BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: JUNGILAPON HANSON 17815 SPRUCE WAY LYNNWOOD, WA 98037 PERMIT HOLDER MAST PERMIT NO. 120-472-605 AVN NO. 2B4025A	LCB NO. L-25,008 OAH NO. 2014-LCB-0054 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 June 6, 2014 alleging that on or about January 25, 2014, the above-named MAST Permit Holder allowed persons under twenty-one years of age to remain in an area classified as off-limits to persons under twenty-one, contrary to WAC 314-11-020(2).
2. The Permit Holder made a timely request for a hearing.
3. An administrative hearing was held on February 10, 2015 before Administrative Law Judge Terry A. Schuh with the Office of Administrative Hearings.
4. At the hearing, Assistant Attorney General Susie Giles-Klein represented the Education and Enforcement Division of the Board, and MAST Permit Holder Jungilapon Hanson represented herself.
5. On April 8, 2015, Administrative Law Judge Terry A. Schuh entered his Findings of Fact, Conclusions of Law and Initial Order in this matter, which did not sustain the Complaint.
6. The parties filed no petitions for review.

7. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises;

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

IT IS HEREBY FURTHER ORDERED that the charge in the Complaint filed in case L-25,008 is DISMISSED.

DATED at Olympia, Washington this 23rd day of JUNE, 2015.

WASHINGTON STATE LIQUOR CONTROL BOARD

Rashford

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 24, 2015

Jungilapon Hanson
17815 Spruce Way
Lynnwood, WA 98037-7432

Susie Giles-Klein, AAG
GCE Division, Office of Attorney General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

RE: ***FINAL ORDER OF THE BOARD***
PERMIT HOLDER: Jungilapon Hanson
PERMIT NUMBER: 120 472 605
LCB HEARING NO. L-25,008
OAH NO. 2014-LCB-0054
AVN NO. 2B4025A

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
Kendra Boyd, Enforcement and Education Division Headquarters, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: JUNGILAPON HANSON 17815 SPRUCE WAY LYNNWOOD, WA 98037-7432 MAST PERMIT HOLDER PERMIT NO. 120-472-605 AVN NO. 2B4025A	LCB NO. L-25,008 OAH NO. 2014-LCB-0054 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:

JUNGILAPON HANSON 17815 SPRUCE WAY LYNNWOOD, WA 98037-7432	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION SUSIE GILES-KLEIN, ASSISTANT ATTORNEY GENERAL

DATED this 24th day of JUNE, 2015, at Olympia, Washington.

Kevin McCarroll, Adjudicative Proceedings Coordinator

RECEIVED
APR 24 2015
Liquor Control Board
Board Administration

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of: Jungilapon Hanson, Permit Holder. AVN No. 2B4025A	Docket No. 2014-LCB-0054 **INITIAL ORDER** Agency: Liquor Control Board Program: Liquor Enforcement Agency No.: L-25,008

1. ISSUE PRESENTED

Regarding AVN #2B4025A dated February 5, 2014, and Complaint No. L-25,008 dated June 6, 2014: Whether the alleged conduct occurred; if so, whether the conduct violated statutes and/or regulations as asserted; if so, whether the assessed or proposed penalty of a 5-day suspension or a $100 penalty is correct.

2. ORDER SUMMARY

Permit Holder Jungilapon Hanson did not, as contemplated by RCW 66.44.310(1)(a) and/or WAC 314-11-020(2), allow a person under the age of 21 years to remain in an area classified by the Liquor Control Board as off-limits to a person under the age of 21 years. Accordingly, AVN #2B4025A and Complaint No. L-25,008 are SET ASIDE.

3. HEARING

3.1 Hearing Date: February 10, 2015

3.2 Administrative Law Judge: Terry A Schuh

3.3 Licensee/Applicant: Jungilapon Hanson, pro se

3.4 Agency: Liquor Control Board

3.4.1 Representative: Susie F. Giles-Klein, Assistant Attorney General

3.4.2 Witnesses

3.4.2.1 Gregory Otteman, Enforcement Officer, Liquor Control Board

3.4.2.2 Judy Lewis, Enforcement Officer, Liquor Control Board

3.5 Exhibits: Exhibits 1 through 13 were admitted into the record as evidence.

4. FINDINGS OF FACT

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

Jurisdiction

4.1 On February 5, 2014, the Liquor Control Board ("LCB") issued to the Permit Holder, Jungilapon Hanson, and served by certified mail Administrative Violation Notice / Mandatory Alcohol Server Permit Violation No. 2B4025A. Ex. 1.

4.2 On February 26, 2014, Ms. Hanson requested a settlement conference and, if settlement was not reached, an administrative hearing. Ex. 2.

4.3 On June 6, 2014, LCB issued Complaint No. L-25,008, incorporating Administrative Violation Notice / Mandatory Alcohol Server Permit Violation No. 2B4025A.

LCB investigation

4.4 On January 25, 2014, LCB Enforcement Officers Lewis and Otteman were engaged in premises checks of licensees. Testimony of Otteman; Testimony of Lewis. One of the things they were checking for were licensees serving alcohol to persons under the age of 21 years or allowing such persons to be in places where they are not permitted. Testimony Of Otteman; Testimony of Lewis.

4.5 At 10:06 p.m., Officers Lewis and Otteman entered Cellars, a restaurant and bar, and employer of Ms. Hanson. Testimony of Otteman; Testimony of Lewis; Ex. 4, p. 1; Ex. 5, p. 1.

4.6 Cellars operates a restaurant and bar. Testimony of Lewis. Persons under the age of 21 years are permitted in the restaurant until 10:00 p.m. Testimony of Lewis. At that time, the entire premises become restricted to person over the age of 21 years. Testimony of Lewis. The bar, of course, is restricted to persons over the age of 21 years at all times. Testimony of Lewis.

4.7 Officers Lewis and Otteman observed two young women at the bar. Testimony of Otteman; Testimony of Lewis; Ex. 5, p. 1. Officers Lewis and Otteman approached the women and observed that they each had a drink on the bar in front of them. Testimony of Lewis.

4.8 The officers asked the women to show their identification. Testimony of Otteman; Testimony of Lewis; Ex. 5, p. 1. Neither had identification. Testimony of Otteman; Ex. 4, p. 1; Ex. 5, p. 1. The officers took the women to the kitchen because the public area was getting too loud for their conversation with the two women. Testimony of Otteman; Testimony of Lewis; Ex. 4, p. 1. The officers asked the women to write down their names, addresses, and birthdates. Testimony of Lewis; Ex. 4, p. 1. The officers checked that written identification with Washington State Patrol records and determined that that the women were Gabrielle M. Wagonblast and Jillian M. Clayton, both under the age of 21 years on January 25, 2014. Testimony of Otteman; Testimony of Lewis; Ex. 8, p. 2; Ex. 10, p. 2.

4.9 The officers determined that neither of the women had money or other means of paying for their drinks. Testimony of Otteman; Testimony of Lewis. The women said that they did not have to pay. Testimony of Lewis. The officers asked the women who paid for their drinks. Testimony of Otteman. The women would not say. Testimony of Otteman; Ex. 5, p. 1.

4.10 During the investigation, Ms. Hanson entered the kitchen at the request of her manager and spoke with the officers. Testimony of Hanson.

4.11 The record is inconsistent regarding the degree to which Ms. Hanson knew the two women. However, at the very least, Ms. Hanson recognized them and had seen them before at Cellars and at other bars. Testimony of Hanson. Furthermore, Ms. Hanson did not know that the women were less than twenty-one years of age. Testimony of Hanson.

4.12 Ms. Hanson saw the two women in the bar after 10:00 p.m. Testimony of Hanson. However, Officer Lewis and Ms. Hanson dispute whether Ms. Hanson saw the women earlier that evening eating dinner in the restaurant section.

Officer Lewis testified and reported (Ex. 4) as follows:
Ms. Hanson told Officers Lewis and Otteman that she saw the two women eating dinner in the restaurant section at about 8:30 p.m. Later, Ms. Hanson repeated that she saw the two women seated in the dining area before the entire premises became restricted to person at least age 21 at 10:00 p.m.

Ms. Hanson testified as follows:
Ms. Hanson does not recall if the two women had dinner. See saw the two women in the bar after 10:00 p.m. She never saw them in the restaurant section. She did not see them eating dinner at 8:30.

I find Officer Lewis's testimony and report more credible regarding this factual issue than Ms. Hanson's testimony – for three reasons. One, Officer Lewis's report was written on February 6, 2014, when events were fresher in her mind than Ms. Hanson's testimony approximately a year later. Two, Ms. Hanson twice told the officers that she saw the women in the restaurant section earlier that evening. Three, Ms. Hanson's testimony that she does not recall if the two women had dinner is not quite consistent with a subsequent denial that she ever saw them in the restaurant section or eating dinner. Accordingly, I find that Ms. Hanson saw the two women earlier in the evening eating dinner in the restaurant section before the entire premises became restricted to persons over the age of 21.

4.13 Nevertheless, LCB and Ms. Hanson also dispute whether Ms. Hanson served dinner to the two women.

Officer Lewis testified and reported (Ex. 4) as follows:
Ms. Hanson must have served dinner to the two women because she was friends with them and knew that they were there. However, Ms. Hanson denied that she served them dinner. Ms. Hanson said that she knew one of the two women as a barista.

Officer Otteman testified and reported (Ex. 5) as follows:
Ms. Hanson denied serving the two women. Nevertheless, the officers determined that Ms. Hanson served the two women but Officer Otteman cannot remember why they made that determination. Officer Otteman understood that the owner later determined that Ms. Hanson had served the two women but Officer Otteman does not know the basis for that apparent determination.

Ms. Hanson testified that she did not serve dinner to the two women.

I find Ms. Hanson's unequivocal denial more credible than the officers' testimony to the contrary because the officers' testimony was based upon conjecture, presumption, and a determination of the owner, who was not present at the hearing to testify and confirm the officers' understanding or the basis for his alleged determination. For that matter, it is not clear whether the owner was referring to service of dinner or alcohol or both.

Therefore, I find by a preponderance of the evidence that Ms. Hanson did not serve dinner to the two women.

4.14 The two women were allowed entry into the bar. Testimony of Lewis, Otteman, and Hanson; Exs. 4 and 5. Ms. Hanson saw the two women in the bar. Testimony of Lewis, Otteman, and Hanson, Exs. 4 and 5. However, there is no evidence in the record regarding what employee or employees allowed them entry or could have and did not prevent entry. Three employees were working in the bar. Testimony of Hanson. Ms. Hanson was not working the bar and never worked in the bar. Testimony of Hanson.

4.15 The two women each had a drink in front of them while they sat at the bar. Testimony of Lewis. The two women denied paying for the drinks and refused to identify who did. Testimony of Otteman; Ex. 5. Ms. Hanson did not serve them. Testimony of Hanson. Ms. Hanson told the officers that she did not serve the two women. Testimony of Otteman; Exs. 4 & 5. Thus, I find that there is no evidence in the record that Ms. Hanson served drinks to the two women.

4.16 Nevertheless, the LCB contended that Ms. Hanson paid for the drinks. Again, the two women told the officers that they did not pay and they declined to say who did. A few days later, the owner told Officer Lewis that Ms. Hanson had paid for the drinks. Testimony of Lewis, Ex. 4. He produced a receipt. Ex. 6. Officer Otteman never saw the receipt until the hearing. Testimony of Otteman. Officer Lewis did not rely upon the receipt but rather, upon the statement of the owner. Testimony of Lewis. Ms. Hanson paid for two drinks but they were drinks she consumed that evening and not the drinks consumed by the two women. Testimony of Hanson. Here, then, the only evidence that Ms. Hanson paid for the drinks consumed by the two women is the owner's statement to Officer Lewis. The owner did not appear and testify. Ms. Hanson pointedly denied having paid for the drinks and explained the basis for the receipt which is Ex. 6. Accordingly, I find by a preponderance of the evidence that Ms. Hanson did not pay for the drinks consumed by the two women.

4.17 Ms. Hanson and one other person were working as servers in the dining section. Testimony of Hanson. Three employees were working in the bar. Testimony of Hanson. Others were working in the kitchen. Testimony of Hanson. In addition, the owner, a manager, security, and a dee-jay were present. Testimony of Otteman; Testimony of Lewis; Exs. 4 and 5. The business, as licensee, was cited and so was Ms. Hanson. Testimony of Otteman; Testimony of Lewis; Ex. 1. No other employee was cited. Testimony of Lewis. The citation issued to Ms. Hanson was not for service of alcohol but, rather, for allowing minors into a restricted area. Testimony of Otteman;

Ex. 1. Ms. Hanson was cited because the officers believed that she had served the two women. Testimony of Otteman.

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.

Ms. Hanson did not serve the two women or allow them to remain in a restricted area

5.2 "Except as otherwise provided by RCW 66.44.316, 66.44.350, and 66.24.590, it shall be a misdemeanor to serve or allow to remain in any area classified by the board as off-limits to any person under the age of twenty-one years." RCW 66.44.310(1)(a).

5.3 "Per RCW 66.44.270, 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." WAC 314-11-020(1).

5.4 Per RCW 66.44.310, licensees or employees may not allow persons under twenty-one years of age to remain in any premises or area of a premises classified as off-limits to persons under twenty-one." WAC 314-11-020(2).

5.5 Here, the two women were both under twenty-one years of age and they were observed by the officers in the bar with what appeared to be alcoholic beverages. Apparently, someone served them alcohol. Ms. Hanson observed the two women in the bar but she believed that they were over the age of twenty-years, although barely. LCB argued that every employee on shift has an obligation to prevent underage persons from remaining in the bar. But every employee was not cited; only Ms. Hanson. Ms. Hanson was a server in the dining area. She never worked in the bar. To be sure, she had a mast permit. Evidently, she served alcohol to diners. Moreover, by the time the officers arrived, the entire premises, including the dining area, were off limits to underage persons. Nevertheless, there were three people working in the bar when the two women were observed. Those three employees were in a better position and one of greater responsibility to monitor who was present in the bar. The officers cited Ms. Hanson because they believed that she knew the two women and had served them

food. The record failed to establish that Ms. Hanson served the two women food or that she knew them more than casually. Further, even if Ms. Hanson knew them well and served them food, I am not persuaded that those circumstances elevated Ms. Hanson to a greater responsibility to monitor the bar or be liable for who is there. There is no evidence in the record that Ms. Hanson knew or reasonably suspected that the two women were underage and there is no evidence in the record that Ms. Hanson facilitated or acquiesced to their presence in the bar. At most, Ms. Hanson observed two young women in the bar that was covered by three employees. Therefore, there is no evidence that Ms. Hanson served alcohol to underage persons and I am not persuaded that she allowed them to remain in restricted premises as contemplated by the foregoing authority.

5.6 Thus, AVN #2B4025A and Complaint No. L-25,008 should be SET ASIDE.

6. INITIAL ORDER

IT IS HEREBY ORDERED that

AVN No. 2B4025A and Complaint No. L-25,008 issued to Permit Holder Jungilapon Hanson are SET ASIDE.

Dated: April 08, 2015.

Terry A Schuh
Senior Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF MAILING ATTACHED

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).

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 2014-LCB-0054

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

Jungilapon Hanson 17815 Spruce Way Lynnwood, WA 98037	☒ First Class Mail, Postage Prepaid ☐ Certified Mail, Return Receipt ☐ Hand Delivery via Messenger ☐ Campus Mail ☐ Facsimile ☐ E-mail
Susie Giles-Klein Assistant Attorney General Attorney General of Washington 1125 Washington Street NE PO Box 40100 Olympia, WA 98504	☒ First Class Mail, Postage Prepaid ☐ Certified Mail, Return Receipt ☐ Hand Delivery via Messenger ☐ Campus Mail ☐ Facsimile ☐ E-mail
Kevin P. McCarroll Adjudicative Proceedings Coordinator Washington State Liquor Control Board 3000 Pacific Ave SE PO Box 43076 Olympia WA 98504	☒ First Class Mail, Postage Prepaid ☐ Certified Mail, Return Receipt ☐ Hand Delivery via Messenger ☐ Campus Mail ☐ Facsimile ☐ E-mail

Date: Wednesday, April 08, 2015

OFFICE OF ADMINISTRATIVE HEARINGS

Melanie N. Barnhill
Legal Secretary