BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: JIM AND VAL, INC. d/b/a BLUE MOON LOUNGE 1331 BROADWAY EVERETT, WA 98201-1717 LICENSEE LICENSE NO. 354160 AVN NO. 3E2093A	LCB NO. 24,093 OAH NO. 2012-LCB-0046 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 26, 2012, alleging that on or about February 15, 2012, the above-named Licensee, or an employee(s) thereof, supplied liquor to a person apparently under the influence of liquor, and/or permitted an apparently intoxicated person(s) to possess and/or consume liquor on the licensed premises, contrary to RCW 66.44.200(1) and WAC 314-11-035 or WAC 314-16-150;
2. The Licensee made a timely request for a hearing;
3. An administrative hearing was held on April 22, 2013 before Administrative Law Judge Lisa N.W. Dublin with the Office of Administrative Hearings;
4. At the hearing, the Education and Enforcement Division of the Board was represented by Assistant Attorney General Kim O'Neal. The Licensee Jim and Val, Inc. d./b/a Blue Moon Lounge was represented by James H. Johanson, Esq;

5. On June 21, 2013 Administrative Law Judge Lisa N.W. Dublin entered her Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the Complaint;
6. No petitions for review were filed by the parties;
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 Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order are, AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board;

IT IS HEREBY FURTHER ORDERED that the liquor license privileges granted to Jim and Val, Inc. d/b/a Blue Moon Lounge, License No. 354160, are suspended for a term of seven (7) days. The suspension will take place from 10:00 a.m. on Thursday, August 22, 2013 until 10:00 a.m. on Thursday, August 29, 2013. Failure to comply with the terms of this order will result in further disciplinary action.

DATED at Olympia, Washington this 16 day of July 2013.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

Ruthann Kurose

Reconsideration. Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of this Order to file a petition for reconsideration stating the specific grounds on which relief is requested. A petition for reconsideration, together with any argument in support thereof, should be

filed by mailing or delivering it directly to the Washington State Liquor Control Board, Attn: Kevin McCarroll, 3000 Pacific Avenue Southeast, PO Box 43076, Olympia, WA 98504-3076, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board's office. RCW 34.05.010(6). A copy shall also be sent to Mary M. Tennyson, Senior Assistant Attorney General, 1125 Washington St. SE, P.O. Box 40110, Olympia, WA 98504-0110. A timely petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on the petition. An order denying reconsideration is not subject to judicial review. RCW 34.05.470(5). The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Stay of Effectiveness. The filing of a petition for reconsideration does not stay the effectiveness of this Order. The Board has determined not to consider a petition to stay the effectiveness of this Order. Any such request should be made in connection with a petition for judicial review under chapter 34.05 RCW and RCW 34.05.550.

Judicial Review. Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

Washington State
Liquor Control Board

July 17, 2013

James Johanson,
Attorney for Licensee
7009 212th St SW Ste 203
Edmonds, WA 98026-7742

Jim and Val, Inc.
d/b/a Blue Moon Lounge
1331 Broadway
Everett, WA 98201-1717

Kim O'Neal, 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: Jim and Val, Inc.
TRADE NAME: Blue Moon Lounge
LOCATION: 1331 Broadway, Everett, WA 98201-1717
LICENSE NO. 354160-3F
LCB NO. 24,093
OAH NO. 2012-LCB-0046
UBI: 602-880-973-001-0001

Dear Parties:

Please find the enclosed Final Order of the Board and Declaration of Service by Mail 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: Mt Vernon, Enforcement and Education Division, WSLCB
Jamie Marshall, Enforcement and Education Division, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: JIM AND VAL, INC. d/b/a BLUE MOON LOUNGE 1331 BROADWAY EVERETT, WA 98201-1717 LICENSEE LICENSE NO. 354160-3F AVN NO. 3E2093A	LCB NO. 24,093 OAH NO. 2012-LCB-0046 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 applicants and licensees, by campus mail for state offices, on the date below to:

JAMES JOHANSON, ATTORNEY FOR LICENSEE 7009 212TH ST SW STE 203 EDMONDS, WA 98026-7742	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION KIM O'NEAL, ASSISTANT ATTORNEY GENERAL
JIM AND VAL, INC. d/b/a BLUE MOON LOUNGE 1331 BROADWAY EVERETT, WA 98201-1717	

DATED this 17th day of July, 2013, at Olympia, Washington.

Kevin McCarroll, Adjudicative Proceedings Coordinator

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

RECEIVED
JUN 25 2013
Liquor Control Board
Board Administration

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

In The Matter Of: **JIM & VAL, INC. dba BLUE MOON LOUNGE,** **LICENSE NO. 354160** **AVN NO.: 3E2093A** **Appellant.**	**OAH Docket No. 2012-LCB-0046** **LCB No. 24,093** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INITIAL ORDER**

I. ISSUES PRESENTED

1.1 On or around February 15, 2012, did the Appellant and/or it employee(s) serve alcohol to an apparently intoxicated person and/or permit an apparently intoxicated person to possess and/or consume liquor on the licensed premises, in violation of RCW 66.44.200?

1.2 If so, what is the appropriate penalty?

II. ORDER SUMMARY

1.1 On or around February 15, 2012, the Appellant and/or its employees served alcohol to an apparently intoxicated person, and/or permitted an apparently intoxicated person to possess and/or consume liquor, on the licensed premises, in violation of RCW 66.44.200.

1.2 The appropriate penalty is a seven-day suspension.

III. HEARING

3.1 **Hearing Date:** April 22, 2013

3.2 **Administrative Law Judge:** Lisa N. W. Dublin

3.3 **Appellant:** Jim and Val, Inc. dba Blue Moon Lounge

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

3.3.1 **Representative:** James H. Johanson, Esq.

3.3.2 **Witnesses:**

3.3.2.1 James S. Baker, owner

3.3.2.2 Valerie Baker, owner

3.3.2.3 Angela Bauer, employee

3.3.2.4 Anthony Diaz, employee

3.3.2.5 Cathy Cooper, customer

3.4 **Agency:** Liquor Control Board ("Board")

3.4.1 **Representative:** Kim O'Neal, Assistant Attorney General

3.4.2 **Witnesses:**

3.4.2.1 Officer Jason Sampaga, Everett Police Department

3.4.2.2 Officer Timothy O'Hara, Everett Police Department

3.4.2.3 Michael Petras, Liquor Enforcement Officer

3.5 **Exhibits:** Board Exhibits 2 ,3, 5, and 6, as well as Appellant's Exhibit A, were admitted into the record.

IV. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

4.1 On or around April 3, 2012, Liquor Enforcement Officer Michael Petras served Administrative Violation Notice (AVN) No. 3E2093A on Val Baker, Owner of Appellant.

4.2 On or about April 3, 2012, Ms. Baker requested an administrative hearing.

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Blue Moon Lounge

4.3 Blue Moon Lounge (Appellant) is a restaurant/lounge located in Everett, Washington that is licensed with the State of Washington to serve spirits, beer and wine. Mr. and Ms. Baker have owned the Appellant since 2008.

4.4 In approximately August 2010, the Appellant was cited for over-service of alcoholic beverages, in violation of State law. The Appellant entered into a settlement with the Liquor Control Board in lieu of appealing the violation and pursuing a hearing with the Office of Administrative Hearings (OAH). Thereafter, Mr. Baker spoke with employees about the importance of noticing the signs of intoxication, and declining service to those who appeared to be intoxicated.

Robert Reef

4.5 On the night of February 14, 2012, Mr. Reef, an elderly man with an artificial leg, entered the Blue Moon Lounge and sat at the bar. Mr. Reef ordered a glass of white zinfandel wine. Later that night, at approximately 11:30 p.m., Ms. Bauer arrived at the Blue Moon Lounge along with her friend Cathy Cooper. Ms. Bauer is the daughter of the Appellant's owners and the girlfriend of the bartender, Mr. Diaz. Ms. Cooper recognized Mr. Reef as her friend's father, and sat next to him at the bar. Mr. Reef then ordered for himself another glass of white zinfandel wine, and ordered Ms. Cooper a well drink: whisky & water. When Mr. Diaz accidentally knocked over Mr. Reef's wine glass that was partially full, Mr. Diaz replaced it with another full glass of wine.

4.6 Before closing time at 2:00 a.m. on February 15, 2012, Mr. Reef and Ms. Cooper got up to leave. As they were leaving, Mr. Reef tripped and fell over. Mr. Diaz and Ms. Bauer went over to Mr. Reef to see if he was okay, and observed the edge of the rug on the floor bent up. As Mr. Diaz and Ms. Bauer were assisting Mr. Reef, Ms. Cooper became involved in a verbal and physical altercation with another patron, Erika Sweeten. Ms. Sweeten called 911, alleging that a drunk man and woman were getting into a green truck outside the Blue Moon Lounge, and she was concerned they were too drunk to drive.

4.7 At approximately 2:08 a.m. on February 15, 2012, Officer O'Hara with the Everett Police Department responded to Ms. Sweeten's 911 call. At this point, the testimony of the parties conflicted on material points, so I must make a credibility finding. Officer O'Hara testified that he pulled up and parked behind the green truck. He observed Mr. Reef in the driver's seat of the truck, Ms. Cooper in the passenger seat, and the interior lights on. When he made contact with Ms. Cooper, Ms. Cooper held up the truck keys and said Mr. Reef was too drunk to drive. Officer O'Hara then spoke with Mr. Reef, whose speech was so slurred that it was nearly indiscernible. Mr. Reef's eyes were red and glassy, his

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face was flushed, and he was persistent that he was fine and could drive. Ms. Cooper admitted she drank too much alcohol and did not feel safe to drive. Officer O'Hara could smell the odor of alcohol on her breath, and observed that her eyes were glassy. Officer O'Hara then went in the Blue Moon Lounge and spoke with Mr. Diaz who stated Mr. Reef arrived intoxicated at approximately 11:00 p.m. Mr. Diaz at first stated he did not serve Mr. Reef any alcohol, but later changed his story to state that he served Mr. Reef four alcoholic beverages, and that Mr. Reef drank three of them before leaving at closing time. Mr. Diaz also told Officer O'Hara that Mr. Reef was intoxicated when he arrived. Officer O'Hara also spoke with Ms. Bauer who at first stated she did not know Mr. Reef, but then later admitted Mr. Reef was a regular and was intoxicated when he arrived at the Blue Moon Lounge that night. (Ex. 4)

4.8 The Appellant's witnesses, on the other hand, denied Officer O'Hara's allegations. Ms. Cooper denied holding the keys up to Mr. O'Hara and stating Mr. Reef was too drunk to drive. She also denied admitting that she herself drank too much. Both Ms. Bauer and Mr. Diaz denied telling Mr. O'Hara that Mr. Reef was a regular who arrived intoxicated. Mr. Diaz testified that Mr. Reef did not appear intoxicated at any time while at the Blue Moon Lounge.

4.9 Having carefully considered and weighed all of the evidence, including witness demeanor (as determined by voice, attitude, straightforwardness, unreasonable hesitancy in responses), party motivations, the reasonableness and consistency of testimony throughout the hearing and as related to prior document submissions in connection with the benefits claim and claim response, and the totality of the circumstances presented, I resolve the conflicting evidence in favor of the Board. Ms. Cooper had three well drinks while at the Blue Moon Lounge, and is a friend of Mr. Reef and the Appellant's owners. In addition, according to Ms. Bauer's written statement and testimony, Ms. Cooper and others were trying to get Mr. Reef a ride home after he fell. (Ex. 5) Similarly, Ms. Bauer and Mr. Diaz have personal ties to the Blue Moon Lounge. Officer O'Hara, on the other hand, has no personal connection to the Blue Moon Lounge or Mr. Reef. In addition, he has spent years performing DUI patrols. His credible testimony is supported by the testimony of Officer Sampaga, who arrived on the scene and observed Officer O'Hara talking to Mr. Reef and Ms. Cooper in the truck. Officer Sampaga spoke with Ms. Sweeten, who was primarily concerned with Mr. Reef trying to drive away in his drunken condition. Officer Sampaga observed a taxicab arrive, and saw Mr. Reef using the truck as a crutch to help him walk to the cab. Officer Sampaga also had to help Mr. Reef to the taxi to keep him from falling due to his drunken state.

4.10 The Appellant speculated that Mr. Reef's artificial leg may have caused him to trip and fall on the carpet, not intoxication. However, this speculation does not make the Appellant's apparent drunkenness less likely; rather, it tends to

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show that had he not been drunk, he would have had better control of his mobility and would not have tripped. Neither Officer O'Hara nor Officer Sampaga knew at the time that Mr. Reef had an artificial leg; nor did they observe Mr. Reef limping or have any reason to suspect Mr. Reef was otherwise disabled.

4.11 Officer O'Hara completed a police report, which he forwarded to the Liquor Control Board. Officer Petras reviewed this report, and conducted an investigation. Officer Petras spoke with Ms. Sweeten, Ms. Bauer, Ms. Cooper and Mr. Diaz. Officer Petras tried to speak with Mr. Reef, but did not have his telephone number. Officer Petras concluded that, on or around February 15, 2012, Mr. Diaz sold alcohol to Mr. Reef while he was intoxicated. (*See* Ex. 2)

4.12 On April 3, 2012, Officer Petras served Ms. Baker with an Administrative Violation Notice (AVN) for selling or serving alcohol to an apparently intoxicated person, in violation of RCW 66.44.200.

V. CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I make the following Conclusions of Law:

Jurisdiction

5.1 I have jurisdiction to hear and decide this matter under WAC 314-29-010(1)(c); chapter 34.05 RCW, and chapter 10-08 WAC.

The Appellant Overserved Mr. Reef in Violation of Washington State Law.

5.2 No person shall sell any liquor to any person *apparently* under the influence of liquor. RCW 66.44.200. Nor shall any licensee give or otherwise supply liquor to any person *apparently* under the influence of liquor. WAC 314-16-150. (Emphasis added) "Apparently" is defined as "in an apparent manner: *seemingly*, evidently," "readily perceptible to the senses," and capable of being readily perceived by the sensibilities or understanding as certainly existent or present." *Barrett v. Lucky Seven Saloon, Inc.,* 152 Wn.2d 259, 268, 96 P.3d 386 (2004).

5.3 "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. WAC 314-07-010.

5.4 The weight of credible evidence establishes that Mr. Reef was apparently intoxicated at the time Mr. Diaz served him alcoholic beverages at the Blue Moon Lounge on or around February 15, 2012. Mr. Reef was so intoxicated that he

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tripped and fell on his way out of the establishment, could not talk coherently to Everett Police Officer O'Hara, and could not walk to the taxicab without stumbling and holding on to his truck and Officer Sampaga. Both Mr. Diaz and Ms. Bauer told Officer O'Hara that Mr. Reef arrived at the Blue Moon Lounge intoxicated. Given Mr. Reef's significant lack of bodily control when he left the Blue Moon Lounge, it is unclear how Mr. Reef could not have appeared drunk to Mr. Diaz at the time he served him alcoholic beverages. Because the Appellant's employee served Mr. Reef alcohol when he was apparently intoxicated, the Appellant violated RCW 66.44.200.

Penalty

5.5 Overserving alcohol in violation of RCW 66.44.200 is a Group 1 violation against public safety. WAC 314-29-020. Group 1 violations are considered the most serious because they present a direct threat to public safety. The penalty for a second violation of RCW 66.44.200 within a two-year period is a seven-day suspension *Id.* Because the Appellant violated RCW 66.44.200 in August 2010, less than two years from the violation presently at issue, the Appellant's liquor license should be suspended for seven days.

INITIAL ORDER

IT IS HERBY ORDERED THAT:

The Appellant violated RCW 66.44.200 in serving Mr. Reef alcohol on February 14-15, 2012. Because this is a second violation for the Appellant within a two-year period, the Appellant's liquor license is hereby suspended for seven days under WAC 314-29-020.

Signed and Issued at Tacoma, Washington, on June 21, 2013.

Lisa N. W. Dublin
Administrative Law Judge
Office of Administrative Hearings

Office of Administrative Hearings
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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 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; 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 the 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 granted. RCW 34.05.470; 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).

CERTIFICATION OF MAILING IS ATTACHED

Office of Administrative Hearings
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Certificate of Service – OAH Docket No. 2012-LCB-0046

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

Jim & Val, Inc. **dba Blue Moon Lounge** **1331 Broadway Avenue** **Everett, WA 98201-1717**	☒First Class US mail, postage prepaid ☐Certified mail, return receipt ☐Campus Mail ☐Facsimile ☐1st Class, postage prepaid, Certified mail, return receipt
Kim O'Neal, Senior Counsel **Office of the Attorney General** **GCE Division** **P.O. Box 40100** **Olympia, WA 98504-0100**	☒First Class US mail, postage prepaid ☐Certified mail, return receipt ☐Campus Mail ☐Facsimile ☐1st Class, postage prepaid, Certified mail, return receipt
Jim Johanson **Law Office of Jim Johanson PLLC** **7009 - 212th Street SW Ste 203** **Edmonds, WA 98026-7742**	☒First Class US mail, postage prepaid ☐Certified mail, return receipt ☐Campus Mail ☐Facsimile ☐1st Class, postage prepaid, Certified mail, return receipt
Kevin McCarroll **Adjudicative Proceedings Coordinator** **Washington State Liquor Control Board** **P.O. Box 43076** **Olympia, WA 98504-3076**	☒First Class US mail, postage prepaid ☐Certified mail, return receipt ☐Campus Mail ☐Facsimile ☐1st Class, postage prepaid, Certified mail, return receipt

Date: June 21, 2013

Cyndi Michelena
Office of Administrative Hearings

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