BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: RED TOP TAVERN, LLC d/b/a RED TOP TAVERN 1030 DARRINGTON ST DARRINGTON, WA 98241 LICENSEE LICENSE NO. 351300 AVN NO. 3E3042A	LCB NO. 24,728 OAH NO. 2013-LCB-0059 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 July 9, 2013, alleging that on January 18, 2013 the above-named Licensee, or employee(s) thereof, served and/or sold liquor to an apparently intoxicated person on the licensed premises, and/or allowed an apparently intoxicated person(s) to consume liquor on the licensed premises, contrary to RCW 66.44.200 and WAC 314-16-150.

2. An evidentiary hearing was scheduled for December 12, 2013 at the licensee's timely request for a formal administrative hearing.

3. A representative for the Licensee did not appear for the evidentiary hearing nor timely request a continuance. Assistant Attorney General Isaac Williamson represented the Enforcement Division of the Board.

4. On December 13, 2013, Administrative Law Judge Jane Cantor Shefler entered her Initial Order of Default Dismissing Respondent's Appeal for Failure to Appear ordering that the appellant was in default and dismissing the appeal.

5. No request to vacate the default was filed.

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

6. No petition for review was filed.

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 24,728 is adopted.

IT IS HEREBY FURTHER ORDERED that the Complaint filed in case 24,728 is sustained and that the liquor license privileges granted to Red Top Tavern LLC d/b/a Red Top Tavern at 1030 Darrington Street in Darrington, Washington, License 351300, 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 Thursday, March 20, 2014 until 10:00 a.m. on Tuesday, March 25, 2014. 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
Financial Division
PO Box 43085
Olympia, WA 98504-3085

DATED at Olympia, Washington this 28TH day of JANUARY, 2014.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

Ruthann Kurose

Chair

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 29, 2014

James Metz
Red Top Tavern LLC
d/b/a Red Top Tavern
PO Box 2556
Stanwood, WA 98292-2556

Jennifer Elias, 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: Red Top Tavern LLC
TRADE NAME: Red Top Tavern
LOCATION: 1030 Darrington St, Darrington, WA 98241
LICENSE NO. 351300
LCB HEARING NO. 24,728
OAH NO. 2013-LCB-0059
AVN NO. 3E3042A
UBI: 602 574 267 001 0001

Dear Parties:

Please find the enclosed Final Order of the Board and Declaration of Service by Mail in the above-referenced matter.

The applicable monetary penalty is due by Friday, February 28, 2014. If payment is not received timely, then suspension will take place during the dates specified in the order. 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, WSLCB Enforcement

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: RED TOP TAVERN LLC d/b/a RED TOP TAVERN 1030 DARRINGTON ST DARRINGTON, WA 98241 LICENSEE LICENSE NO. 351300 AVN NO. 3E3042A	LCB NO. 24,728 OAH NO. 2013-LCB-0059 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 METZ RED TOP TAVERN LLC d/b/a RED TOP TAVERN PO BOX 2556 STANWOOD, WA 98292-2556	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION ISAAC WILLIAMSON, ASSISTANT ATTORNEY GENERAL
JAMES METZ RED TOP TAVERN LLC d/b/a RED TOP TAVERN PO BOX 337 DARRINGTON, WA 98241-0337	RED TOP TAVERN LLC d/b/a RED TOP TAVERN 1030 DARRINGTON ST DARRINGTON, WA 98241

DATED this 29th day of January, 2014, 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
JAN 16 2014
Liquor Control Board
Board Administration

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

In the Matter of: **RED TOP TAVERN, LLC** **dba RED TOP TAVERN** **1030 DARRINGTON STREET** **DARRINGTON, WA 98241** **Respondent.** **LICENSE NO. 351300** **AVN NO. 3E3042A**	**OAH Docket No. 2013-LCB-0059** **LCB No. 24,728** **INITIAL ORDER OF DEFAULT DISMISSING RESPONDANT'S APPEAL FOR FAILURE TO APPEAR**

HEARING

The above-captioned matter was scheduled for a an evidentiary hearing on December 12, 2013 at the Office of the Attorney General, 3501 Colby Ave. – Suite 200, Everett, WA 98201, at 9:00 a.m. (PST), pursuant to due and proper notice to all interested parties.

The Liquor Control Board appeared and was represented by Isaac Williamson, Assistant Attorney General. Also present as a witness on behalf of the Liquor Control Board was Thomas Dalton, Snohomish County Sheriff.

A representative of the Respondent Red Top Tavern LLC did not appear for the hearing, and did not timely request a continuance.

MOTION

The evidentiary hearing was scheduled to convene at 9:00 a.m. When a representative of the Respondent did not appear at 9:00 a.m., the undersigned Administrative Law Judge ("ALJ") waited 27 minutes for a representative of the Respondent to appear, until 9:27 a.m., before convening.

The Liquor Control Board moved for an order of default dismissing the administrative appeal.

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

The ALJ reviewed the file and observed that the Notice of Hearing issued in this matter provided notice to the parties of the date, time and location of the hearing. The Notice of Hearing was mailed to the Respondent at its address of record on September 6, 2013. The Notice of Hearing was not returned to the Office of Administrative Hearings as undelivered.

CONCLUSIONS OF LAW

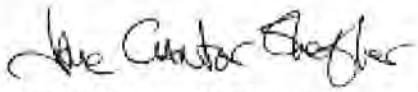
RCW 34.05.440(2) states: "If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, other than failing to timely request an adjudicative proceeding as set out in subsection (1) of this section, the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order."

In this case, the Respondent Red Top Tavern LLC failed to attend and participate in the December 12, 2013 hearing. Consequently, the Respondent in default and the administrative appeal should be dismissed.

ORDER

Now, therefore, it is ORDERED that the Respondent Red Top Tavern LLC is in DEFAULT pursuant to RCW 34.05.440 and the administrative appeal is hereby **DISMISSED**.

Signed and Issued at Tacoma, Washington, on the date of mailing.



Jane Cantor Shefler
Administrative Law Judge
Office of Administrative Hearings

NOTICE OF APPEAL RIGHTS – PLEASE READ CAREFULLY

Motion to Vacate Default: RCW 34.05.440(3) provides: "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 with the Administrative Law Judge who issued the Initial Order of Default 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."

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Tacoma, WA 98402
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By agency rule (WAC 10-08-110), service is complete upon mailing of this order. **Therefore, any motion to vacate a default order must be received by this OAH office within a total of seven (7) days after the date of the mailing of the default order.** Mail the Motion to Vacate Default to:

The Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402

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 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 (10) ten 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,
Adjudicative Proceedings Coordinator
3000 Pacific Avenue SE
P O Box 43076
Olympia, Washington 98504-3076

CERTIFICATION OF MAILING IS ATTACHED

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

Certificate of Service – OAH Docket No. 2013-LCB-0059

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

James Metz **Red Top Tavern LLC** **PO Box 2556** **Stanwood, WA 98292**	☒First Class US mail, postage prepaid ☐Certified mail, return receipt ☐Campus Mail ☐Facsimile ☐1st Class, postage prepaid, Certified mail, return receipt
Isaac Williamson **Assistant Attorney General** **Office of Attorney General** **Government Compliance & Enforcement Div.** **PO 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
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 December 13, 2013

Cyndi Michelena
Office of Administrative Hearings

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