

**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF:

BARKER EXPRESS/HICO MARKET, MO  
MARKET, AND MEWAEEL HABTE

LICENSEE

LIQUOR LICENSE NOS. 352789, 074290  
AVN NOS. 4T3095B, 4N3135A

LCB NOS. 24,753; 24,754;  
24,782; 24,797

OAH NOS. 2013-LCB-0070  
2013-LCB-0071  
2014-LCB-0007

FINAL ORDER OF THE BOARD

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

1. The Licensing Division of the Liquor Control Board issued a Statement of Intent to Revoke Liquor License for Barker Express/HICO Market License No. 352789 (LCB No. 24,754) dated May 29, 2013. The Licensing Division of the Liquor Control Board issued a Statement of Intent to Revoke Liquor License for Mo Market License No. 074290 (LCB No. 24,753) dated May 29, 2013.
2. The Enforcement and Education Division of the Liquor Control Board issued a complaint for AVN No. 4N3131A (LCB No. 24,797) dated February 19, 2014 alleging that between approximately August, 2009 and January, 2010, Mewael Habte d/b/a Barker Express/HICO Market and/or an employee of the licensee furnished liquor to a minor in violation of RCW 66.44.270 and/or WAC 314-11-020(1).
3. The Enforcement and Education Division of the Liquor Control Board issued a complaint for AVN No. 4T3095B (LCB No. 24,782) dated February 19, 2014 alleging that on

FINAL ORDER OF THE BOARD  
LCB NOS. 24,753; 24,754; 24,782; 24,797  
BARKER EXPRESS/HICO MARKET,  
MO MARKET, AND MEWAEEL HABTE  
LICENSE NOS. 352789, 074290

April 5, 2013, the above-named Licensee Mewael Habte d/b/a Barker Express/HICO Market refused to allow an inspection of the licensed premises and/or obstructed a law enforcement officer from conducting an inspection of the licensed premises in violation of RCW 66.28.090 and/or WAC 314-11-090.

4. The Licensee timely submitted requests for a hearing.

5. On April 6, 2015, a hearing was held before Administrative Law Judge Courtney Beebe with the Office of Administrative Hearings.

6. At the hearing, the Licensee was represented by Attorney Robert C. Cossey. Assistant Attorney General Kim O'Neal represented the Licensing and Enforcement Divisions of the Board.

7. On June 16, 2015, Administrative Law Judge Courtney Beebe issued an Initial Order, supporting the revocation of the liquor licenses held by the Licensee and both violations.

8. On July 10, 2015, a Petition for Review was received from the Licensee.

9. On July 16, 2015, a Motion for One-Week Extension Time to File Response to Petition for Review was filed by Assistant Attorney General Kim O'Neal for the Licensing and Enforcement Divisions.

10. On July 21, 2015, the Board issued an Order Granting Motion to Extend Time to File Petition for Review.

11. On July 27, 2015, a Response to Petition for Review was received from Assistant Attorney General Kim O'Neal for the Licensing and Enforcement Divisions

12. 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,

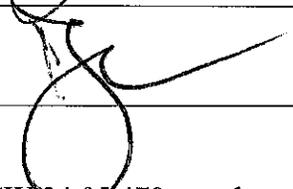
THEREFORE, IT IS HEREBY ORDERED that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order are, AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board;

IT IS HEREBY FURTHER ORDERED that liquor licenses, 352789 for BARKER EXPRESS/HICO MARKET, and 074290 MO MARKET, for MEWAEEL HABTE are REVOKED.

AND IT IS HEREBY FURTHER ORDERED that the Complaints filed in cases 24,797 and 24,782 for License 352789 are sustained. In consideration of the fact that the Licensee has sold the business and is no longer operating the licensed premises, no penalty will be scheduled or collected in connection with this case.

DATED at Olympia, Washington this 4<sup>th</sup> day of August, 2015.

WASHINGTON STATE LIQUOR CONTROL BOARD

  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
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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 and Cannabis Board

August 5, 2015

Robert Cossey  
Attorney for Licensee  
Robert Cossey & Associates PS  
902 N Monroe  
Spokane, WA 99201-2112

Mewael Habte  
Barker Express/Hico Market/ Mo Market  
305 S Thor Street  
Spokane, WA, 99202-5072

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: Mewael Habte  
TRADE NAMES: Barker Express/Hico Market, Mo Market  
LICENSE NOS. 352789, 074290  
LCB HEARING NOS. 24,753; 24,754; 24,782; 24,797  
OAH NOS. 2013-LCB-0070; 0071; 2014-LCB-0007  
ADMINISTRATIVE VIOLATION NOTICE NOS. 4T3095B, 3N3135A  
UBI: 602-721-668

Dear Parties:

Please find the enclosed Final Order of the Board and Declaration of Service by Mail in the above-referenced matter. **License revocation will be effective at 5:00 p.m. on Tuesday, September 8, 2015.**

If you have any questions, please contact me at (360) 664-1602.

Sincerely,

Kevin McCarroll  
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Justin Nordhorn, Chief, Enforcement and Education, WSLCB  
Spokane Enforcement and Education Division, WSLCB  
Kendra Boyd, Enforcement and Education Division, Headquarters, WSLCB  
Becky Smith, Licensing Director, WSLCB  
Sharon Hendricks, Licensing Policy and Compliance Manager, WSLCB  
Linda Thompson, Licensing Adjudications Coordinator, WSLCB

WASHINGTON STATE LIQUOR AND CANNABIS BOARD

IN THE MATTER OF:

BARKER EXPRESS/HICO MARKET,  
MO MARKET, AND MEWAEEL  
HABTE

LICENSEE

LIQUOR LICENSE NOS. 352789,  
074290  
AVN NOS. 4T3095B, 4N3135A

LCB NOS. 24,753; 24,754;  
24,782; 24,797

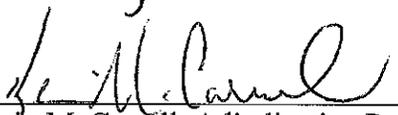
OAH NOS. 2013-LCB-0070  
2013-LCB-0071  
2014-LCB-0007

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 electronic mail for WSLCB offices, and Campus Mail via Consolidated Mail Services for state offices on the date below to:

ROBERT COSSEY ATTORNEY FOR LICENSEE ROBERT COSSEY & ASSOCIATES PS 902 N MONROE SPOKANE, WA 99201-2112	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION KIM O'NEAL, ASSISTANT ATTORNEY GENERAL
MEWAEEL HABTE d/b/a BARKER EXPRESS/HICO MARKET/ MO MARKET 305 S THOR STREET SPOKANE, WA, 99202-5072	

DATED this 5<sup>th</sup> day of August, 2015, at Olympia, Washington.

  
Kevin McCarrroll, Adjudicative Proceedings Coordinator

RECEIVED

JUN 30 2015

Liquor Control Board  
Board Administration

WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE LIQUOR CONTROL BOARD

In the matter of:

Barker Express/HICO Market, Mo Market,  
and Mewael Habte,

Licensees.

License No. 352789, 074290  
AVN #4T3095B; #4N3135A

Docket No. 2013-LCB-0070; 2013-LCB-0071; 2014-LCB-0007

**INITIAL ORDER**

Agency: Liquor Control Board  
Program: Liquor (LIQ)  
Agency Nos. 24,753; 24,754; 24,782;  
24,797

**1. ISSUES PRESENTED**

- 1.1 Whether liquor license #352789 held by Mewael Habte for the premises Barker Express/HICO Market should be revoked under RCW 66.24.010, RCW 66.08.150, WAC 314-07-065(7), WAC 314-07-045, WAC 314-07-015(1), and WAC 314-07-074-065(9) for the reasons set forth in Statement of Intent to Revoke 24,754.
- 1.2 Whether liquor license #074290 held by Mewael Habte for the premises Mo Market should be revoked under RCW 66.24.010, RCW 66.08.150, WAC 314-07-065(7), WAC 314-07-045, WAC 314-07-015(1), and WAC 314-07-074-065(9) for the reasons set forth in Statement of Intent to Revoke 24,753.
- 1.3 Whether licensee Mewael Habte refused to allow an inspection of the licensed premises Barker Express/HICO Market and/or obstructed law enforcement officers from conducting an inspection of the licensed premises in violation of RCW 66.28.090 or WAC 314-11-090 as set forth in Complaint 24,782 and AVN #4T3095B, and if so, whether the licensee is subject to a penalty of a five day (5) license suspension or a \$500.00 penalty in lieu of suspension.
- 1.4 Whether licensee Mewael Habte furnished liquor to a minor in violation of RCW 66.44.270 as set forth in Complaint 24,797 and AVN #4N3135A, and if so, whether the licensee is subject to a penalty of a five (5) day suspension or a \$500.00 penalty in lieu of suspension.

**2. ORDER SUMMARY**

- 2.1 Liquor license #352789 held by Mewael Habte for the premises Barker Express/HICO Market should be revoked under RCW 66.24.010, RCW 66.08.150, WAC 314-07-065(7), WAC 314-07-045, WAC 314-07-015(1), and WAC 314-07-074-065(9). The Board's action revoking licenses #352789 is AFFIRMED.

- 2.2 Liquor license #074290 held by Mewael Habte for the premises Mo Market should be revoked under RCW 66.24.010, RCW 66.08.150, WAC 314-07-065(7), WAC 314-07-045, WAC 314-07-015(1), and WAC 314-07-074-065(9). The Board's action revoking licenses #074290 is AFFIRMED.
- 2.3 Licensee Mewael Habte refused to allow an inspection of the licensed premises Barker Express/HICO Market and obstructed a law enforcement office from conducting an inspection of the licensed premises in violation of RCW 66.28.090 and WAC 314-11-090. The Licensee is subject to a penalty of a five (5) day suspension or \$500.00 penalty in lieu of suspension. The Board's AVN #4T3095B is AFFIRMED.
- 2.4 Licensee Mewael Habte furnished liquor to a minor in violation of RCW 66.44.270 as set forth in Complaint 24,797 and is subject to a penalty of a five (5) day suspension or a \$500.00 penalty in lieu of suspension. The Board's AVN #4N3135A is AFFIRMED.

### 3. HEARING

- 3.1 Hearing Date: April 6, 2015
- 3.2 Administrative Law Judge: Courtney Beebe
- 3.3 Licensee: Mewael Habte, Barker Express, Mo Market, HICO Market
- 3.4 Licensee Representative: Robert R. Cossey
- 3.5 Agency: Liquor Control Board
- 3.6 Agency Representative: Kim O'Neal, Assistant Attorney General
- 3.7 Exhibits: Department's Exhibits 1 through 13 were admitted.
- 3.8 Witnesses: Sharon Hendricks, Licensing & Regulation Division of Liquor Control Board; Detective Stephanie Barkley, Spokane Police Department; Lieutenant Rodney Mittman, Liquor Officer Tim Mahan; Mewael Habte, Licensee.

### 4. FINDINGS OF FACT

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

#### Jurisdiction

- 4.1 At all times relevant to this matter Mewael Habte held liquor license #352789 and was the principle owner of the licensed premises Barker Express / HICO Market ("Licensee") located at 817 S. Perry St., Spokane, WA 99202.

- 4.2 At all times relevant to this matter Mewael Habte held liquor license #074290 and was the principle owner of the licensed premises Mo Market ("Licensee") located at 305 S. Thor St., Spokane, WA 99202.
- 4.3 On January 15, 2013, the Spokane Police Department submitted a "Liquor Licenses Objection Request for Revocation" to the Liquor Control Board ("Board").
- 4.4 The Board issued a Statement of Intent to Revoke Liquor License 24,753 and Statement of Intent to Revoke Liquor License 24,754 on May 29, 2013, seeking to revoke licenses #352789 and #074290. (Exhibits 1 and 2.)
- 4.5 The Liquor Control Board issued Administrative Violation Notice #4T3095B on April 11, 2013 to Licensee Mewael Habte for licensed premises Barker Express / HICO Market. The Liquor Control Board issued Complaint 24,782 as per AVN #4T3095B on February 19, 2014, asserting that the Licensee refused to allow inspection of the licensed premises and/or obstructed a law enforcement officer from conducting an inspection of the licensed premises in violation of RCW 66.28.090 and/or WAC 314-11-090. (Exhibit 12.)
- 4.6 The Liquor Control Board issued Administrative Violation Notice #4N3135A on June 10, 2013 to Licensee Mewael Habte for licensed premises Barker Express / HICO Market. The Liquor Control Board issued Complaint 24,797 as per AVN #4N3135A on February 19, 2014, asserting that the Licensee furnished liquor to a minor, Amber Thulean in violation of RCW 66.44.270. (Exhibit 13.)
- 4.7 The Licensee submitted a Request for Hearing and Response to Statement of Intent to Revoke on September 24, 2013 through his legal representative.

#### Revocation of License

- 4.8 The Licensee has a history of violations at his licensed businesses. The Licensee's employee sold liquor to a minor from licensed premises Mo Market on June 3, 2012. Licensee was issued AVN #4T2155C. The Licensee complied with the AVN and penalty. (Exhibit 2, p.2.)
- 4.9 The Licensee's employee sold liquor to a minor on January 31, 2012 at licensed premises Barker Express / HICO Market. Licensee was issued AVN #4P2031B. The Licensee complied with the AVN and penalty (Exhibit 2, p.2)
- 4.10 The Licensee received two tobacco related citations on June 24, 2010 and July 14, 2010 for possession of Cigarettes with out Tax Stamps. The Licensee settled the gross misdemeanor with a bail forfeiture (Exhibit 3, p.1)
- 4.11 The Licensee was arrested and charged with second degree rape for the rape of two women, Amber Thulean and Kimberly Kloetsch, on March 26, 2012.

- 4.12 Licensee testified at the criminal trial and at the hearing in this matter that he provided liquor and laundromat privileges to Amber Thulean at the Barker Express / HICO Market location and that he and Ms. Thulean had a consensual sexual relationship that included performing sexual acts at the licensed premises.
- 4.13 Licensee testified at the criminal trial and at the hearing in this matter that he provided money and liquor to Kimberly Kloetsch, a woman over the age of 21 at all times relevant to this matter, at the Barker Express / HICO Market location and that he and Ms. Kloetsch had intercourse at the Barker Express / HICO Market location.
- 4.14 The Licensee plead guilty to Fourth Degree Assault with Sexual Motivation on December 4, 2012. As part of his guilty plea, the Licensee Mr. Habte stipulated that the facts and statements of probable cause listed in the police reports and affidavits are factual. (Exhibit 4, p7; Exhibit 6.)
- 4.15 The Licensee confirmed on the record in this matter that he plead guilty to Fourth Degree Assault with Sexual Motivation and stipulated that the facts and statements of probable cause listed in the police reports and affidavits are factual.

#### Sale of Alcohol to Minor

- 4.16 During the Licensee's criminal trial for second degree rape one of the victims, Amber Thulean, age 20 during the months of November and December 2009, testified that the Licensee gave her alcohol multiple times while on the Barker Express / HICO Market premises. Her testimony was corroborated by Licensee's employee John Proctor who observed the activity and refused to sell liquor to Ms. Thulean. (Exhibits 5 and 6).
- 4.17 During the hearing in this matter and during the criminal trial for second degree rape, the Licensee, Mr. Habte, admitted that he gave Amber Thulean liquor from his licensed premises Barker Express / HICO Market, when she was less than twenty-one years of age. (Exhibit 5, pp. 6-7.)

#### Obstruction of Investigation

- 4.18 On April 5, 2013, Lieutenant Rodney Mittman and Liquor Officer Tim Mahan responded to a complaint that Licensee was selling unstamped cigarettes at the Barker Express / HICO Market location. Officers requested access to the office of the premises, which is a usual request made in aid of investigation, and the Licensee refused to grant the officers access.
- 4.19 During the hearing in this matter, Licensee Mr. Habte admitted that he refused to grant the officers access to the office at the Barker Express / HICO Market location. As a result, the officers were unable to complete their investigation.

## 5. CONCLUSIONS OF LAW

Based on the facts above, I make the following conclusions:

### Jurisdiction

- 5.1 I have jurisdiction over the persons and subject matter of this case under Revised Code of Washington (RCW) 66.08.150, chapter 34.12 RCW, and under Washington Administrative Code (WAC) 314-42-051.

### Revocation of License

- 5.2 The facts are not in dispute. The Licensee has admitted all the conduct in that the Board asserts is grounds for the revocation of the two licenses in question. The issue to be determined, then, whether the conduct amounts to a violation of a rule or statute such that the two licenses in question must be revoked.
- 5.3 The Board may, in its discretion, subject to the provisions of RCW 66.08.150, suspend or cancel any license; and all rights of the licensee to keep or sell liquor thereunder must be suspended or terminated, as the case may be. RCW 66.24.010(3)(a).
- 5.4 A person or entity must meet certain qualifications to receive a liquor license, which are continuing qualifications in order to maintain the license. WAC 314-07-015.
- 5.5 The Board may deny an application or revoke a liquor license based upon an objection by a local authority. RCW 66.24.010(8); WAC 314-09-010; WAC 314-07-065(7).
- 5.6 In this case, the Board has received an objection from the City of Spokane, seeking revocation of the two licenses in question. The Board, then, may revoke the two licenses in question.
- 5.7 The Board may cancel a liquor license based upon a history of license violations and/ or criminal history, if the behavior demonstrates a pattern of disregard for laws or rules justifying the Board in revoking his liquor licenses. WAC 314-07-045.
- 5.8 Including the three prior violations, as well as the two violations discussed below, the Licensee has violated the laws and rules applicable to the sale of liquor and tobacco five times in four years. This behavior demonstrates a pattern of disregard of laws and rules and the Board is justified in revoking the two licenses at issue.
- 5.9 The Board has legal authority under WAC 314-07-065(9) to revoke a liquor license when it determines that permitting the licensee to continue to hold the liquor

license is not in the best interest of the welfare, health or safety of the people of the state.

- 5.10 The Administrative Law Judge agrees that the Licensee's conduct was knowing and intentional. The Licensee knew that Ms. Thulean was underage when he gave her alcohol in exchange for sex. The Licensee intentionally engaged in a practice of providing alcohol, money, and laundromat privileges to Ms. Thulean and Ms. Kloetsch in exchange for sexual intercourse.
- 5.11 The Licensee does not deny any of the allegations, except that he believes his conduct does not amount to rape. However, that is not the question before the Administrative Law Judge.
- 5.12 The Board has carried its burden and has shown that permitting the Licensee Mr. Habte to continue to enjoy the privilege of holding two liquor licenses given his proclivity to use the privilege in return for sexual favors and to further otherwise criminal conduct such as assault and possibly rape, is not in the best interest of the welfare, health or safety of the people of the State of Washington.
- 5.13 The Board's Statement of Intent to Revoke License 24,753 revoking liquor licenses #074290 must be affirmed.
- 5.14 The Board's Statement of Intent to Revoke License 24,754 revoking liquor license #352789 must be affirmed.

#### Sale of Liquor to Minor

- 5.15 It is illegal to furnish alcohol to any person under the age of 21 years. RCW 66.44.270(1); WAC 314-11-020(1).
- 5.16 "Liquor licensees are responsible for the operation of their licensed premises in compliance with the liquor laws and rules of the board (Title 66 RCW and Title 314 WAC). Any violations committed or permitted by employees will be treated by the board as violations committed or permitted by the licensee." WAC 314-11-015(1)(a).
- 5.17 Washington Administrative Code 314-11-020(1) provides that "licensees or employees may not supply liquor to any person under twenty-one years of age, either for his /her own use or for the use of any other person."
- 5.18 The Licensee, Mewael Habte, admitted under oath on two occasions that he gave liquor to Amber Thulean when Ms. Thulean was under the age of twenty-one years.
- 5.19 The Board has met its burden regarding Complaint 24,797 and AVN #4N3135A must be affirmed.

## Obstruction of Investigation

- 5.20 A licensed premises used in the sale of liquor, "or any...parts of premises used or in any way connected, physically or otherwise, with the licensed business, . . . shall at all times be open to inspection by any liquor enforcement officer." Any person who is on the premises "and having charge thereof, who refuses or fails to admit a liquor enforcement officer, inspector or peace officer demanding to enter there in pursuance of this section in the execution of his/her duty, . . . shall be guilty of a violation" of RCW 66.28.090
- 5.21 Washington Administrative Code 314-11-090 provides that "the following must be available to inspection at all times by the board and any law enforcement officer:  
(1) The licensed premises and any premises connected physically or otherwise to the licensed business."
- 5.22 The Licensee Mr. Habte admitted that he refused to allow Lieutenant Rodney Mittman and Liquor Officer Tim Mahan into the office of the licensed premises Barker Express / HICO Market.
- 5.23 The Board has met its burden regarding Complaint 24,782 and AVN #4T3095B must be affirmed.

## **6. INITIAL ORDER**

- 6.1 The Liquor Control Board's Statement of Intent to Revoke License 24,753 revoking liquor licenses #074290 is AFFIRMED.
- 6.2 The Liquor Control Board's Statement of Intent to Revoke License 24,754 revoking liquor license #352789 is AFFIRMED.
- 6.3 The Liquor Control Board's Administrative Violation Notice AVN #4T3095B is AFFIRMED.
- 6.4 The Liquor Control Board's Administrative Violation Notice AVN #4N3135A is AFFIRMED.

Issued from Tacoma, Washington, on date of mailing.



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Courtney Beebe  
Administrative Law Judge  
Office of Administrative Hearings

## 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)(b). Copies of the reply must be mailed to all other parties and their representatives at the time the reply is filed.

Mail the petition for review of initial order to:

Washington State Liquor Control Board  
Attention: Kevin McCarroll  
P.O. 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).

RECEIVED

JUL 10 2015

Liquor Control Board  
Board Administration

WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE LIQUOR CONTROL BOARD

<p>In the Matter of:</p> <p>BARKER EXPRESS/HICO MARKET, MO MARKET, and MAWAEL HABTE,</p> <p style="text-align: center;">Licensees.</p> <p>License No: 352789, 074290 AVN #4T3095B; #4N3135A</p>	<p>OAH DOCKET NO. 2013-LCB-0070; 2013-LCB-0071; 2014-LCB-0007</p> <p>NO. 24,753; 24,754; 24,782; 24,797</p> <p>PETITION FOR REVIEW OF INITIAL ORDER</p>
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COMES NOW the Licensees, by and through his attorney of record, ROBERT COSSEY, and petitions for review of the Initial Order issued on June 16, 2015. This petition is based upon RCW 34.05.464, WAC 10-08-211 and WAC 314-42-095.

1. PORTIONS OF INITIAL ORDER TO WHICH EXCEPTION IS TAKEN

Conclusions of Law:

5.2 The facts are not in dispute. The Licensee has admitted all the conduct in that the Board asserts is grounds for the revocation of the two licenses in question. The issue to be determined, then, whether the conduct amounts to a violation of a rule or statute such that the two licenses in question must be revoked.

5.8 Including the three prior violations, as well as the two violations discussed below, the Licensee has violated the laws and rules applicable to the sale of liquor and tobacco five times in four years. This behavior demonstrates a pattern of disregard of laws

ORIGINAL

1 and rules and the Board is justified in revoking the two licenses at issue.

2 5.10 The Administrative Law Judge agrees that the Licensee's conduct was  
3 knowing and intentional. The Licensee knew that Ms. Thulean was underage when he gave  
4 her alcohol in exchange for sex. The Licensee intentionally engaged in a practice of  
5 providing alcohol, money, and laundromat privileges to Ms. Thulean and Ms. Kloetsch in  
6 exchange for sexual intercourse.

7 5.11 The Licensee does not deny any of the allegations, except that he believes  
8 his conduct does not amount to rape. However, that is not the question before the  
9 Administrative Law Judge.

10 5.12 The Board has carried its burden and has shown that permitting the Licensee  
11 Mr. Habte to continue to enjoy the privilege of holding two liquor licenses given his proclivity  
12 to use the privilege in return for sexual favors and to further otherwise criminal conduct  
13 such as assault and possibly rape, is not in the best interest of the welfare, health or safety  
14 of the people of the State of Washington.

15 5.13 The Board's State of Intent to Revoke License 24,753 revoking liquor  
16 licenses #074290 must be affirmed.

17 5.14 The Board's State of Intent to Revoke License 24,754 revoking liquor  
18 licenses #352789 must be affirmed.

19 6.1 The Liquor Control Board's Statement of Intent to Revoke License 24,753  
20 revoking liquor licenses #074290 is AFFIRMED.

21 6.2 The Liquor Control Board's Statement of Intent to Revoke License 24,754  
22 revoking liquor licenses #352789 is AFFIRMED.

## 23 2. REFERENCES TO EVIDENCE OF RECORD AND EXCEPTIONS TAKEN

24 ¶ 5.2 is incorrect in that the interpretation of the facts is in dispute.

25 ¶ 5.8 is objected to as the behavior cited as a basis for revocation of the Licensee's  
26 liquor licenses does not demonstrate a pattern of disregard of laws and rules and the  
27 Board is not justified in revoking the two licenses at issue.

28 ¶ 5.10 is inaccurate in that there is no finding of fact to support the conclusion of

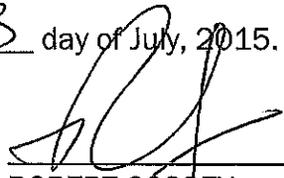
1 law that the Licensee gave alcohol to the minor Ms. Thulean *in exchange for sex*. The  
2 Findings of Fact support only a conclusion that the Licensee provided Ms. Thulean alcohol  
3 while underage. Furthermore, the Findings of Fact also do not support the Conclusion that  
4 the Licensee "intentionally engaged in a practice of providing alcohol, money, and  
5 laundromat privileges to Ms. Thulean and Ms. Kloetsch in exchange for sexual intercourse."  
6 (Exhibit 5). None of the testimony in Exhibit 5 indicates that alcohol was actually provided  
7 *in exchange for sex*. (Exhibit 5). Ms. Kloetsch was not underage and it was not a violation to  
8 provide her with alcohol, although in her interview with law enforcement Ms. Kloetsch did  
9 not admit to ever receiving alcohol from the Licensee. (Exhibit 6, pages 12-13). Other than  
10 providing alcohol to Ms. Thulean who was a minor, the other conduct is not a violation of  
11 the laws and rules applicable to the sale of liquor.

12 ¶ 5.11 is objected to in that the Licensee does deny he committed rape. He was  
13 only convicted of Fourth Degree Assault with Sexual Motivation. (Exhibit 4). Furthermore,  
14 the allegations that alcohol was provided in exchange for sex are disputed. Providing  
15 alcohol to the minor, Ms. Thulean, on two occasions was not disputed.

16 ¶ 5.12 is objected to in that it was previously concluded in ¶ 5.11 that the issue of  
17 rape "is not the question before the Administrative Law Judge." However, in ¶ 5.12 part of  
18 the basis for the Conclusion is that the Licensee used the liquor license privilege "to further  
19 otherwise criminal conduct such as assault and possibly rape..." This Conclusion directly  
20 contradicts ¶5.11 where it was stated that the issue of whether rape occurred is not a  
21 question before the Administrative Law Judge. ¶ 5.12 should not reference the possibility  
22 of rape as a Conclusion. Mr. Habte was not convicted of rape, only Fourth Degree Assault  
23 with Sexual Motivation. (Exhibit 4). Furthermore, the admission was to providing alcohol to  
24 Ms. Thulean two times while a minor. (Exhibit 5, 6). These two incidents were listed as one  
25 violation. (Complaint 24,797 and AVN #4N3135A). This does not constitute a proclivity.  
26 The other violations of furnishing liquor to minors were not committed by Mr. Habte himself  
27 but by employees and both AVNs and penalties were complied with. (AVN #4T2155C,  
28 Exhibit 2; AVN #4P2031B, Exhibit 2).

¶ 5.13, 5.14, 6.1 and 6.2 are objected to in that there was insufficient basis to  
revoke liquor licenses 24,753 and 24,754 based on the evidence presented.

RESPECTFULLY SUBMITTED this 3 day of July, 2015.



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ROBERT COSSEY  
WSBA #34263  
Attorney for Licensee

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Liquor Control Board  
Board Administration

WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE LIQUOR CONTROL BOARD

In the Matter of:

BARKER EXPRESS/HICO MARKET,  
MO MARKET, AND MEWAEEL HABTE,

Licensees,

License No: 352789, 074290  
AVN #4T3095B; 34N3135A

OAH DOCKET NO:

2013-LCB-0070  
2013-LCB-0071  
2013-LCB-0007

Agency No:  
24,754; 24,753; 24,782; 24,797

**AFFIDAVIT OF MAILING**

I, Patricia Story, under penalty of perjury under the laws of the State of Washington, declare that on July 6, 2015, I deposited in the United States Mail, first class postage affixed, by regular mail the following document to the persons listed below at the last known addresses:

PETITION FOR REVIEW OF INITIAL ORDER

Washington State Liquor Control Board  
Attn: Kevin McCarroll  
P.O. Box 43076  
Olympia, WA 98504

Mewael Habte  
Barker Express/Hico Market  
817 S. Perry St.  
Spokane, WA 99202

AFFIDAVIT OF MAILING  
Page 1

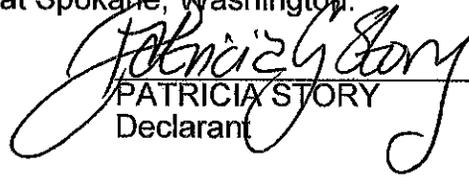
Robert Cossey & Assoc.  
Attorneys at Law  
902 N. Monroe  
Spokane WA 99201  
(509) 327-5563

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1 S. Kim O'Neal  
2 Office of the Attorney General  
3 1125 Washington St SE  
4 PO Box 40100  
5 Olympia, WA 98504  
6

7 Dated this 6<sup>th</sup> day of July, 2015, at Spokane, Washington.

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9 PATRICIA STORY  
10 Declarant  
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Liquor Control Board  
Board Administration

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**WASHINGTON STATE LIQUOR AND CANNABIS BOARD**

In the Matter of  
BARKER EXPRESS/HICO MARKET,  
MO MARKET  
Mewael Habte,  
License No. 352789, 074290  
Licensee.

OAH No. 2013-LCB-0070;  
2013-LCB-0071; 2014-LCB-0007  
RESPONSE TO PETITION FOR  
REVIEW

**I. INTRODUCTION**

Judge Beebe correctly ruled that Licensee Mewael Habte's two liquor licenses were properly revoked based upon an objection from the City of Spokane and his own admitted conduct. The pattern of disregard of laws and rules and Mr. Habte's criminal and administrative violation history provide ample support for the two license revocations, and the Petition for Review should be denied.

**II. STATEMENT OF FACTS**

The Licensee does not assign error to any of the factual findings in the Initial Order. Therefore, all of those factual findings are accepted as true.

**III. ARGUMENT**

Mr. Habte assigns error only to certain of Judge Beebe's conclusions of law.

Conclusion of Law 5.2 is correct as stated in the Initial Order because Mr. Habte did not deny any of the allegations of misconduct that the Licensing Division relied upon to seek

1 revocation of his license, and he did not deny any of the allegations in the Administrative  
2 Violation Notices issued by the Enforcement Division to charge him with violations of liquor  
3 laws. Whether the Licensee takes issue with the Judge's use of those admitted facts or the  
4 inferences she draws from those facts is not a basis for arguing that her factual statement in  
5 5.2 is in error. He has shown no error, and that conclusion should stand as accurate.

6 Mr. Habte assigns error to Conclusion of Law 5.8, but provides nothing in support of  
7 that assignment of error other than his disagreement with it. The Judge concluded that the  
8 conduct described in the evidence at hearing, in the police reports and criminal trial testimony  
9 and in the Liquor Officers' and Licensing Manager's testimony, amply demonstrated a pattern  
10 of disregard of laws and a sufficient basis to revoke Mr. Habte's two liquor licenses. His  
11 disagreement with the Judge's conclusions does not provide a basis for determining that Judge  
12 Beebe's conclusion is incorrect. Conclusion of Law 5.12 should stand as correct.

13 Mr. Habte assigns error to Conclusion of Law 5.10, and argues that there are no  
14 findings of fact to support the conclusion that he gave alcohol to the minor victim in exchange  
15 for sex or that he intentionally engaged in a practice of providing alcohol, money, and  
16 laundromat privileges to the minor victim and the other female victim in exchange for sex.  
17 He argues that none of the testimony in Exhibit 5 supports that conclusion. He also argues  
18 that this conduct, other than his intentional provision of alcohol to an underage female, is not  
19 a violation of liquor laws or rules.

20 In reaching her conclusions, Judge Beebe is not limited to the specific acts that  
21 Mr. Habte himself admitted, either in testimony at the hearing or in other testimony or  
22 statements. She can also make reasonable inferences from the evidence, exhibits and  
23 testimony in the administrative record. There is ample evidence to support conclusion 5.10.  
24 The findings of fact to which error was not assigned include 4.12, in which the judge found  
25 Mr. Habte testified under oath at his criminal trial and at hearing in this case that he provided  
26 liquor and laundromat privileges to the minor female victim at his liquor licensed business

1 and that he and the victim had a sexual relationship that included performing sexual acts at the  
2 licensed business. Finding of Fact 4.13 states that Mr. Habte also testified at trial and at the  
3 hearing in this case that he provided money and alcohol to the other female victim, who was  
4 over 21, at his liquor licensed business and that they had sex at the business. Finding of Fact  
5 4.14 and 4.15 both confirm that Mr. Habte, both upon his guilty plea and at the hearing in this  
6 case stipulated and agreed that the police reports, statements of probable cause, and affidavits  
7 related to his criminal case are factual.

8 At the hearing in this case former Spokane Police Detective Stephanie Barkley  
9 testified that she investigated Mr. Habte for three allegations of rape while she was employed  
10 by the Spokane Police Department. She testified that the letter from the City of Spokane  
11 objecting to the renewal of Mr. Habte's liquor licenses was factual and accurate based upon  
12 her investigation and her presence throughout Mr. Habte's criminal trial. That letter is  
13 Exhibit 3 in the administrative record in this case. Detective Barkley also confirmed that her  
14 memorandum to Spokane Police Officer Max Hewitt was factual and accurate. That  
15 memorandum, upon which the City's letter is based, is in Exhibit 4 at page 8 in the  
16 administrative record. Mr. Habte's behavior is described in these two exhibits, and his giving  
17 alcohol to the underage female victim as well as having given that victim and other women  
18 alcohol and having sex with them in his office at the liquor licensed business, is stated in  
19 them.

20 Exhibit 5 contains excerpts from the sworn testimony given during Mr. Habte's  
21 criminal trial. At pages 3-5, the minor victim testified that Mr. Habte gave her alcohol  
22 knowing she was underage. At pages 6-7, an employee who worked in Mr. Habte's licensed  
23 business, John Proctor, testified that the minor victim received free laundry services from  
24 Mr. Habte and that while he refused to sell her alcohol because he knew her to be underage,  
25 Mr. Habte would go ahead and give her the alcohol. At pages 7-8 of Exhibit 5, Mr. Proctor  
26 testified there were other underage females than just the minor victim who also received

1 favors from Mr. Habte in the store, including free alcohol. At page 11, Mr. Proctor testified  
2 that the minor victim went into Mr. Habte's office at the licensed business with Mr. Habte  
3 more than once and that Mr. Habte had several times requested that Mr. Proctor give him a  
4 box of condoms when he was going into his office with the minor victim and with other  
5 females. At page 13, Mr. Proctor confirmed that Mr. Habte provided free laundry services to  
6 the minor victim. At pages 16-17, Mr. Habte admitted under oath giving the minor female  
7 victim alcohol knowing she was underage because they talked and she went out with him.

8         Detective Barkley's police reports prepared during her criminal investigation of  
9 Mr. Habte are in Exhibit 6. These reports are what Mr. Habte stipulated to the truthfulness of  
10 when he pled guilty. At page 9, the other female victim stated she met Mr. Habte at his liquor  
11 licensed business, and that he invited her to come drink with him at his store. At page 13, she  
12 stated that she had sex with Mr. Habte in his office at his liquor licensed business and that  
13 Mr. Habte's employee watched the store while they did that. At page 17, the minor victim  
14 stated she met Mr. Habte at his liquor licensed store and that when she went to his store  
15 Mr. Habte would talk to her and try to get to know her. She stated that she agreed to go out  
16 with him as a friend.

17         Detective Barkley testified that she interviewed Mr. Habte during her criminal  
18 investigation, and that she recorded that interview. Her interview of Mr. Habte was played for  
19 the jury during his criminal trial. The contents of that interview are in Exhibit 6. At  
20 Exhibit 6, page 20, Mr. Habte acknowledged his rights and agreed to speak with Detective  
21 Barkley. At page 21, Mr. Habte stated he met the minor victim at his licensed business. He  
22 stated he and the victim had sex in exchange for laundry services, and that they had sex in his  
23 office in the licensed business. At page 23, Mr. Habte stated he gave the minor victim  
24 hydrocodone and beer, or 4 Loco, when they had sex at his home, and he stated he gave her  
25 beer and/or 4 Loco when she came to his store. At page 23, Mr. Habte said he met the other  
26 female victim at his liquor licensed store, and at page 24, he stated he gave her money in

1 exchange for sex. He stated he had sex with her in the office of his licensed store three times.  
2 At Exhibit 6, page 28, the minor victim states that during a visit to Mr. Habte's home he gave  
3 her tequila and hydrocodone, and that he attempted to have sex with her. She stated that he  
4 engaged in sexual activity with her, but she refused to have intercourse with him. At pages  
5 28-29, the minor victim states that Mr. Habte attempted to have sex with her in his office at  
6 the liquor licensed business and that he engaged in sexual activity, but not intercourse. She  
7 stated there were two occasions when she had sexual contact with Mr. Habte, once at his  
8 home and once at the store. She stated he gave her alcohol in the store when he knew she was  
9 underage and offered her free use of the laundry.

10 The evidence in the record is certainly sufficient to support the judge's finding as  
11 stated in conclusion of law 5.10. Mr. Habte's own statements support the conclusion,  
12 especially in light of the confirmation in the testimony and statements from the minor victim,  
13 the other female victim, and Mr. Habte's employee John Proctor. The idea that using his  
14 liquor licensed store as a means of meeting, becoming acquainted with, and offering  
15 inducements for sex, including free alcohol, to female patrons, especially an underage female  
16 patron, does not violate liquor laws is ludicrous. A liquor licensee is required to protect the  
17 public health, safety and welfare, not himself become a danger to it. Furthermore, the liquor  
18 laws require liquor licensees to operate their licensed businesses in compliance with liquor  
19 and other laws and forbid disorderly or lewd conduct on the premises. WAC 314-11-015.

20 Mr. Habte assigns error to conclusion of law 5.11, which simply states that Mr. Habte  
21 did not deny any of the allegations, except that he did not believe his conduct constituted rape.  
22 The judge then stated that whether or not Mr. Habte committed rape was not before her.  
23 There is nothing incorrect about that conclusion, and Mr. Habte provides nothing to show that  
24 it is in any way incorrect. The record certainly does not support his allegation that he only  
25 admitted providing alcohol to the minor on two occasions. He admitted other conduct as  
26

1 described above, and he also admitted that he denied the liquor officers access to his office to  
2 perform legally required inspections.

3 Mr. Habte takes issue with the judge's statement in conclusion 5.12 that Mr. Habte  
4 used his liquor license privileges in return for sexual favors and to further criminal conduct  
5 such as assault and possibly rape. He argues that the judge should not have referred to even  
6 the possibility that he committed rape, given that she stated in conclusion 5.11 that the issue  
7 of whether he committed rape is not before her. Conclusion 5.12 is not inconsistent with 5.11,  
8 and it is not incorrect. Mr. Habte was arrested, charged with and tried for rape. He was not  
9 convicted of that crime, but that does not remove the possibility that he did commit that act.  
10 The judge did not conclude he committed rape, and it is clear from the order that she relied  
11 upon the conduct that is proven on the record, either by admissions or by other evidence to  
12 sustain the allegations against Mr. Habte in this case, which do not include any allegation that  
13 he committed rape. The other objection is that providing alcohol to the minor victim on two  
14 occasions does not constitute a "proclivity" to engage in that conduct. The judge's conclusion  
15 states that Mr. Habte should not be allowed to continue to hold two liquor licenses given his  
16 proclivity to use the privileges of those licenses to obtain sexual favors and to further criminal  
17 conduct. The administrative record shows that he did use his business and the alcohol his  
18 licensed business allowed him to possess in support of his sexual activities with female  
19 patrons, and that he committed other illegal acts such as selling unstamped cigarettes. There  
20 is nothing incorrect about conclusion 5.12.

21 The remaining assignments of error are simply an expression of disagreement that this  
22 record as a whole supports revoking Mr. Habte's two liquor licenses. Judge Beebe was  
23 correct in concluding that the conduct reflected in the administrative record in this case,  
24 including intentionally providing alcohol to a minor female, using his business for sex with  
25 female patrons, using alcohol to help induce females, including an underage female, to have  
26 sex with him at his business, refusing to permit a legally required inspection of the office in

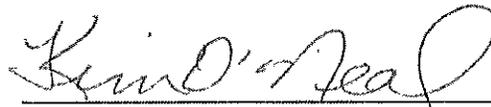
1 his licensed premises upon the request of Liquor Enforcement Officers, and multiple  
2 violations of the laws against providing alcohol to minor purchasers at his licensed businesses,  
3 fully supported the decision to revoke his two liquor licenses. Both Ms. Hendricks, a 28-year  
4 employee of the Licensing Division, and the two Liquor Enforcement Officers, with at least  
5 10 years of experience testified it was unheard of for a licensee himself to intentionally  
6 provide alcohol to a minor. Licenses are revoked for far less egregious conduct by employees  
7 of a licensee who is trying to fulfill his responsibilities as a licensee. The Liquor Enforcement  
8 Officers similarly testified they had never before or since been refused access by a licensee to  
9 any area of a tobacco licensed premises to do an inspection. Mr. Habte committed the most  
10 serious of these violations himself, and it is fully within the liquor laws to hold him  
11 responsible for the violations committed by his employees as well. WAC 314-07-015(1)(a).

#### 12 IV. CONCLUSION

13 The administrative record fully supports the conclusions Judge Beebe included in her  
14 Initial Order as well as her determination that revocation of Mr. Habte's two liquor licenses is  
15 the appropriate result in this case. The Initial Order should be affirmed and issued as the  
16 Board's Final Order.

17 DATED this 5th day of July, 2015.

18  
19 ROBERT W. FERGUSON  
Attorney General

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22 KIM O'NEAL, WSBA #12939  
Senior Counsel

23 Attorneys for Washington State Liquor and  
24 Cannabis Board Enforcement Division.

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**PROOF OF SERVICE**

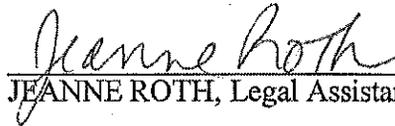
I certify that I served a true and correct copy of this document on all parties or their counsel of record on the date below as follows:

Robert R. Cossey  
Robert R. Cossey & Associates PS  
902 North Monroe  
Spokane, WA 99201-2161

- U.S. Mail via state Consolidated Mail Service (with proper postage affixed)
- Courtesy copy via facsimile:
- Courtesy copy via electronic mail:
- \_\_\_\_\_  
ABC/Legal Messenger

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 27 day of July, 2015, at Olympia, Washington.

  
\_\_\_\_\_  
JEANNE ROTH, Legal Assistant

**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF:

BARKER EXPRESS/HICO MARKET,  
MO MARKET and MEWAEL HABTE

LICENSEE

LICENSE NOS. 352789, 074290

LCB NOS. 24,753; 24,754; 24,782;  
24,797

OAH NOS. 2013-LCB-0070; 0071;  
2014-LCB-0007

ORDER GRANTING MOTION TO  
EXTEND TIME TO FILE  
PETITION FOR REVIEW

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

1. An Initial Order in this matter was issued by Administrative Law Judge Courtney Beebe on June 16, 2015.
2. On July 10, 2015 a Petition for Review of Initial Order was received from the Licensee through Attorney Robert Cossey.
3. On July 16, 2015, the Licensing and Enforcement Divisions of the Board, through Assistant Attorney General Kim O'Neal, filed a Motion for One-Week Extension of Time to File Response to Petition for Review. The Motion was supported by the Declaration of Counsel by Kim O'Neal.
4. The Board finds that the Licensing and Enforcement Divisions have made a clear and convincing showing of good cause to extend the date for filing a Response to Petition for Review, due to exigent circumstances.

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ORDER GRANTING MOTION  
LCB NOS. 24,453; 24,754; 24,782; 24,797  
BARKER EXPRESS/HICO MARKET, MO  
MARKET and MEWAEL HABTE  
LICENSE NOS. 352789, 074290

The Board hereby ORDERS that the Motion is granted. A Response to the Petition for Review of Initial Order may be filed by July 27, 2015

DATED this 21<sup>st</sup> day of July, 2015.

  
\_\_\_\_\_  
Ruthann Kurose  
\_\_\_\_\_