

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

ERZULIE LLC
d/b/a WAIDS
1212 E JEFFERSON ST
SEATTLE, WA 98122-5536

LICENSEE

LICENSE NO. 076837
AVN NOS. 2S3133A, 2D3028A

LCB NOS. 24,769
24,772

OAH NO. 2013-LCB-0076

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 October 23, 2013, alleging that on or about August 9, 2012 the above-named Licensee, or an employee thereof, did sell, give, or otherwise supply liquor to a person under that age of twenty-one (21) years of age, contrary to RCW 66.44.270(1) and WAC 314-11-020(1)
2. The Liquor Control Board also issued a complaint dated October 23, 2013, alleging that on or about January 28, 2013, an employee or employees of the Licensee engaged in the sale and service of alcohol without a valid Mandatory Alcohol Server Training (MAST) permit, contrary to WAC 314-17-030.
3. The Licensee made a timely request for a hearing.
4. An administrative hearing was held on February 14 and 18, 2014 before Administrative Law Judge Gina L. Hale at the Office of Administrative Hearings in Seattle, Washington.
5. At the hearing, the Education and Enforcement Division of the Board was represented by Assistant Attorney General Jennifer Elias. Erzulie LLC d/b/a Waid's and owner Waid Sainvil, appeared and was represented by Raymond Connell, Attorney at Law.

6. On May 2, 2014 Administrative Law Judge Gina L. Hale entered her Findings of Fact, Conclusions of Law and Initial Order in these matters which sustained the Complaints.
7. The Licensee, through its attorney, Raymond Connell, filed a Petition for Review dated May 26, 2014, and received by the Board on May 27, 2014. The Initial Order was served on May 2, 2014, thus Petitions for Review were due to the Board no later than May 22, 2014. The Licensee's Petition for Review was not timely filed.
8. The Enforcement and Education Division, through its attorney, Assistant Attorney General Jennifer Elias, filed a Response to the Petition for Review on June 2, 2014.
9. 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 for cases 24,769 and 24,772 are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board, with the following corrections:

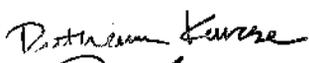
- A. In Conclusion of Law 5.7, the reference to "RCW 55.44.290(1)" is modified to refer to RCW 66.44.290(1).
- B. In Conclusion of Law 5.8, the word "do" is inserted in the second sentence, between "to" and "what" So that it reads: "As such, license-holders are expected to do what is necessary to ensure the safety of the public."

IT IS HEREBY FURTHER ORDERED that liquor license number 076837 for Erzulie LLC d/b/a Waid's is REVOKED effective July 3, 2014.

DATED at Olympia, Washington this 3 day of June, 2014.

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

June 3, 2014

Waid Sainvil, Managing Member
Erzulie LLC
d/b/a Waid's
11814 12 Ave S
Seattle, WA 98168-2134

Raymond A. Connell,
Attorney for Licensee
Connell Law Office LLC
6333 Seward Park Ave S
Seattle, WA 98118-3054

Waid Sainvil, Managing Member
Erzulie LLC
d/b/a Waid's
1212 E Jefferson St
Seattle, WA 98122-5536

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: Erzulie LLC
TRADE NAME: Waid's
LOCATION: 1212 E Jefferson St, Seattle, WA 98122
LICENSE NO. 076837
LCB HEARING NOS. 24,769 and 24,772
OAH NO. 2013-LCB-0076
AVN NOS. 2S3133A and 2D3028A
UBI: 602-600-646-001-0001

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: Federal Way and Mountlake Terrace Enforcement and Education Divisions, WSLCB
Jamie Marshall, WSLCB Enforcement

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

ERZULIE LLC
d/b/a WAID'S
1212 E JEFFERSON ST
SEATTLE, WA 98122-5536

LICENSEE

LICENSE NO. 076837
AVN NOS. 2S3133A, 2D3028A

LCB NOS. 24,769
24,772

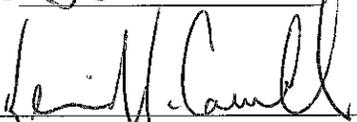
OAH NO. 2013-LCB-0076

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:

WAID SAINVIL, MANAGING MEMBER ERZULIE LLC d/b/a WAID'S 11814 12 AVE S SEATTLE, WA 98168-2134	RAYMOND A. CONNELL, ATTORNEY FOR LICENSEE CONNELL LAW OFFICE LLC 6333 SEWARD PARK AVE S SEATTLE, WA 98118-3054
WAID SAINVIL, MANAGING MEMBER ERZULIE LLC d/b/a WAID'S 1212 E JEFFERSON ST SEATTLE, WA 98122-5536	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION JENNIFER ELIAS, ASSISTANT ATTORNEY GENERAL

DATED this 3rd day of June 2014, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

MAY 22 2014

Liquor Control Board
Board Administration

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

In the Matter of:

OAH Docket No. 2013-LCB-0076

Erzulie LLC dba Waid's,

LCB Nos. 24,769;

1212 E Jefferson St
Seattle, WA 98122-5536

24,772

Licensee.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND INITIAL ORDER**

License No. 076837

AVN No(s). 2S3133A; 2D3028A

1. ISSUES FOR DETERMINATION:

- 1.1. **Issue One:** Whether the Licensee allowed liquor to be served to minors.
- 1.2. **Issue Two:** Whether the Licensee allowed employees to engage in the sale and/or service of liquor without valid Mandatory Alcohol Server Training (MAST) permits.

2. ORDER SUMMARY:

- 2.1. **Issue One:** The Licensee did allow liquor to be served to minors.
- 2.2. **Issue Two:** The Licensee did allow employees to engage in the sale and or service of liquor without valid Mandatory Alcohol Server Training (MAST) permits.

3. STATEMENT OF THE CASE:

- 3.1. **Administrative Violation Notice No. 2S3133A.** On May 16, 2013, the Washington State Liquor Control Board – Education and Enforcement Division (LCB, or Board) issued an Administrative Violation Notice (AVN) to Erzulie LLC., d.b.a. Waid's at 1212 East Jefferson Street, Seattle, Washington.
- 3.1.1. **Allegations.** The AVN alleged that on August 9, 2012, the Licensee or an employee allowed a person under the age of 21 years to be served alcohol in violation of Revised Code of Washington (RCW) 66.44.270(1) and Washington Administrative Code (WAC) 314-11-020(1).
- 3.1.2. **Penalty.** The assessed penalty was the cancellation of the Licensee's liquor license.

- 3.1.3. **LCB Complaint No. 24,769.** On October 23, 2013, the Board issued a written Complaint, No. 24,769, against the Licensee formalizing the charges alleged in the AVN.
- 3.2. **Administrative Violation Notice No. 2D3028A.** On May 16, 2013, the Board issued a second AVN to the Licensee at 1212 East Jefferson Street, Seattle, Washington.
- 3.2.1. **Allegations.** The AVN alleged that on January 27, 2013, employees of the Licensee were consuming alcoholic beverages at approximately 3:40 a.m. in violation of WAC 314-11-070. The AVN also alleged that the employees of the Licensee did not have the required Mandatory Alcohol Server Training (MAST) permits, nor were they in the MAST database in violation of WAC 314-17-030.
- 3.2.2. **Penalty.** The assessed penalty was a five-day suspension.
- 3.2.3. **LCB Complaint No. 24,772.** On October 23, 2013, the Board issued a written Complaint, No. 24,772, against the Licensee formalizing the AVN charges regarding the sale and or service of alcohol without a valid MAST permit.
- 3.3. **Proceeding, Appearances, and Close of Record.** Pursuant to due and proper notice, this matter came on for a full, in-person, evidentiary hearing, at the Office of Administrative Hearings in Seattle, Washington on February 14 and 18, 2014.
- 3.3.1. **Presiding Administrative Law Judge.** Gina L. Hale, Administrative Law Judge, Washington State Office of Administrative Hearings (OAH).
- 3.3.2. **Appearances for the Licensee,** Erzulie LLC dba Waid's and owner Waid Sainvil, appeared and was represented by Raymond Connell, Attorney at Law.
- 3.3.3. **Appearances for the Liquor Control Board – Education and Enforcement Division,** LCB Officer David Stitt appeared and was represented by Jennifer Elias, Assistant Attorney General.
- 3.3.4. **Close of Record:** The hearing record closed on March 4, 2014.
- 3.4. **Witnesses.** The following witnesses appeared in-person, were sworn, and testified in this matter; the testimony of each was considered by the undersigned Administrative Law Judge:

Witnesses for Complaint No. 24,769:

Detective Sgt. Jaycin Diaz; Seattle Police Department

Detective William Guyer; Seattle Police Department
Officer David Stitt; Liquor Control Board Officer
Jacklyn W.; Seattle Police Department Investigative Aide

Witnesses for Complaint No. 24,772:

Hans Bernard; Bartender for the Licensee
Officer Pholeng Chue; Liquor Control Board Officer
Officer David Stitt; Liquor Control Board Officer

- 3.5 **Exhibits.** The following exhibits were admitted into evidence or excluded from evidence on sustained objections. Each admitted exhibit was considered by the undersigned Administrative Law Judge and given its due weight.

LCB Exhibits for Complaint No. 24,769: 1 through 8 (identification language as used by LCB) were admitted without objection.

1. Administrative Violation Notice No. 2S3133A; (2 pages)
2. Washington State Liquor Control Board narrative Evidence Report by Lieutenant Blaker; (1 page)
3. Seattle Police Department Report GO Number 2012-263146; (9 pages)
4. Memorandum from Matt York to Susan Blaker; (2 pages)
5. Information for Investigative Aide Jessica H.; (4 pages)
6. Information for Investigative Aide Jacklyn W.; (4 pages)
7. Information for Investigative Aide Haley C.; (4 pages)
8. Final Order of the Board Approving Settlement Agreement. (8 pages)

LCB Exhibits for Complaint No. 24,772: 1 through 12 (identification language as used by LCB) were admitted without objection.

1. Administrative Violation Notice Case No. 2D3028A; (2 pages)
2. Washington State Liquor Control Board Uniform Incident Report by Officer David Stitt; (6 pages)
3. Washington State Liquor Control Board Uniform Incident Report by Officer Pholeng Chue; (5 pages)

4. Certified Licensing History for Erzulie LLC.; (48 pages)
5. Washington State Liquor Control Board Supplement Incident Report by Officer David Stitt; (5 pages)
6. Washington State Liquor Control Board Supplement Incident Report by Officer David Stitt; (5 pages)
7. List of Alcohol Server Permit Issued under the name BERNARD; (1 page)
8. List of Alcohol Server Permit Issued under the name SISO; (1 page)
9. Alcohol Server Training Permit Inquiry for Hans BERNARD; (1 page)
10. Copy of Hans Bernard's driver's license (photo) taken by Officer Stitt; (1 page)
11. AS400 information of Waid's; (1 page)
12. Washington State Liquor Control Board Statement that they were not able to provide documentation of an verbal warning to Hans Bernard. (1 page)

Licensee's Exhibits: The Licensee did not submit any documents for Complaint No. 24,769, or for Complaint No. 24,772.

3.6. **Non-Evidentiary Presentations Considered.** The following non-evidentiary documents were filed with OAH and considered by the Administrative Law Judge (some of the following may also have been included by the parties as part of their evidentiary presentation):

3.6.1. The Complaints, the Licensee's Request for Administrative Hearing, the Corrected Notice of Hearing and Order Following Prehearing Conference of **January 17, 2014.**

3.6.2. The parties' opening statements, and written closing arguments.

4. **FINDINGS OF FACT:**

Based on a preponderance of evidence, the undersigned makes the following Findings of Fact:

Jurisdictional Facts

- 4.1. At all relevant times, the Licensee, Erzulie LLC., dba Waid's operated a licensed premises at 1212 East Jefferson Street, Seattle, Washington under Washington State Liquor Control Board issued License Number 076837.
- 4.2. On or about May 16, 2013, LCB issued two Administrative Violation Notices (AVNs) to the Licensee. AVN No. 2S3133A related to minors being served in the Licensee's premises. AVN No. 2D3028A related to Licensee's bartender working without a valid MAST permit.
- 4.3. The Licensee made a timely request for hearing regarding both AVNs.
- 4.4. In response to Licensee's request for an administrative hearing, LCB issued two formal, complaints (LCB Complaint No. 24,769 and LCB Complaint No. 24,772) on October 23, 2013.
- 4.5. In substance, Complaint No. 24,769, alleged that on or about August 9, 2012, the Licensee and/or an employee of the Licensee, did sell, give, or otherwise supply liquor to a person under the age of twenty-one (21) years of age contrary to RCW 66.44.270(1) and WAC 314-11-020(1). This allegation arose after three Investigative Aides, under the age of 21, were served alcohol at the Licensee's premises.
- 4.6. As for Complaint No. 24,772, it alleged that on or about January 27, 2013, an employee or employees of the Licensee, engaged in the sale and service of alcohol without a valid Mandatory Alcohol Server Training (MAST) permit contrary to WAC 314-17-030. This allegation arose after two LCB officers entered the Licensee's premises between 2:00 a.m. and 6:00 a.m., and observed employees consuming alcohol where the bartender and the bar-back did not possess their MAST permits and were not in the MAST database.
- 4.7. On October 28, 2013, LCB filed a written request with OAH for assignment of an Administrative Law Judge to schedule and conduct the hearing in the matter.
- 4.8. The Licensee and the Licensee's owner, Waid Sainvil, were given timely written notice of the evidentiary hearing and appeared along with the Licensee's attorney, Raymond Connell.

Resolution of Conflicting Testimony

- 4.6 The testimony of the parties' witnesses conflicted on material points. The ALJ, carefully considered and weighed all of the evidence, including witness demeanor (as determined in part by posture, voice, attitude, straightforwardness, hesitancy or lack of

hesitancy in responses), party and witness motivations, the reasonableness and consistency of testimony as related to other witnesses and exhibits, whether the testimony was of first-hand knowledge or hearsay, and the totality of circumstances presented. Based on the foregoing, the ALJ resolved the conflicting testimony in favor of LCB.

Substantive Facts

- 4.7. At all relevant times, David Stitt was an LCB Enforcement and Education Division Officer properly trained to undertake the responsibilities of his office, including his enforcement activities in this matter.
- 4.8. At all relevant times, Jaycin Diaz was a Seattle Police Department Detective Sergeant properly trained to undertake the responsibilities of his office, including his enforcement activities in this matter.
- 4.9. At all relevant times, William Guyer was a Seattle Police Department Detective properly trained to undertake the responsibilities of his office, including his enforcement activities in this matter.
- 4.10. The Licensee, Erzulie, LLC., dba Waid's - owner, Waid Sainvil, was initially licensed on July 12, 2006. At all relevant times, the Licensee held the Washington State liquor licensee for the premises, Waid's, license number 076837.

Licensee's History and Settlement Agreement

- 4.11. On February 26, 2010, the City of Seattle (City) objected to the renewal of the Licensee's license for Erzulie, LLC., dba Waid's. In support of their objection, the City submitted supporting documentation which was reviewed by LCB. The documentation demonstrated that there was a "pattern of chronic illegal activity associated with the Licensee's licensed premises." (Exhibit 8)
- 4.12. Based on a review of the City's objection and the applicable law, the Licensing Division for LCB issued, to the Licensee, a Statement of Intent Not to Renew Liquor License on August 4, 2010.
- 4.13. The Licensee made a timely request for hearing on August 13, 2010.
- 4.14. Prior to the commencement of a hearing, the parties (LCB and the Licensee) entered into a Settlement Agreement (Agreement).
- 4.15. Under the terms of the Agreement, the Licensee was to withdraw his request for hearing thereby waiving the right to any further administrative review.

- 4.16. The LCB was to withdraw the Intent Not to Renew Liquor Licensee. The LCB was then to issue an Intent to Renew Liquor License, with certain conditions and/or restrictions being imposed on the Licensee. The conditions and/or restrictions included the following:
- a. The Licensee's entire licensed premises shall be off-limits to any person under the age of twenty-one years; except the Licensee will be allowed to have an all ages Blues Night so long as the Licensee had three (3) security personnel on the premises and the patrons wear wrist bands to segregate by age;
 - b. The Licensee shall have an employee as security at its main entrance after 10 pm while the business is open;
 - c. The Licensee, or its employees, shall always have control over and be responsible for any person allowed onto its premises and it shall not delegate any control or responsibility to a promoter or any other additional person or group;
 - d. In addition to the one security person at the door, the Licensee shall have an additional security person for every seventy-five (75) occupants on the licensed premises;
 - e. All security personnel shall have a Mandatory Alcohol Server Training (MAST) Permit before they can work on the Licensee's premises. The Licensee will provide Licensing with proof of each security personnel's MAST Permit before the security personnel can work on the licensed premises;
 - f. All security personnel shall have successfully completed the Seattle Police Department's security training before they can work on the Licensee's premises. The Licensee will provide Licensing with each security personnel's proof of completion of the Seattle Police Department Security Training before the security personnel can work on the licensed premises;
 - g. The Licensee shall not commit a public safety violation, as stated in WAC 314-29-020, within twenty-four months from the date of the Board's Final Order in this matter; and
 - h. The Licensee agrees that Licensing can immediately terminate its liquor license if the Licensee commits a public safety violation, as stated in WAC 314-29-020, within twenty-four months from the date Licensing's Statement of Intent to Renew is issued in this matter.

- 4.17. The Licensee agreed to the renewal of the license based on the above conditions and restrictions.
- 4.18. The parties signed the Settlement Agreement on August 9 and 10, 2011.
- 4.19. The conditions and restrictions were to take effect thirty (30) days after the issuance of the Statement of Intent to Renew Liquor License. The Statement of Intent to Renew was issued on August 15, 2011.
- 4.20. The Licensee was to have no violations for a twenty-four month period following the entry of the Board's Final Order. The Final Order was entered on June 26, 2012. Twenty-four months from the entry of the Final Order would be June 2014.
- 4.21. The conditions and restrictions of the Settlement Agreement were included in the Licensee's electronic LCB file. This allowed LCB officers to track any possible violations of the Agreement.

Service to Minors: Complaint No. 24,769

- 4.22. **August 9, 2012, Incident.** On August 9, 2012, the Seattle Police Department, in conjunction with LCB officers, conducted a compliance check on the Licensee's licensed premises. Detective Sgt. Jaycin Diaz was in charge of the operation.
- 4.23. **Investigative Aides.** Three Investigative Aides, all young women under the age of twenty-one (21), were working with the police to test the compliance of the Licensee and his staff. The women were: Jacklyn W., Haley C., and Jessica H.
- 4.24. **Identification.** Detective William Guyer was responsible for the orientations for the women. He provided them with their identification and \$20 cash each for the purchases. The women were also allowed to have their cell phones. As part of the compliance check, the young women were allowed only one piece of identification each. Det. Guyer gave them each an expired Washington State driver's license for another female who was over age thirty (30). The three driver's licenses varied in degrees of expiration. Jacklyn W. had a license which had been expired for six (6) years; Jessica H. carried one which had been expired for five (5) years. Haley C's license had been expired for two (2) years.
- 4.25. **Jacklyn W.** One of the three Investigative Aides, Jacklyn W., was the only one of the three women to testify at the above-entitled hearing. Jacklyn agreed to serve as an Investigative Aide because her friend, Haley C. asked her to. Jacklyn worked only on August 9 to 10, 2012, as an Aide; she was 19 years old at the time. She did participate in four to five other compliance checks that evening. She was refused service at only one licensed premises. She was paid \$50 for her services.

- 4.26. **Compliance Check.** Officers were inside and outside the licensed premises to provide "close cover" for the three Aides. Det. Guyer was in the bar when the three women entered. His identification was checked at the door and then he ordered a beer from the bar. All three young women entered the premises and sat at the table area. They then went to the bar to order their drinks. Both Jacklyn W. and Haley C. noted in their signed statements that they were not asked about their age, but they were asked to show their identification, which they provided to the bartender, Arthur Williams. All three young women were sold "rum and coke," paid for the drinks with the \$20 they had been given, and sat back down at a booth. Haley C. also ordered a Heineken beer.
- 4.27. **Licensee's Argument.** It is the Licensee's position that the Seattle Police Department engaged in entrapment, outrageous conduct, and criminal rendering to minors when they used minors and expired licenses as part of their compliance check against the Licensee. The Licensee argues that it has no responsibility beyond the presentation of the identification by the patrons. If the card passes the scanner test, there is no obligation for the Licensee to inquire further.
- 4.28. **AVN and Penalty.** Following the Compliance Check, the Seattle Police Department forwarded information regarding the incident with the three Aides to the LCB. The information on the Licensee was reviewed. On May 16, 2013, Officer David Stitt served the Licensee with AVN No. 2S31338A. Service to a minor is a Group 1 Violation Against Public Safety under WAC 314-29-020. The penalty assessed against the Licensee was "cancellation" / "termination of license" based on the Settlement Agreement entered into in August 2011.

Lack of MAST Permit: Complaint No. 24, 772

- 4.29. **January 28, 2013, Incident.** LCB Officer Stitt had received a "tip" that the Licensee was engaged in after-hours service of alcohol. On or about January 28, 2013, at approximately 3:40 a.m., Officer Stitt and LCB Officer Pholeng Chue entered the Licensee's premises. Upon entering the premises, they saw employees drinking alcohol as their "shifter," an alcoholic drink employees have after their work is done and their shift is over. There were beer bottles and amber liquid in shot glasses on various tables. There were 10 to 12 people inside, with 5 to 6 in the lounge and 2 behind the bar.
- 4.30. **Bartenders: MAST Permits.** The Officers identified the bartending staff as Hans Bernard, bartender, and Mohammed Siso, bar-back. The Officers requested to see the MAST Permits, but neither employee had their MAST Permit on them. The officers searched the MAST computer database and did not find either employee listed.

- 4.31. **Hans Bernard: MAST Permits.** Mr. Bernard began working as a bar-back with the Licensee in September or October 2006. He obtained his first MAST permit sometime in November 2006; he later became a bartender for the Licensee. Mr. Bernard's initial MAST permit expired sometime in 2011. He got a new MAST permit in June 2013. He continued to work as a bartender for the Licensee between 2011 and June 2013.
- 4.32. **Licensee's Argument.** It is the Licensee's position that a server working without a MAST permit is not a public safety issue. It would constitute a Group 2 Regulatory Violation and not a Group 1 Violation Against Public Safety. The Licensee also argues that an LCB Officer Ritchey had located Mr. Bernard in the MAST database. So, even though Officer Stitt was unsuccessful, someone from LCB had found proof. We find that Officer Ritchey was not called as a witness by either party. Additionally, the Licensee made no request to call Officer Ritchey as a witness, nor was there any request for time to produce any documentation from him.
- 4.33. **LCB Action Taken.** Officer Stitt checked the MAST database on January 28, 2013; March 26, 2013; and May 16, 2013. Officer Stitt was waiting to learn whether Mr. Bernard and Mr. Siso had voluntarily complied and gotten their MAST Permits. No voluntary compliance was forthcoming.
- 4.34. **AVN and Penalty.** On May 16, 2013, Officer Stitt issued AVN No. 2D3028A to the Licensee. The AVN assess a five (5) day suspension or \$500 penalty, in lieu of suspension, for employees working without their required MAST permits. Officer Stitt was aware that this was also a condition of the Settlement Agreement which the Licensee had entered into. Additionally, Officer Stitt issued a written warning for the after-hours service of alcohol.
- 4.35. **Agreed Penalty.** If the foregoing facts for both AVNs establish a violation of Washington law and a violation of the Settlement Agreement, the agreed penalty is termination of the Licensee's liquor license as noted in the Settlement Agreement.

5. CONCLUSIONS OF LAW:

Based on the above Findings of Fact, the undersigned makes the following Conclusions of Law:

Jurisdiction

- 5.1. Based on the foregoing Findings of Fact, the LCB issued the respective AVNs for which the Licensee timely requested a formal administrative hearing. Pursuant to the Licensee's request for an administrative hearing, LCB issued and filed the instant Complaints. Therefore, the undersigned Administrative Law Judge has jurisdiction over these cases pursuant to Title 66 RCW, Chapter 34.05 RCW and Title 314 WAC.

Substantive Violation of Law

- 5.2. A license is a privilege and not a vested right. WAC 314-12-010.
- 5.3. Liquor Licensees are responsible for the operation of their licensed premises in compliance with the liquor laws and rules of the Washington State Liquor Control 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. A liquor Licensee is responsible for the wrongful actions of the Licensee's employees on the licensed premises. WAC 314-11-015 (1) (a).
- 5.4. **Complaint No. 24,769 – Service to a Minor.** Under the provisions of RCW 66.44.270(1) and WAC 314-11-020 (1), it is unlawful to sell alcohol to a person under the age of twenty-one (21). Under WAC 314-29-020, such an action has been determined to be a Group 1 Violation to Public Safety. In the instant case, the minors gained entry to the licensed premises with expired driver's licenses, which are not valid forms of identification. WAC 314-11-025(2). The expired licenses were accepted and three minors were served alcohol in violation of the law and regulations.
- 5.5. **Licensee's Defenses – Service to a Minor.** The Licensee protested the use of expired identification, in part, because it does nothing to put the Licensee on notice that they may be serving a minor. A second argument has been that it is unduly burdensome to require more inquiry beyond use of a scanner. Finally, the Licensee has argued the defenses of entrapment, outrageous conduct and criminal rendering to a minor regarding the Compliance Check as a whole.
- 5.6. **Laws and Regulations – Service to a Minor.** Under RCW 66.44.010(1), "all county and municipal peace officers are hereby charged with the duty of investigation and prosecuting all violation of this title ..." Therefore, the Seattle Police Department was executing a statutory duty to assist in the enforcement of the state liquor control laws and regulations.
- 5.7. **Criminal Defenses Not Applicable.** The Licensee has argued that the Seattle Police Department engaged in entrapment, outrageous conduct, and criminal rendering to a minor. Entrapment and Outrageous Conduct are both valid defenses in a criminal proceeding. However, they are not available as defenses in an administrative proceeding. As for Criminal Rendering to a Minor, that too is inapplicable here. Under the provisions of RCW 55.44.290(1), the sale of alcohol to a minor is prohibited unless it is part of "a controlled purchase program authorized by the liquor control board ..."
- 5.8. **Highly Regulated Industry.** Alcohol is a highly regulated industry. As such, license-holders are expected to do what is necessary to ensure the safety of the public. Checking identification involves more than just asking for the card. LCB has provided reminders

and helps to suggest that due diligence includes the following, at a minimum: a) ask for the identification; b) have the patron hand over the identification; c) check the date of birth; d) check the expiration date; e) check the photo; and f) verify other information as necessary. (Exhibit 4, pages 47 and 48, Complaint No. 24, 772.)

5.9. **Complaint No. 24,772 – Server/Security Working without a MAST Permit.** Mr. Bernard showed that he knew and understood the MAST permit requirements when he began working in the liquor industry. He obtained his permit and was in compliance for those first five years. When it was made clear to him through the AVN of January 2013, that his failure to possess a current permit was a serious issue, he took no steps to rectify the situation. However, it was not Mr. Bernard's responsibility alone. The Licensee, as the license holder, also had a responsibility to ensure that his staff had the proper training and credentials, and could show proof of that. Officer Stitt waited several months before serving the AVN. If proof of compliance had been provided, the AVN might have been limited to the written warning for service after hours. No proof was provided to Officer Stitt; he served the AVN in May 2013; and Mr. Bernard got a new MAST permit in June 2013.

5.10. **Conclusion Regarding Complaint No. 24,769:** Therefore, based on the Findings of Fact, and pursuant to the foregoing legal authorities, Licensee violated Washington law by allowing service of alcohol to minors in violation of 66.44.270(1) and WAC 314-11-020 (1). Complaint No. 24, 769 shall be **SUSTAINED**.

5.11. **Conclusion Regarding Complaint No. 24,772:** The Licensee also violated Washington law by allowing an employee to serve alcohol without proof that he had the required MAST permit in violation of WAC 314-17-030. Complaint No. 24, 772 shall be **SUSTAINED**.

Penalty (Sanction)

5.12. Further, based on the foregoing Finds of Fact, and the Settlement Agreement entered into by the parties, the Licensee violated two conditions of the August 2011, Settlement Agreement. First, the Licensee allowed minors to be served alcohol. Secondly, the Licensee failed to insure that the bartender (as a Server and Security) had the required MAST permit. Based on the Settlement Agreement, the agreed penalty is termination of the Licensee's liquor license.

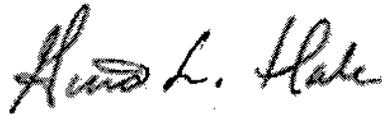
6. **INITIAL ORDER:**

NOW THEREFORE, IT IS ORDERED That:

6.1. The undersigned Administrative Law Judge has jurisdiction over this case.

- 6.2. Licensee did violate Washington law as alleged in Complaint No. 24,769 issued against Licensee by the Washington Liquor Control Board on October 23, 2013. Specifically, on or about August 9, 2011, Licensee allowed minors to be served alcohol contrary to RCW 66.44.270(1) and WAC 314-11-020(1). This is a Group 1 Violation of Public Safety under WAC 314-29-020 and a breach of the August 2011, Settlement Agreement.
- 6.3. The Complaint No. 24,769 herein is **SUSTAINED**.
- 6.4. Licensee did violate Washington law as alleged in Complaint No. 24,772 issued against Licensee by the Washington Liquor Control Board on October 23, 2013. Specifically, on or about January 28, 2013, Licensee failed to insure that his bartender (Server-Security staff) had the required MAST permits contrary to WAC 314-17-030. This was also a breach of the August 2011, Settlement Agreement.
- 6.5. The Complaint No. 24,772 herein is **SUSTAINED**
- 6.6. Based on the terms of the Settlement Agreement and subject to the Liquor Control Board's further determination, the Licensee's liquor license shall be **REVOKED**.

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



Gina L. Hale
Administrative Law Judge
Office of Administrative Hearings

NOTICE TO PARTIES OF 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)(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).

CERTIFICATE OF MAILING IS ATTACHED

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 2013-LCB-0076

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

<p>Waid Sainvil Managing Member Erzulie LLC dba Waid's 11814 12th Ave S Seattle, WA 98168-2134 Email: waidanator@gmail.com Respondent</p>	<p><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 checked="" type="checkbox"/> Email</p>
<p>Waid Sainvil Managing Member Erzulie LLC dba Waid's 1212 E Jefferson St Seattle, WA 98122-5536 Email: waidanator@gmail.com Respondent</p>	<p><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 checked="" type="checkbox"/> Email</p>
<p>Raymond A. Connell Attorney at Law Connell Law Office, LLC 6333 Seward Park Ave S Seattle, WA 98118-3054 Fax: (866) 323-6596 Email: rconnell@cchglaw.com Respondent Representative</p>	<p><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 checked="" type="checkbox"/> Email</p>
<p>Jennifer Elias Assistant Attorney General Office of the Attorney General 1125 Washington St SE PO Box 40100 Olympia, WA 98504-0100 Fax: (360) 664-0229 Email: jennifere2@atg.wa.gov Agency Representative</p>	<p><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 checked="" type="checkbox"/> Email</p>

Kevin P. McCarroll
Adjudicative Proceedings Coordinator
Washington State Liquor Control Board
3000 Pacific Ave SE
PO Box 43076
Olympia WA 98504-3076
Fax: (360) 586-3190
Email: kpmcc@liq.wa.gov
Department Representative

- First Class US mail, postage prepaid
- Certified mail, return receipt
- Campus Mail
- Facsimile
- Email

Date: Friday, May 02, 2014

OFFICE OF ADMINISTRATIVE HEARINGS



Audrey C. Chambers
Legal Secretary