

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

SUNG KEUN KIM AND KYUNG J KIM
d/b/a MEADOWBROOK
CONVENIENCE CENTER
7200 W NOB HILL
YAKIMA, WA 98908
LICENSEE

LICENSE NO. 070228

LCB NO. 23,550
OAH NO. 2009-LCB-0041

FINAL ORDER OF THE BOARD

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

- 1 The Liquor Control Board issued a Complaint dated September 30, 2009, alleging that on March 12, 2009, the above-named Licensee, or employee(s) thereof, gave, sold, and/or otherwise supplied liquor to a person(s) under the age of twenty-one (21), contrary to RCW 66.44.270 and/or WAC 314-11-020(1).
- 2 The Licensee made a timely request for a hearing and after due and proper notice, a hearing was held before Administrative Law Judge Deborah Fiander on April 20 and April 21, 2010. The Licensee was represented by Attorney at Law Rob Case and the Education and Enforcement Division of the Board was represented by Assistant Attorney General Brian Considine.
- 3 On June 18, 2010 Administrative Law Judge Deborah Fiander entered her Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the complaint.
- 4 No petitions for review were filed by the parties.
- 5 The Board corrects the license number identified in the Initial Order. License number 351337 is incorrect and herein replaced with license number 070228.

6 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 that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order, with the correction noted in paragraph 5 above, are hereby AFFIRMED AND ADOPTED as the Findings of Fact, Conclusions of Law and Final Order of the Board and that the liquor license privileges granted to Sung Keun Kim and Kyung Kim d/b/a Meadowbrook Convenience Center at 7200 W Nob Hill, Yakima, Washington, License Number 070228, are hereby suspended for a term of seven days (7) days; effective from 12:00 p.m. on September 10, 2010, until 12:00 p.m. on September 17, 2010. Failure to comply with the terms of this order will result in further disciplinary action.

DATED at Olympia, Washington this 27 day of July, 2010.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

Linda J. Bremer

Reinhart Kewozel

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).

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

RECEIVED

JUL 06 2010

LIQUOR CONTROL BOARD
BOARD ADMINISTRATION

In the Matter of:

Sung Keun Kim and Kyung J. Kim,
d/b/a Meadowbrook Convenience
Center,

Licensee

License No. ~~351337~~ 070228

OAH No. 2009-LCB-0041
LCB No. 23,550

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND INITIAL ORDER

STATEMENT OF THE CASE

Administrative Law Judge Deborah Fiander, conducted this hearing in Yakima, Washington on April 20 and April 21, 2010.

The Appellant, Sung Keun Kim, d/b/a Meadowbrook Convenience Center, appeared and was represented by Attorney at Law, Rob Case. Sung Keun Kim, Olivia Espinoza Montano and Miguel Espinoza testified for the Appellants.

The Washington State Liquor Control Board (LCB) was represented by Assistant Attorney General, Brian Consadine. Liquor Control Board Officer Caine Hilario, Yakima City Police Officers Michael Durbin, Ryab Pepper and Andy Garcia, and Yakima Police Explorer [REDACTED] testified on behalf of the Liquor Control Board.

The proceedings were interpreted by Vania Haam (425) 357-1100 and Jose Chavez (509) 457-2870.

FINDINGS OF FACT

1. Meadowbrook Convenience Center, (referred to herein as "the Convenience Center"), located at 7200 West Nob Hill Boulevard, Yakima, Washington is the holder of a liquor license/permit UBI Number 070228.

2. On March 12, 2009, at approximately 9:41 p.m., Yakima City Police Officers Michael Durbin, Ryab Pepper and Andy Garcia of the Pro-Active Enforcement Unit and Yakima Police Explorer [REDACTED] conducted an alcohol purchase/sting at the Convenience Center at 7200 West Nob Hill Boulevard.

3. On March 12, 2009, Explorer [REDACTED] born June 3, 1988, was participating in the Yakima Police Explorer program. The Explorer program allows persons who are between the ages of 18 and 21 years, to participate in a volunteer capacity in some limited police activities such as "ride-alongs, security details and alcohol stings."

4. The Yakima Police Officers Durbin, Pepper and Garcia and Explorer [REDACTED] had conducted several stings at other locations in Yakima on March 12, 2009, before arriving at the Convenience Center. When they began the sting operation the officers instructed Explorer [REDACTED] to choose one type of alcohol at each place of business. Explorer [REDACTED] determined that he would choose the larger size cans of beer at each stop.

5. When the officers and Explorer [REDACTED] arrived at the Convenience Center it was approximately 9:40 p.m. They parked on the north side of the building, facing the main entrance. The front of the building has large windows although portions of the window have signage posted on them. Officer Michael Durbin exited the vehicle and entered the building

dressed in plain clothing. When Officer Durbin entered the Convenience Center he walked toward the candy bar aisle.

6. Explorer [REDACTED] exited the vehicle and entered the building shortly after Officer Durbin. Officers Garcia and Pepper remained in the vehicle and watched Explorer [REDACTED] and Officer Durbin enter the Convenience Center.

7. When Explorer [REDACTED] entered the Convenience Center, he was wearing a white dress shirt with a white t-shirt, jeans and white tennis shoes. Mr. [REDACTED] walked directly to a cooler toward the back of the Convenience Center and selected large can of beer. While Explorer [REDACTED] was selecting a beer, Officer Durbin appeared to be shopping, but continued to observe Explorer [REDACTED]

8. After Explorer [REDACTED] selected a beer from the cooler he proceeded to the register. When Explorer [REDACTED] began proceeding to the register, Officer Durbin also began walking toward the register, following behind Explorer [REDACTED]. When Mr. [REDACTED] reached the register, Officer Durbin remained approximately five feet behind Explorer [REDACTED]

9. Officer Durbin observed Explorer [REDACTED] give the clerk, Olivia Espinoza Montano, the beer that Explorer [REDACTED] had selected from the cooler as well as a five dollar bill. The clerk did not ask to see Explorer [REDACTED]' identification. The clerk rang the transaction, charging Explorer [REDACTED] \$1.99 for the beer and \$0.16 in tax. She gave him change from the five dollar bill in the amount of \$2.85. She placed the beer in a brown paper bag and handed the bag containing the beer to Explorer [REDACTED]

10. After completing the transaction, Explorer [REDACTED] exited the store with the bag containing the beer. He walked to the police vehicle where Officers Ryan Pepper and Andy

Garcia were waiting. Explorer [REDACTED] entered the vehicle and handed the bag containing the beer to Officer Pepper. Explorer [REDACTED] did not return to the Convenience Center.

11. Officer Pepper entered the business and approached the counter with the paper bag containing the beer. He approached the clerk at counter and took the beer out of the bag.

12. Officer Durbin also approached the register and identified himself as a police officer to the clerk. Officer Pepper took a photograph of the beer and tried to explain the situation. The clerk, however, could not understand Officer Pepper due to a language barrier. Officer Pepper returned to the police vehicle and explained to Officer Garcia that the clerk spoke Spanish and asked Officer Garcia to assist with translation.

13. Officer Pepper and Officer Garcia entered the building. Officer Durbin asked the clerk for a copy of the receipt of the purchase as well as a return of the \$5.00 bill used in the transaction. The clerk provided the receipt to Officer Durbin and returned the \$5.00 bill from the till. The officers also returned the change from the transaction, in the amount of \$2.85.

14. The receipt received by Officer Durbin from clerk is dated 3/12/09. The time stamp reflects 21:44:09. The store identification on the receipt reads:

SHELL
7200 W NOB HILL
YAKIMA WA 98908

Exhibit 5, page 1.

15. The description of the item purchased is "BEER/WINE." The quantity is "1" and the amount is \$1.99. Exhibit 1, page 5.

16. The photograph submitted by LCB of the beer sold at the Convenience Center on March 12, 2009 reflects a 24 ounce can of Miller Lite. Exhibit 7.

17. Neither Sung Keun Kim nor Kyung J. Kim were present on March 12, 2009 at the time of the incident. Also present at the time of the incident was Miguel Espinoza, who is a friend of Ms. Espinoza Montano and had been visiting with her at the time of the incident and an individual named Juan who helps with the cleaning.

18. Appellants argue that LCB cannot demonstrate that the photo of Miller Lite beer offered as Exhibit number 7 is the actual beer that Ms. Espinoza Montano sold on March 12, 2010. Appellants argue that the price reflected on the receipt is the price that they charge for a Bud Light, not a Miller Light.

19. Explorer [REDACTED] could not say for certain that the beer in the photograph submitted as Exhibit 7 is the beer that he purchased at the Convenience Center on March 12, 2009. Explorer [REDACTED] was certain, however, that he purchased a 24 ounce beer at the Appellant's Convenience Store. Appellants offered no evidence to demonstrate that the beverage Ms. Espinoza Montano sold to Explorer [REDACTED] on March 12, 2009 was not a beer.

20. At hearing, Ms. Espinoza Montano also testified that she believed she had sold the beer to Officer Durbin who was not wearing a jacket or a hat. She further alleged that after he purchased the beer Officer Durbin left the store and returned wearing a jacket and a hat. The clerk's friend, Miguel Espinoza testified that he recalled the person who bought the ve was "more white." Mr. Espinoza also testified, however, that when the individual was buying the beer Mr. Espinoza "was giving him [his] back."

21. On March 12, 2009, the Yakima Police Department provided the citation for Furnishing Alcohol to a Minor to the Liquor Control Board. On May 4, 2009, Officer Caine Hillario issued an Administrative Violation Notice, Case Number 4K9071L

22. On May 4, 2009, the Liquor Control Board Officer Canine Hilario personally served an Administrative Violation Notice (AVN) against Meadowbrook Convenience Store and Licensee/Permit Holders Sung Keun Kim and Kyung J. Kim on Kim Kyung. The AVN, case number 4K9071L, sets out an alleged violation on March 12, 2009 of Revised Code of Washington (RCW) 66.44.270. The AVN refers to Yakima Police report Number 09-04278 for details.

23. In conjunction with the violation, LCB also assessed a seven day suspension effective June 4, 2009, through June 11, 2009. The May 4, 2009 AVN is Appellant's second AVN in a two year period. See Exhibit 6, page 1 (LCB Certified Statement of Licensing History for Meadowbrook Convenience Center).

24. On May 5, 2010, the Appellant requested an informal settlement conference and absent reaching a settlement, requested a formal administrative hearing. Exhibit 1, page 2.

25. On June 23, 2009, a settlement conference was conducted between the Appellants and LCB. The parties did not reach a compromise agreement and the Appellants requested an administrative hearing.

CONCLUSIONS OF LAW

1. The Washington State Liquor Control Board has jurisdiction over the licensees, Meadowbrook Convenience Center, who is the holder of a liquor license/permit issued pursuant to chapter 66.24 RCW and is subject to the provisions of RCW 66.24.010.

2. The licensee of a liquor licensed premises is responsible for operation of the licensed premises in compliance with the liquor laws and rules of the board. If the licensee chooses to employ others in the operation of the business, any violations committed, or permitted, by those employees shall be treated by the board as violations committed, or permitted, by the licensee. WAC 314-12-125(1). It is the duty and responsibility of the licensees to control the conduct of employees at all times. WAC 314-16-120(1).

3. It is unlawful for any retail licensee to give, sell, or otherwise supply liquor to any person under the age of twenty-one years. RCW 66.44.270(1) and WAC 314-16-150(1).

4. Beer is liquor. RCW 66.04.010(2) and (15).

5. The licensee violated the provisions of RCW 66.44.270(1) and WAC 314-16-150(1) by having sold, given or otherwise supplied liquor to a person under the age of twenty-one years.

6. The Liquor Control Board may, in its discretion, may suspend or cancel the liquor license and all rights of the licensees to keep and sell liquor thereunder, if the licensees have violated the provisions of RCW 66.44.270(1) and WAC 314-16-150(1). RCW 66.24.010(3). For a second violation during a two year period, the penalty is a seven day liquor license suspension. WAC 314-29-020.

7. The Appellants' dispute the allegation that the clerk working in their business on March 12, 2010, sold liquor to a person under the age of twenty-one years. However, the credible testimony of Explorer [REDACTED] which is corroborated by the credible testimony of Officer Durbin and by the receipt dated March 12, 2009, demonstrates that Ms. Espinoza Montano sold a beer to Explorer [REDACTED] while she was cashiering at the Meadowbrook Convenience

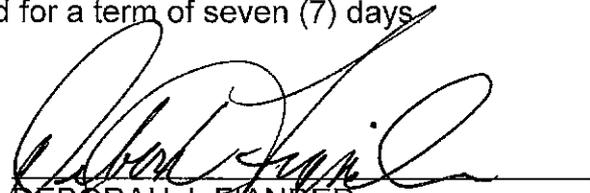
Center on March 12, 2009. The evidence further demonstrates that at the time Ms. Espinoza Montano sold the beer to Explorer [REDACTED] he was a person under the age of twenty-one years.

8. The standard penalty for a second violation shall be imposed.

From the foregoing conclusions of law, NOW THEREFORE,

INITIAL ORDER

IT IS HEREBY ORDERED That the board's complaint be sustained and that the liquor license privileges granted to Sung Keun Kim and Kyung J. Kim, doing business as Meadowbrook Convenience Store, at 7200 West Nob Hill, Yakima, Washington, license 070228, be and the same is hereby suspended for a term of seven (7) days


DEBORAH J. FLANDER
Administrative Law Judge
Office of Administrative Hearings

NOTICE TO THE PARTIES

Either the licensee or permit holder 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 and WAC 10-08-211, 314-29-010(4)(b) and 314-42-080(1).

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 and 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 314-42-080(3). Copies of the reply must be mailed to all other parties and their representatives at the time the reply is filed.

The administrative record, the initial order, and any exceptions filed by the parties will be circulated to the board members for review. WAC 314-29-010(4)(c).

Following this review, the board will enter a final order WAC 314-29-010(4)(d). Within ten days of the service of a final order, any party may file a petition for reconsideration, 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.

A copy was mailed to:

Sung Keun Kim, Kyung J. Kim, dba Meadowbrook Convenience Center, Appellants
Rob Case, Attorney for Licensee
Brian Considine, AAG (360) 753-2711
Vania Haam, Court Certified Korean Interpreter
Pat Wilson Parmer, Enforcement and Education Division



Washington State
Liquor Control Board

July 28, 2010

D. Rob Case, Attorney for Licensee
PO Box 550
Yakima, WA 98907-0550

Sung Keun Kim and Kyung J Kim, Licensees
d/b/a Meadowbrook Convenience Center
PO Box 8261
Yakima, WA 98908-0261

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

**RE: FINAL ORDER OF THE BOARD
ADMINISTRATIVE VIOLATION NOTICE NO. 4K9071L
LICENSEE: Sung Keun Kim and Kyung J Kim
TRADE NAME: Meadowbrook Convenience Center
LOCATION: 7200 W Nob Hill, Yakima, WA 989808
LICENSE NO. 070228-4F
LCB HEARING NO. 23,550
OAH NO. 2009-LCB-0041
UBI: 601 162 197 002 0002**

Dear Parties:

Enclosed please find a Declaration of Service by Mail and a copy of the Final Order in the above referenced matter

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

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin McCarroll".

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Spokane and Pasco Enforcement and Education Divisions, WSLCB
Amber Harris, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

LCB NO. 23,550

SUNG KEUN KIM AND KYUNG J KIM
MEADOWBROOK CONVENIENCE CENTER
7200 W NOB HILL
YAKIMA, WA 989808

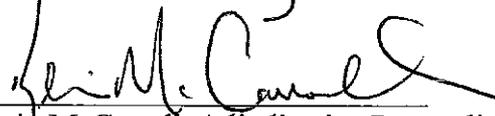
DECLARATION OF SERVICE BY MAIL

LICENSEE

LICENSE NO. 070228-4F

I declare under penalty of perjury under the laws of the state of Washington that on July 28, 2010, I served a true and correct copy of the FINAL ORDER OF THE BOARD in the above-referenced matter, by placing a copy of said documents in the U.S. mail, postage prepaid, to all parties or their counsel of record.

DATED this 28th day of July, 2010, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

D. ROB CASE, ATTORNEY FOR LICENSEE
PO BOX 550
YAKIMA, WA 98907-0550

BRIAN CONSIDINE, ASSISTANT ATTORNEY GENERAL, GCE DIVISION
OFFICE OF THE ATTORNEY GENERAL
1125 WASHINGTON STREET SE
PO BOX 40100
OLYMPIA, WA 98504-0100

SUNG KEUN KIM AND KYUNG J KIM,
LICENSEES
d/b/a MEADOWBROOK CONVENIENCE CENTER
PO BOX 8261
YAKIMA, WA 98908-0261