BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: SELLZAR INTERESTS INC d/b/a FUSION 722 NE 45TH ST SEATTLE, WA 98105-4719 LICENSEE LICENSE NO. 354009 UBI: 602 762 207 001 0001	LCB NO. L-25,226 OAH NO. 11-2014-LCB-00064 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 Deny Liquor License Change of Corporate Officer dated July 11, 2014.

2. The Applicant submitted a request for a hearing.

3. On March 9, 2015, a hearing was held before Administrative Law Judge Gina L. Hale with the Office of Administrative Hearings.

4. At the hearing, the Applicant was represented by Attorney David Osgood. Assistant Attorney General Kim O'Neal represented the Licensing Division of the Board.

5. On May 8, 2015, Administrative Law Judge Gina L. Hale issued an Initial Order, affirming the decision to deny the Applicant's license application as expressed in the Statement of Intent to Deny Liquor License Application.

6. No Petition for Review was received.

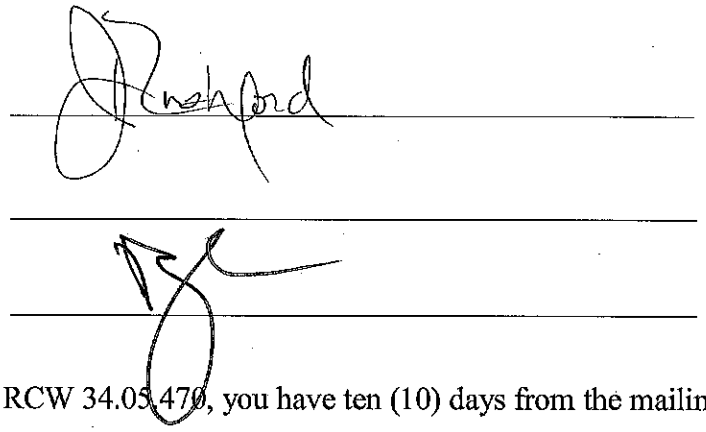
7. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises;

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 liquor license change of corporate officer application number 354009 for Sellzar Interests, Inc. d/b/a Fusion is DENIED.

DATED at Olympia, Washington this 7th day of July, 2015.

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

July 8, 2015

David Osgood
Law Office of David Osgood PS
PO Box 12188
Seattle, WA 98102-0188

Daniel Yarbrough
Sellzar Interests Inc
d/b/a Fusion
722 NE 45th St
Seattle, WA 98105-4719

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: Sellzar Interests Inc
TRADE NAME: Fusion
LOCATION: 722 NE 45th St, Seattle, WA 98105-4719
LICENSE NO. 354009
LCB HEARING NO. L-25,226
OAH NO. 11-2014-LCB-00064
UBI: 602-762-072-001-0001

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: Teresa Eidem, Seattle City Attorney's Office
Becky Smith, Licensing Director, WSLCB
Sharon Hendricks, Policy and Compliance Manger, WLSCB
Linda Thompson, Licensing Adjudications Coordinator, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: SELLZAR INTERESTS INC d/b/a FUSION 722 NE 45TH ST SEATTLE, WA 98105-4719 LICENSEE LICENSE NO. 354009 UBI: 602-762-072-001-0001	LCB NO. L-25,226 OAH NO. 11-2014-LCB-00064 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:

DAVID OSGOOD LAW OFFICE OF DAVID OSGOOD PS PO BOX 12188 SEATTLE, WA 98102-0188	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION KIM O'NEAL, ASSISTANT ATTORNEY GENERAL
DANIEL YARBROUGH SELLZAR INTERESTS INC d/b/a FUSION 722 NE 45TH ST SEATTLE, WA 98105-4719	

DATED this 8th day of JULY, 2015, at Olympia, Washington.

Kevin McCarroll, Adjudicative Proceedings Coordinator

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of:	Docket No. 11-2014-LCB-00064
Daniel Yarbrough, Sellzar Interests, Inc. d.b.a. Fusion	**INITIAL ORDER**
Location Address: 722 NE 45th Street Seattle, WA 98105 Licensee.	Agency: Liquor Control Board Program: Liquor Licensing Agency No. L-25,226
License No. 354009 UBI No. 602-762-072-001-0001	

RECEIVED
MAY 14 2015
Liquor Control Board
Board Administration

1. ISSUES PRESENTED

1.1. **Issue No. 1**. Whether the Liquor Control Board's Statement of Intent to Deny Liquor License Change of Corporate Officer should be affirmed.

2. ORDER SUMMARY

2.1. **Issue No. 1**. The Liquor Control Board's Statement of Intent to Deny Liquor License Change of Corporate Officer should be affirmed.

3. HEARING

3.1.	**Hearing Date:**	March 9, 2015
3.2.	**Administrative Law Judge:**	Gina L Hale
3.3.	**Licensee:**	(David Osgood, Attorney at Law, appeared on behalf of the Licensee who did not attend)
	3.3.1. **Representative:**	David Osgood, Attorney at Law
3.4.	**Agency:**	Liquor Control Board
	3.4.1. **Representative:**	Kim O'Neal, Assistant Attorney General
	3.4.2. **Witnesses:**	Sharon Hendricks - Licensing Compliance and Policy Manager

3.5. **Exhibits:** The administrative law judge admitted Liquor Control Board exhibits 1 through 4. The Licensee did not submit any exhibits or offer any testimony.

3.5.1. **LCB Exhibits:**

1. Statement of Intent to Deny Liquor License; (6 pages)
2. Request for Hearing; (2 pages)
3. Report of Application; (9 pages)
4. Index of Records for Denial Request (2 pages) and Attachments to the Report of Application (108 pages)

3.6. **Non-Evidentiary Presentations Considered**. The following non-evidentiary documents were filed with OAH and arguments made at the hearing. All were 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. Licensee's Request for Administrative Hearing and the OAH Notice of Hearing.

3.6.2. The parties' opening statements and oral closing arguments.

4. FINDINGS OF FACT

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

Jurisdiction

4.1 On July 11, 2014, the Liquor Control Board (Board) issued a Statement of Intent to Deny Liquor License Change of Corporate Officer to the Licensee, Daniel Yarbrough, d.b.a. Fusion. Exhibit 1.

4.2 Mr. Yarbrough submitted a Request for Hearing dated July 28, 2014. Exhibit 2, page 2.

4.3 The Board received the Mr. Yarbrough's request on July 30, 2014. Exhibit 2, page 1.

Evidence Presented at the Hearing

4.4 Mr. Yarbrough did not testify at the hearing, nor did he submit any exhibits. The only sworn testimony given and exhibits presented at the hearing were offered on behalf of the Liquor Control Board.

4.5 Mr. Yarbrough's attorney was present at the hearing and did make legal arguments on his behalf.

Daniel Yarbrough's History with Sellzar Interests, Inc. and Applications to the Board

4.6 In January 2008, Sellzar Interests, Inc. received a Spirits, Beer, and Wine license for the premises located at 722 NE 45th Street, Seattle, Washington 98105.

4.7 Mr. Yarbrough obtained a 50% interest in the company after he replaced a former corporate officer. The Licensee-corporation submitted a Change of Corporate Officers/Shareholders application, which the Board approved in June 2012.

4.8 On June 23, 2013, Mr. Yarbrough submitted an application to assume the license as Library Sports, Grill, LLC, dba, Library Sports Grill.

4.9 Based on Mr. Yarbrough's history in the nightclub industry, both the City of Seattle and the Liquor Control Board's Enforcement and Education Division (Enforcement) requested that the Board's Licensing Division conduct a full financial investigation of Library Sports Grill, LLC.

4.10 On February 14, 2013, the Board sent a letter to Mr. Yarbrough requesting him to provide two years of bank statements and various other documents. Mr. Yarbrough was given until March 1, 2013. No response was received from Mr. Yarbrough.

4.11 On March 4, 2013, the City of Seattle sent a Letter of Objection to the Board opposing the assumption application. The City of Seattle had serious concerns regarding Mr. Yarbrough's "tumultuous history in nightclub ownership," and did not believe that Mr. Yarbrough was "fit to possess, hold, control or manage a liquor license."

4.12 The Board informed Mr. Yarbrough of the objection by the City of Seattle on March 12, 2013. Mr. Yarbrough was given until March 27, 2013, to respond.

4.13 No response was received from Mr. Yarbrough until April 22, 2013, when he withdrew his assumption application.

4.14 On April 18, 2013, prior to withdrawing his assumption application, Mr. Yarbrough submitted a Change of Corporate Officers/Shareholders application. The application was for Sellzar Interests, Inc., d.b.a. Fusion and it named Mr. Yarbrough as the 100% owner of the corporate stock.

4.15 In order to determine whether the application should be approved or not, the Board requested various financial documents from Mr. Yarbrough in a letter dated May 6, 2013. In particular, the Board requested two years of bank statements for all accounts for which Mr. Yarbrough had signature authority. No response was received and the Board made a second request to Mr. Yarbrough for the documents on July 8, 2013.

4.16 No documents were provided by Mr. Yarbrough in response to the Board's request.

4.17 On May 9, 2013, the City of Seattle objected to Mr. Yarbrough's application for Change of Corporate Officers/Shareholders for the same reasons it objected to the assumption application.

4.18 On September 25, 2013, the Board's Enforcement Division also requested that the Change of Corporate Officers/Shareholders application be denied for two reasons: a) Mr. Yarbrough's failure to provide the requested documents in support of his application, and b) Mr. Yarbrough's history of administrative violations.

Administrative Violation History - City of Tukwila

4.19 **Cathedral Events Center.** On September 28, 2012, Mr. Yarbrough, a member of Viva Events Center LLC, d.b.a. Cathedral Events Center, applied for a Sports Entertainment Facility license. On February 1, 2013, the application was switched to a Nightclub application.

4.20 On February 15, 2013, the City of Tukwila submitted a Letter of Objection to the approval of Mr. Yarbrough's license application based on the fact that he did not have a business license for the City of Tukwila. Concerns regarding public safety and crime prevention were also noted and Mr. Yarbrough was notified of the City's concerns.

4.21 The Board ruled to deny the application. Prior to the issuance of the Board's ruling, Mr. Yarbrough withdrew his application.

Administrative Violation History - City of Olympia

4.22 **Trago Olympia.** In November 2012, Mr. Yarbrough was a member of Trago Olympia LLC, d.b.a. Trago Olympia. On November 7, 2012, Mr. Yarbrough applied for a Spirits, Beer and Wine Restaurant Lounge license.

4.23 The Board denied Mr. Yarbrough's application for Trago Olympia on June 21, 2013, based on Mr. Yarbrough's administrative violation history. Another member of the business, Sean Roach, bought out two other members. On December 11, 2013, a Settlement Agreement was reached. The license was issued on the condition that Mr. Yarbrough and Troy Selland would be prohibited from having any involvement in the business including employment, ownership or management.

Administrative Violation History - City of Seattle and LCB Enforcement

4.24 Both the City of Seattle and the Board's Enforcement Division noted their concerns regarding Mr. Yarbrough's administrative violation history.

4.25 From 2009 to 2013, Mr. Yarbrough has been involved in the hands-on management of four (4) different premises: Fusion, 1 Hundred Bistro & Bar, Vela

Pizzeria and Lounge, and Reventon. The following violations are a part of Mr. Yarbrough's administrative violation history.

4.26 **Fusion.** Operated by Mr. Yarbrough with Troy Selland:

- January 17, 2013. Verbal Warning: NSF check for alcohol by Retail Licensee.
- August 24, 2012. Verbal Warning: Employee under legal age or without a MAST permit.

4.27 **1 Hundred Bistro & Bar.** Operated by Mr. Yarbrough with Troy Selland:

- March 23, 2013. Written Warning: NSF check for alcohol by Retail Licensee
- March 9, 2013. Verbal Warning: NSF check for alcohol by Retail Licensee
- February 7, 2013. Verbal Warning: Advertising Violation – Prohibited practices between a Non-Retail and Retail Licensee
- September 26, 2012. Verbal Warning: Failure to post required signs, including "No Minors" sign at entrance
- July 11, 2012. Written Warning: Failure to furnish required documentation

4.28 **Vela Pizzeria and Lounge.** Operated by Mr. Yarbrough with Troy Selland:

- May 15, 2011. AVN: Hours of Service violation between 2:00 a.m. and 6:00 a.m.
- November 21, 2009. AVN: Substituting, Tampering, Improper Labeling, unlawful removal, possession, or unauthorized sale of liquor

4.29 **Reventon.** Operated by Mr. Yarbrough alone:

- May 6, 2012. AVN: Required Food Service not available in violation of WAC 314-02-035(6)
- May 6, 2012. AVN: Required Food Service not available in violation of WAC 314-02-035(9)
- May 6, 2012. AVN: Engaging in or Permitting Lewd Conduct

- May 6, 2012. AVN: Inadequate Lighting

- April 19, 2012. Written Warning: Unauthorized Alterations, Change of Trade Name or Added Activities

- April 13, 2012. Verbal Warning: Engaging in or Permitting Lewd Conduct

- March 29, 2012. Verbal Warning: Failure to post required signs in violation of WAC 314-11-060(2) and WAC 3014-11-060(3)

- February 17, 2012. Verbal Warning: Employee under legal age or without a MAST permit and Required Food Service Not Available

4.30 It is the Board's position that there are four separate and independent bases for the denial of Mr. Yarbrough's application:

- Failure to provide the requested financial documentation in support of the application to Change Corporate Officers/Shareholders

- The objection by the City of Seattle as a local government entity to the change application

- Mr. Yarbrough's administrative violation history

- Negative impact on public health and safety

Mr. Yarbrough's Actions Pending the Final Board Decision

4.31 On December 28, 2012, Mr. Yarbrough and Mr. Selland executed a Purchase and Sale Agreement for Mr. Yarbrough's purchase of the business. The Board had not issued any approval for the change of corporate officers at that time.

5. CONCLUSIONS OF LAW

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

Jurisdiction

5.1. The undersigned administrative law judge has jurisdiction over the persons and subject matter of this case under the provisions of Title 66 Revised Code of

Washington (RCW), Chapter 34.05 RCW and Title 314 Washington Administrative Code (WAC).

5.2. As a licensed retail seller of alcohol, the Licensee is subject to the jurisdiction of the Washington State Liquor Control Board. The Licensee is subject to the conditions and restrictions imposed by Title 66 RCW; WAC 314-11; and WAC 314-12. Proceedings involving agency action are adjudicative proceedings under Chapter 34.05 RCW. The Board has authority to assign such proceedings to an administrative law judge pursuant to Chapter 34.12 RCW. A proper hearing was provided in this case.

Board Authority

5.3. A license is a privilege and not a vested right. WAC 314-12-010.

5.4. In order to receive a license, an individual must meet certain criteria, and they must continue to meet those criteria in order to maintain the license. WAC 314-07-015(1). (Emphasis added.)

5.5. Under the provisions of RCW 66.24.010(2), the Board has the authority to "consider any prior criminal conduct of the applicant including an administrative violation history record with the board and a criminal history record information check."

Bases for Denial

5.6. **Failure to Provide Requested Documentation.** Under the provisions of WAC 314-07-065(2), the Board may deny a liquor license where a license applicant fails to provide requested documentation.

5.7. The Board was clear in its request for certain documents which it needed to review. Mr. Yarbrough has failed to provide any explanation as to why the documents were not submitted as requested.

5.8. **Objections by Local Government.** The decision to allow or deny a liquor license to an entity / individual has been duly delegated to the Washington State Liquor Control Board. However, the Board makes its decisions in light of the communities which will be impacted. Under the provisions of WAC 314-07-065(7) and WAC 314-09-010(2), the Board may consider objections from local authorities, the public and governmental jurisdictions when deciding whether to grant or deny a request for a license.

5.9. In the present case, the Board received objections from the City of Seattle to the Change in Corporate Officers/Shareholders application just as it had opposed the assumption application. The City of Seattle referenced Mr. Yarbrough's violation history and what it believed was his disregard for the law, which had occurred over several years. The Board acted properly in considering the position of this local governmental body in making the decision to deny.

5.10. Mr. Yarbrough did not provide any testimony at the hearing in response to the concerns of the City of Seattle or regarding the Board's consideration of the City's concerns.

5.11. **Administrative Violation History.** A licensee's administrative violation history can include verbal and written warnings, as well as Administrative Violation Notices. Mr. Yarbrough has been given all three over the course of his tenure as a liquor licensee. Some of the offenses have been repeat offenses and the penalty has escalated accordingly. Mr. Yarbrough's violation history reflects a disregard for the rules and regulations in violation of WAC 314-07-045. His most recent act in this regard, the subject of this hearing, is the fact the he proceeded to change the corporate officers prior to getting the required approval from the Board. Additionally, while he did submit a formal application to Change Corporate Officers./Shareholders, he repeatedly failed to submit the required financial documentation to the Board as requested. He made the change without Board approval and has left the Board to deal with the consequences of that change.

5.12. The Board correctly, and within its authority, reviewed and considered Mr. Yarbrough's administrative violation history. RCW 66.24.010(2). The Board, having reviewed Mr. Yarbrough's violation history, did not act in a capricious or arbitrary way when it denied his application for Change of Corporate Officers/Shareholders under the provisions of WAC 314-07-045.

5.13. There was no testimony or documentation presented by Mr. Yarbrough to challenge or explain his administrative violation history.

5.14. **Negative impact to Public Health and Safety.** Mr. Yarbrough's violation history has created concern for both the City of Seattle and the Enforcement Division regarding the potential negative impacts to the welfare, health and safety of the public. The Board has shown that granting Mr. Yarbrough's application would not be in the best interest of the public; the undersigned concurs.

5.15. There was no testimony or documentation presented by Mr. Yarbrough which presented any opposing view.

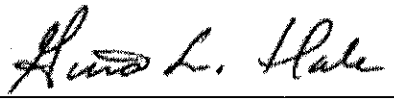
5.16. The undersigned concludes that the Board did not act arbitrarily or capriciously in deciding to deny Mr. Yarbrough's Change of Corporate Officers/Shareholders application. Rather, the Board acted properly within its statutory and regulatory authority in response to local government and public welfare concerns.

5.17. The Liquor Control Board's action to deny Mr. Yarbrough's Change of Corporate Officers/Shareholders application was supported by law and was appropriate. The Board action should be affirmed.

6. INITIAL ORDER

6.1. The Liquor Control Board's Statement of Intent to Deny Liquor License Change of Corporate Officer is AFFIRMED.

Dated: May 08, 2015.



Gina L Hale
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).

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that today I served a copy of this document, by placing it in the mail with postage prepaid, addressed to the following parties of record:

David Osgood Attorney at Law PO Box 12188 Seattle, WA 98102	Appellant Representative
Kim O'Neal Assistant Attorney General PO Box 40100 Olympia, WA 98504-0100	Assistant Attorney General
Daniel Yarbrough d/b/a FUSION 722 NE 45th Street Seattle, WA 98105	Licensee
Kevin McCarroll Adjudicative Proceedings Coordinator P.O. Box 43076 Olympia, WA 98504-3076	Agency Contact
Becky Smith Licensing Director P.O. Box 43098 Olympia, WA 98504-3098	Agency Contact

Dated May 08, 2015, at Olympia, Washington.
(DATE OF MAILING)

Jamie Marshall

Representative
Office of Administrative Hearings
2420 Bristol Court SW
Olympia, WA 98502