valid and served upon depositing in the United States mail. Here, OAH properly served the Licensee with the Notice of Telephonic Status Conference on September 12, 2012, when OAH properly stamped, addressed, and deposited the Notice in the United States mail on said date.

ORDER

NOW THEREFORE, IT IS ORDERED:

The Licensee's request to vacate the Initial Order of Default Dismissing Licensee's Appeal for Failure to Appear, issued on September 24, 2012, is hereby denied.

DATED this 21st day of November, 2012, at Spokane, Washington.



Mark H. Kim
Administrative Law Judge

NOTICE OF APPEAL RIGHTS - PLEASE READ CAREFULLY

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.

Final Order and Additional Appeal Rights: 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 days of the service of a final order, any party may file a petition for reconsideration with the board, stating the specific grounds upon which relief is requested. RCW 34.05.470 and WAC 10-08-215.

The final decision of the board is appealable to the Superior Court under the provisions of RCW 34.05.510 through 34.05.598 (Washington Administrative Procedure Act).
[Appeal Info for specific type of case]

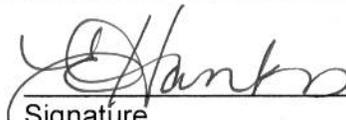
CERTIFICATION OF SERVICE IS ATTACHED

Certificate of Service

I certify that true copies of this document were served from Spokane, Washington, upon the following as indicated:

Address: Nicholas D. Squires dba The Riff 215 W. Main Ave. Spokane, WA 99201-0111	<input checked="" type="checkbox"/> First Class US Mail, postage prepaid
Address: Nicholas D. Squires dba The Riff 1815 E. 9th Ave. Spokane, WA 99202	<input checked="" type="checkbox"/> First Class US Mail, postage prepaid
Address: Marisa E. Broggel, AAG Office of the Attorney General P.O. Box 40100 Olympia, WA 98504-0100	<input checked="" type="checkbox"/> First Class US Mail, postage prepaid
Address: Kevin McCarroll Adjudicative Proceedings Coordinator WA State Liquor Control Board P.O. Box 43076 Olympia, WA 98504	<input checked="" type="checkbox"/> First Class US Mail, postage prepaid

Date this 21st day of November, 2012.



Signature
Elaine Hanks

Print Name
Office of Administrative Hearings