

BEFORE THE WASHINGTON STATE LIQUOR AND CANNABIS BOARD

IN THE MATTER OF:

SMARTY'S LLC
d/b/a SMARTY'S LLC

430 SUNSET BLVD NE
RENTON, WA 98057

APPLICANT

LICENSE APPLICATION NO. 413672
UBI: 603 353 421 001 0001

LCB NO. M-25,249
OAH NO. 01-2015-LCB-00012

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 and Cannabis Board issued a Statement of Intent to Deny Marijuana License dated July 22, 2014, asserting that the Applicant failed to submit required documents including a Secretary of State Certificate of Formation and a signed and /or valid letter of intent to lease or purchase from a property owner or designee.
2. The Applicant submitted a timely request for a hearing.
3. On May 26, 2015, a hearing was held before Administrative Law Judge TJ Martin with the Office of Administrative Hearings.
4. At the hearing, the Applicant was represented by Attorney Andrew Voelker. Assistant Attorney General Kim O'Neal represented the Licensing Division of the Board.
5. On March 5, 2015, Administrative Law Judge TJ Martin issued an Initial Order, affirming the decision to deny the Applicant's license application as expressed in the Statement of Intent to Deny Marijuana License.

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;

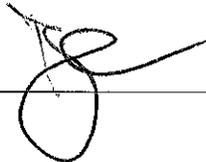
NOW, THEREFORE, IT IS HEREBY ORDERED that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order are, AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board;

IT IS HEREBY FURTHER ORDERED that marijuana license application number 413672 for Smarty's LLC d/b/a Smarty's LLC is DENIED.

DATED at Olympia, Washington this 18th day of AUGUST, 2015.

WASHINGTON STATE LIQUOR AND CANNABIS BOARD

Dorheim Kurasa



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 and Cannabis 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 19, 2015

Andrew Voelker
Attorney for Applicant
Roth & Associates
301 Union St Unit 21074
Seattle, WA 98111-1603

Caleb Guillory
Smarty's LLC
d/b/a Smarty's LLC
PO Box 21011
Seattle, WA 98111-3011

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
APPLICANT: Smarty's LLC
TRADE NAME: Smarty's LLC
LOCATION: 430 Sunset Blvd NE, Renton, WA 98057
LICENSE APPLICATION NO. 413672
LCB HEARING NO. M-25,249
OAH NO. 01-2015-LCB-00012
UBI: 603 353 421 001 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: Becky Smith, Licensing Director, WSLCB
Frank O'Dell, Licensing Supervisor, WLSCB
Linda Thompson, Licensing Adjudications Coordinator, WSLCB

WASHINGTON STATE LIQUOR AND CANNABIS BOARD

IN THE MATTER OF:

SMARTY'S LLC
d/b/a SMARTY'S LLC

430 SUNSET BLVD NE
RENTON, WA 98057

APPLICANT

LICENSE APPLICATION NO. 413672
UBI: 603 353 421 001 0001

LCB NO. M-25,249

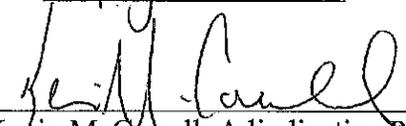
OAH NO. 01-2015-LCB-00012

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:

ANDREW VOELKER ATTORNEY FOR APPLICANT ROTH & ASSOCIATES 301 UNION ST UNIT 21074 SEATTLE, WA 98111-1603	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION KIM O'NEAL, ASSISTANT ATTORNEY GENERAL
CALEB GUILLORY SMARTY'S LLC d/b/a SMARTY'S LLC PO BOX 21011 SEATTLE, WA 98111-3011	CALEB GUILLORY SMARTY'S LLC d/b/a SMARTY'S LLC 1402 3 RD AVE STE 1330 SEATTLE, WA 98101-2116

DATED this 19th day of August, 2015, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

RECEIVED

AUG 03 2015

Liquor Control Board
Board Administration

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of:

Caleb Guillory, doing business as (d/b/a)
SMARTY'S LLC

Applicant

Location address: 430 Sunset Blvd. NE
Renton, WA 98057

License Application No. 413672
UBI No. 603-353-421-001-0001

Docket No. 01-2015-LCB-00012

INITIAL ORDER

Agency: Liquor Control Board
Program: Retail Marijuana Licensing
Agency No. M-25,249

1. ISSUES PRESENTED

- 1.1 Whether the Applicant, SMARTY'S LLC, failed to submit required documents to include: Secretary of State Certificate of Formation; and a signed and/or valid letter of intent to lease or purchase from a property owner or designee.
- 1.2 If so, whether the Liquor Control Board properly denied the Applicant's retail marijuana license application for failing to submit required documents, based on RCW 69.50.331 and WAC 314-55-020(12); and WAC 314-55-020(2).

2. ORDER SUMMARY

- 2.1 SMARTY'S LLC (hereafter the 'Applicant'), did not submit the required, necessary documents, including a signed and/or valid letter of intent to lease or purchase from a property owner or designee and a Secretary of State Certificate of Formation.
- 2.2 Under RCW 69.50.331, WAC 314-55-020(12) and WAC 314-55-050(2), the marijuana retail license application of SMARTY'S LLC, License No. 413672 is **denied**. The Liquor Control Board's 'Statement of Intent to Deny', dated July 22, 2014, is **affirmed**.

3. HEARING

- 3.1 Hearing Date: May 26, 2015
- 3.2 Location: Telephonic Hearing
- 3.3 Administrative Law Judge: TJ Martin
- 3.4 Licensee/Applicant: SMARTY'S LLC
- 3.5 Representative: Andrew Voelker, Attorney from Roth & Associates
Witnesses: Caleb Guillory, LLC Manager, for the Applicant, and
Brian Kushin, Business Location Leasee
- 3.6 Agency: Liquor Control Board
Representative: Kim O'Neil, Senior Counsel from the Washington
State Attorney General's Office on behalf of
the Washington State Liquor Control Board
Witnesses: Kim Gabbard, Marijuana Licensing Supervisor
- 3.7 Exhibits: The administrative law judge admitted
Liquor Control Board's Exhibits 1 through 4 and
Applicant's Exhibits A through E.

4. FINDINGS OF FACT

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

Jurisdiction

- 4.1 On July 22, 2014, the Liquor Control Board ('LCB') issued and served on the Applicant, SMARTY'S LLC, a 'Statement of Intent To Deny Marijuana License', regarding License Application Number 413672. *Liquor Control Board's Exhibit 1.*
- 4.2 On August 12, 2014, the Applicant, SMARTY'S LLC, filed a 'Request for Hearing, Response To Statement Of Intent To Deny.' *Liquor Control Board's Exhibit 2.*

[Continued]

Verification of Right to Real Property

- 4.1 Prior to February 2014, SMARTY'S LLC applied for a license to operate a retail marijuana business in Washington State. *LCB Exhibit 3; Page 10.*
- 4.2 Caleb Guillory is the owner and LLC Manager of SMARTY'S LLC and the person responsible for making the application for the retail marijuana license to the Liquor Control Board. *Testimony of Caleb Guillory.*
- 4.3 After receiving the Applicant's application, the Liquor Control Board notified Mr. Guillory, that due to a higher number of retail marijuana applications of over 2,100 applicants for 334 retail marijuana permits, the Liquor Control Board (LCB) would be instituting a lottery for marijuana retail licenses. The LCB would be requesting certain information from applicants before they would be entered into a retail marijuana lottery. LCB referred to the lottery application materials as the 'Retail Pre-screen Information.' *LCB Exhibit 4; and Testimony of Kim Gabbard.*
- 4.4 Five documents were required to be provided for the Pre-Screen Information packet to be complete. These documents were required to be provided within 30 days of the Retail Pre-Screen packet being sent to an applicant. *Testimony of Gabbard; and Exhibit 4; Page 4.*
- 4.5 Specifically, the Retail Pre-screen Information form required the applicant to attach the following information regarding the proposed business location to be licensed:
- Real Estate Purchase and Sale Agreement signed by buyer and seller; or
 - Real estate closing statement; or
 - Signed lease agreement; or
 - Letter of intent to lease signed by property owner

Testimony of Gabbard.

- 4.10 Marijuana License applicants were given the option of submitting documents via facsimile, regular mail, electronically via the DocuSign software program, or by dropping documents off in person at the Liquor Control Board office. *Testimony of Gabbard.*
- 4.11 The Applicant decided to fill out the Pre-screen Information Form electronically, via the DocuSign software program, offered by the Liquor Control Board, to process the Pre-screen Information submission. *Testimony of Guillory.*

[Continued]

- 4.12 On February 22, 2014, LCB sent the Applicant an email notifying it the Retail Pre-screen Information packet was available through an online service. Mr. Guillory received the email and accessed the Retail Pre-screen Information Form the same day. *Liquor Control Board Exhibit 3; Page 12, Exhibit 4; Page 3.*
- 4.13 On February 25, 2014, the Applicant signed the Pre-screen Information Form, attesting he had submitted all necessary documents required, to the best of his knowledge. *Exhibit 3; Page 30 and Testimony of Guillory.*
- 4.14 Due to the high number of 'Pre-screen Information Form' submissions by applicants, the Liquor Control Board did not have adequate staffing to review all applications submitted to ensure the correct documents were attached to each file, prior to the applicant deadlines. Accordingly, to be fair, the Liquor Control Board did not review any of the submissions prior to their respective deadlines. Once an applicant's application was submitted, after the deadline had expired, an applicant could not change his or her application submission. *Testimony of Gabbard.*
- 4.15 As a result, prior to the Pre-screen deadline, the Liquor Control Board did not verify if all the necessary documents had been submitted by the Applicant, only that his 'pre-screen Information' had been submitted. *Testimony of Gabbard.*
- 4.16 On July 22, 2014, the Liquor Control Board determined the Applicant had failed to submit the requested real property documentation as well as proof establishing the business, SMARTY's LLC, had been formed in the State of Washington. *Testimony of Gabbard and Liquor Control Board's Exhibit 3; Page 37 through Page 39.*
- 4.17 The Liquor Control Board received the Applicant's Pre-screen Information documents. However, the 'Letter of Intent' regarding the right to real property was only signed by the Applicant, Caleb Guillory. *LCB Exhibit 3; Page 29.*
- 4.18 At the hearing, the Applicant's witness, Brian Kushin, testified he is the leasee of the property situated at 430 Sunset Boulevard NE, Renton, Washington, the proposed location of the retail marijuana business location. He and Caleb Guillory, entered into an agreement for the applicant to sublease the location, if granted a retail marijuana license. *Testimony of Kushin.*
- 4.19 On December 10, 2013, the applicant, Caleb Guillory, and Brian Kushin, executed a 'Letter of Intent', for the applicant to lease the property. *Exhibit B; Page 1 through Page 2; and Testimony of Guillory.*

- 4.20 Brian Kushin asserted he is the leasee of the property and was going to sublease the property to the Applicant, if the applicant received a retail marijuana license. *Testimony of Kushin.*
- 4.21 The actual property owner is T.R. Nguyen. Testimony of Kushin.
- 4.22 T.R. Nguyen was not present for the hearing and did not testify regarding whether he gave approval to Brian Kushin to enter into a sublease agreement with the Applicant, Caleb Guillory.
- 4.23 Brian Kushin asserted Mr. Nguyen knew of the agreement between the Applicant and Mr. Kushin and that Kushin had authority to enter into a sublease agreement with the applicant. *Testimony of Kushin.*
- 4.24 At the hearing, the Applicant's LLC Manager, Caleb Guillory, admitted he accidentally submitted the wrong 'Intent to Lease' document at the time of his application submission. The document submitted had only the Applicant's signature attached to it, but not the property owner or lessor's signature. *Testimony of Guillory.*
- 4.25 As a result of the Applicant failing to demonstrate a right to the real property at issue, on the September 17, 2014, the Liquor Control Board ('LCB') issued 'Statement of Intent To Deny Marijuana License', regarding the Applicant's retail marijuana license application. *Liquor Control Board's Exhibit 1.*

Applicant's Washington State Certificate of Formation

- 4.26 As a part of filing its Pre-Screen Information packet, the Applicant submitted documentation from the Internal Revenue Service (I.R.S.), listing the U.B.I. (Unified Business Identifier) information of 'Smarty's LLC with Caleb W. Guillory Sole MBR'. *Exhibit 3; Page 18-19, Exhibit D and Exhibit E.*
- 4.27 The documentation submitted by the Applicant was neither the Secretary of State Certificate of Formation or proof demonstrating the business had been formed in the State of Washington. *Testimony of Gabbard.*
- 4.28 At the hearing, the Applicant submitted a 'State of Washington Certificate of Formation' for SMARTY's LLC. However, the document was not submitted at the time of the Applicant's Pre-Screen Application submission. *Exhibit A.*

Applicant's Notification of Application Denial

- 4.29 The Applicant submitted his required documentation on February 25, 2014. However, he was not officially notified of the denial of his retail marijuana application until July 22, 2014. *Testimony of Guilory and Exhibit 3; Page 37-39.*

5. CONCLUSIONS OF LAW

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

Jurisdiction

- 5.1 The undersigned administrative law judge has jurisdiction over the persons and subject matter of this case under Revised Code of Washington (RCW) 69.50.334, chapter 34.05 RCW, and chapter 34.12 RCW and under Washington Administrative Code (WAC) 314-55-070.

Verification of Right to Real Property

- 5.2 When granting a marijuana retailer license, LCB must license not only the applicant business entity, but also the physical premises used by the business. There are multiple provisions of the law which impose a duty on LCB, or grant it discretion, to assess the proposed licensed premises, including the following:
- a. RCW 69.50.331(1) confers on LCB the authority to inspect the premises and inquire into all matters in connection with the construction and operation of the premises. *See also*, WAC 314-55-020(6).
 - b. RCW 69.50.331(7) requires LCB to notify the applicable city or county government of a pending license application for a location within the city's or county's jurisdiction, so that such government may file a written objection against the applicant or the premises.
 - c. RCW 69.50.331(8) provides that LCB must not issue a marijuana license for any premises within one thousand feet of certain businesses and facilities.
 - d. WAC 314-55-020(9) requires the applicant to submit a detailed floor plan or site plan for the proposed licensed premises.

- 5.3 To carry out its regulatory duties, LCB may inquire and request documents regarding all matters in connection with the marijuana license application. WAC 314-55-020. It is evident, then, that LCB has the legal authority to request specific information or documentation regarding the proposed licensed premises.
- 5.4 LCB has broad discretionary authority to deny a marijuana license application, including for “[f]ailure or refusal to submit information or documentation requested by the board during the evaluation process.” WAC 314-55-020(2).
- 5.5 WAC 314-55-020(12) gives LCB specific authority to administratively close or seek denial of an application upon the applicant’s “failure to respond to the board licensing and regulation division’s requests for information within the timeline provided.”
- 5.6 In the present case, the Applicant, Caleb Guilory, doing business as SMARTY’S LLC, submitted an ‘Intent to Lease’ document in his Pre-Screen application packet. However, the Applicant, submitted the document, which was only signed by the Applicant, without the property owner or leasor’s signature being affixed to the same document.
- 5.7 Because the Applicant, Smarty’s LLC, failed to submit the requested real estate documentation, which would have needed to include the signature by the property owner or leasor, within the timeline required, its submission was incomplete and is subject to administrative closure and denial under RCW 69.50.331, WAC 314-55-020(12) and WAC 314-55-050(2). The Liquor Control Board’s action in denying of the applicant’s application is appropriate. The LCB action should be affirmed.

Applicant’s Washington State Certificate of Formation

- 5.8 In the present case, the Applicant, Caleb Guilory, argued the Liquor Control Board could have determined SMARTY’S LLC was a properly formed business in Washington State within minimal, reasonable research by looking up SMARTY’S LLC’s UBI on the Washington State Secretary of State website. However, the burden was not on the Liquor Control Board to conduct research to substantiate the Applicant’s assertion it was a Washington State formed business. Rather, the burden was on the Applicant to provide the requested documentation. In this matter, the Applicant submitted documentation from the I.R.S. showing that Smarty’s LLC was a recognized business for federal taxation purposes. However, the documentation failed to be either a Washington State

Secretary of State issued Certificate of Formation or Certificate of Incorporation. More importantly, the information submitted by the Applicant fails to prove the business was formed under the laws of the State of Washington, consistent with RCW 69.50.331(1)(c). As a result, the Applicant's documentation does not meet the requirement, as established by the Liquor Control Board. Therefore, the Liquor Control Board's action in denying of the applicant's application is appropriate. The LCB action should be affirmed.

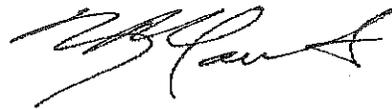
Applicant's Notification of Application Denial

5.9 In the present case, the Office of Administrative Hearings only has jurisdiction as granted to it statutorily. As a result, the undersigned administrative law judge lacks jurisdiction in order to determine whether the Applicant's Due Process Rights were violated due to any delay in notifying the Applicant of his retail marijuana application denial. In addition, the undersigned administrative law judge lacks jurisdiction to grant the Applicant any equitable remedy or relief which it believes may be appropriate.

6. INITIAL ORDER

Under RCW 69.50.331, WAC 314-55-020(12) and WAC 314-55-050(2), the marijuana retail license application of Caleb Guilory, doing business as SMARTY'S LLC, application number 41367, is **Denied**. The Liquor Control Board's 'Statement of Intent to Deny' is **Affirmed**.

Dated: July 17, 2015.



TJ Martin
Administrative Law Judge
Office of Administrative Hearings

NOTICE OF APPEAL RIGHTS – PLEASE READ CAREFULLY

Petition for Review of Initial Order: Either the applicant or the assistant attorney general may file a petition for review of the initial order with the liquor control board within twenty (20) days of the date of service of the initial order. RCW 34.05.464, WAC 10-08-211 and WAC 314-42-095.

The petition for review must:

- (i) Specify the portions of the initial order to which exception is taken;
- (ii) Refer to the evidence of record which is relied upon to support the petition; and
- (iii) Be filed with the liquor control board within twenty (20) days of the date of service of the initial order.

A copy of the petition for review must be mailed to all of the other parties and their representatives at the time the petition is filed. **Within (10) ten days after service of the petition for review, any of the other parties may file a response to that petition with the liquor control board.** WAC 314-42-095(2) (a) and (b). Copies of the response must be mailed to all other parties and their representatives at the time the response 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 SERVICE FOR OAH DOCKET NO. 01-2015-LCB-00012

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

<p>Caleb Guilory d/b/a Smarty's PO Box 21011 Seattle, WA 98111</p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Kim O'Neal Attorney General Office PO Box 40100 Olympia, WA 98504</p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Becky Smith, Licensing Director, WSLCB P.O. Box 43098 Olympia, WA 98504</p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Kevin McCarroll Adjudicative Proceedings Coordinator, WSLCB P.O. Box 43076, Olympia, WA 98504</p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Friday, July 17, 2015

OFFICE OF ADMINISTRATIVE HEARINGS


 Melanie Barnhill
 Legal Assistant