

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

YS PARK, INC.
d/b/a HAPPY'S MARKET
207 W UNIVERSITY AVE
ELLENSBURG, WA

LICENSEE

LICENSE NO. 350252
AVN NO. 4E9056A

LCB NO. 23,513
OAH NO. 2009-LCB-0032

FINAL ORDER OF THE BOARD

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

1. An administrative hearing was held on November 5, 2009 at the Licensee's timely request for a hearing on the Administrative Violation Notice issued by the Liquor Control Board on February 26, 2009.

2. On June 10, 2009, the Board issued a Complaint alleging that on or about January 6, 2009 the above named Licensee, or employee(s) thereof, gave, sold and/or 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). The actual date of the alleged violation was February 6, 2009.

3. At the hearing, the Education and Enforcement Division of the Board was represented by Assistant Attorney General Brian Considine and the Licensee was represented by Kenneth D. Beckley, Attorney at Law.

4. On December 31, 2009 Administrative Law Judge Chris Blas entered his Findings of Fact, Conclusions of Law and Initial Order in this matter which dismissed the Complaint.

5. The Enforcement Division of the Board filed a Petition for Review of the Initial Order, but the Petition was not received by the Board within 20 days of the date the Initial Order

was served, as it was dated, and received by the Board, on January 25, 2010. The Licensee filed a Response to the Petition for Review, which was received by the Board on February 4, 2010.

6. On February 5, 2010, the Enforcement Division filed a Motion for Extension of Time to File Petition for Review. The reason stated for the late filing was that Assistant Attorney General Brian Considine calendared the due date incorrectly. The Board finds that the reasons stated for the late filing are not compelling, and the Board has not considered the Enforcement Division's Petition for Review in entering its Final Order.

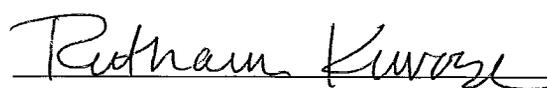
7. The Licensee wrote a letter to the Administrative Law Judge dated January 4, 2010, noting that it appears that a word was unintentionally left out of the last sentence of Finding of Fact No. 4. The last sentence of Finding of Fact No. 4 is modified to read: "No copies of the sales receipt, videotape of the transactions in the store on February 6, 2009, or a confirmation by a third party witness were presented to confirm the testimony."

8. 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 heretofore made and entered in this matter, as modified by paragraph 7 of this Order, be, and the same hereby are, AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board, and that the Complaint is DISMISSED.

DATED at Olympia, Washington this 2 day of March, 2010.

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**

March 3, 2010

Kenneth Beckley, Attorney for Licensee
701 N Pine St
Ellensburg, WA 98926-2939

YS Park, Inc-Licensee
d/b/a Happy's Market
207 W University Ave
Ellensburg, WA 98926-2866

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. 4E9056A
LICENSEE: YS Park, Inc
TRADE NAME: Happy's Market
LOCATION: 207 W University Ave, Ellensburg, WA 98926-2866
LICENSE NO. 350252
LCB HEARING NO. 23,513
OAH NO. 2009-LCB-0032
UBI: 602 384 899 001 0001**

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 Wenatchee Enforcement and Education Divisions, WSLCB
Amber Harris, WSLCB

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WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

YS PARK, INC
d/b/a HAPPY'S MARKET
207 W UNIVERSITY AVE
ELLENSBURG, WA 98926-2866

LICENSEE

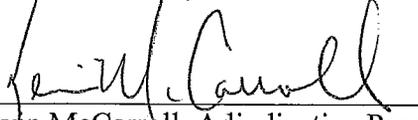
LICENSE NO. 350252
AVN NO. 4E9056A

LCB NO. 23,513
OAH NO. 2009-LCB-0032

DECLARATION OF SERVICE BY
MAIL

I declare under penalty of perjury under the laws of the state of Washington that on March 3, 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 3rd day of March, 2010, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

KENNETH BECKLEY, ATTORNEY FOR
LICENSEE
701 N PINE ST
ELLENSBURG, WA 98926-2939

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

YS PARK, INC-LICENSEE
d/b/a HAPPY'S MARKET
207 W UNIVERSITY AVE
ELLENSBURG, WA 98926-2866

DECLARATION OF SERVICE BY
MAIL

1

Washington State Liquor Control Board
3000 Pacific Avenue SE
PO Box 43076
Olympia, WA 98504-3076
(360) 664-1602

RECEIVED

JAN 04 2010

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

IN THE MATTER OF:

**YS PARK INC.
dba HAPPY'S MARKET,**

Licensee

License No. 350252

OAH Docket No. 2009-LCB-0032

LCB Case No. 23,513

AVN No. 4E9056A

INITIAL ORDER

On March 6, 2009 the Washington State Liquor Control Board (Board) served an Administrative Violation Notice (AVN) on the Licensee, YS Park. In its Notice, the Board alleges that on February 6, 2009, the Licensee furnished liquor to a minor in violation of RCW 66.44.270 and imposes a penalty of a 30-day suspension effective from 10 a.m. April 8, 2009 until 10 a.m. May 8, 2009. The Licensee filed a timely request for a hearing in response to the AVN.

This matter came on for hearing before Washington State Office of Administrative Hearings, Administrative Law Judge, Chris Blas, in Ellensburg, Washington, on November 5, 2009. At hearing, the Education and Enforcement Division (the Division) of the Board was represented by Assistant Attorney General, Brian Considine and Liquor Enforcement Officer Matt Murphy. The Licensee appeared and was represented by attorney Kenneth Beckley and Licensee shareholder Y S Park. Appearing as witnesses for the Division were [REDACTED] Ellensburg Police Officer Clifford Clayton III, minors J.D. and J.E.. Appearing as witnesses for the Licensee were Manager Richard Searle, Christopher Camarata, shareholder YS Park, Young Bin Park, Seung Baik (aka Steve Baik).

This hearing was held in conjunction with the hearing in Docket No. 2009-LCB-0031.

FINDINGS OF FACT

1. The AVN alleges:

“On 02/06/09, four minors were cited by Ellensburg Police Department for minor in possession of tilt alcohol at Ellensburg High School. In the investigation, it was discovered that one of the minors (age 17) purchased the tilt alcohol from Happy’s Market and was not asked for identification. The minor identified an employee (Young Bin Park) as the individual who sold the minor the alcohol on 02/06/09 at approximated 1900 hours.

The Licensee denies the allegation of furnishing liquor to a minor on February 6, 2009.

2. On February 6, 2009, three males under the age of 21 years, J.D. (then age 15), J.E. (then age 17) and [REDACTED] (then age 17), were found at Ellensburg High School by Ellensburg Police Officer Clifford Clayton III, in possession of cans of Tilt. Tilt is a beverage containing alcohol. The minors reported to Officer Clayton that [REDACTED] had purchased the Tilt from Happy’s Market earlier that evening and did so without having to present any identification. Happy’s Market is a convenience store owned by the Licensee located in Ellensburg near Central Washington University.

3. On February 7, 2009, Officer Clayton obtained written statements from the three minors. [REDACTED] states he purchased the cans of Tilt at Happy’s Market and was not asked for identification on February 6, 2009. The undisputed facts show that minors were in possession of liquor (Tilt) at the time of Officer Clayton’s investigation on February 6, 2009. The only link to Happy’s market being the provider of the liquor is the testimony of three of the minors interviewed by Officer Clayton: [REDACTED] J.E. and J.D..

4. [REDACTED] J.D. and J.E. testified at hearing that at or about 7 p.m. on February 6, 2009 J.E. asked [REDACTED] to go into Happy’s Market to purchase Tilt in 4-packs for them and that [REDACTED] agreed to do so. They testified that J.D. and J.E.

gave money to [REDACTED] and [REDACTED] then entered the store with J.D. and J.E. sitting in J.D.'s parked car in a location where they could not see into the store. Neither J.D. nor J.E. were able to see how [REDACTED] acquired the Tilt from the store. [REDACTED] testifies he purchased the Tilt from a clerk inside the store. Copies of the sales receipt, videotape or a confirmation from a third party witness were presented to confirm the testimony.

5. [REDACTED] J.D., and J.E. state that [REDACTED] came out of the store with the cans of Tilt. J.D. states that the Tilt cans were in one or two brown paper bags which [REDACTED] placed on the back floor boards in J.D.'s car. Happy's Market provides its customers with both brown paper bags or plastic bags.

6. The Licensee denies the claim that one of its employees sold liquor to a minor on February 6, 2009. According to the Licensee's February 6, 2009 work schedule, three employees were working at or around the time of the alleged purchase (6:45 p.m. to 7:00 p.m.): Christopher Camarata; Steve Baik; and Aaron (last name unknown). Only Christopher Camarata and Steve Baik were transacting sales to customers that day. Aaron was stocking. Steve Baik was the only Asian person working at that time.

7. Video recordings, sales receipts and other corroborating evidence of an actual transaction were not presented by either party. The witnesses to the claimed transaction consist of [REDACTED] and the store employees, Christopher Camarata and Seung (known as Steve) Baik. Other supporting or conflicting evidence consist of the testimonies of J.D. and J.E., the results of the photograph lineup presented to [REDACTED] by the Division and the Officer Clayton who later caught the minors with alcohol in their possession and obtained written statements from the minors.

8. Liquor Enforcement Officer Matt Murphy was notified of the alleged incident on February 18, 2009 (12 days after the incident) and started his investigation the next day. Officer Murphy interviewed [REDACTED] on or about February 19, 2009. [REDACTED] told Officer Murphy that he purchased Tilt at Happy's Market on February 6, 2009 and claimed a clerk who appeared to be Asian sold him the Tilt without checking his identification. Officer Murphy showed [REDACTED] the drivers license pictures of Steve Baik and Young Bin Park (both of whom are Asian). [REDACTED] "clearly" identified the picture of Young Bin Park as the person who had sold him the cans of Tilt. He also informed Officer Murphy that Steve Baik was stocking shelves at the time of purchase.

9. Bank records for Young Bin Park's debit card transactions show he was in Issaquah, Bellevue and Federal Way on February 6, 2009. Young Bin Park also testifies that he was not working in Ellensburg at Happy's Market that day. Young Bin Park was college student living in Bellevue at the time.

10. Both Steve Baik and Christopher Camarata both testify that they did not sell liquor to a minor on February 6, 2009. They deny recognizing [REDACTED]

11. On February 26, 2009, Officer Murphy went to Happy's Market to further his investigation. He met with Steve Baik and Christopher Camarata. According to Officer Murphy's investigative notes, Steve Baik informed Officer Murphy that he and Young Bin Park were the only ones working on February 6, 2009 at the time of the alleged purchase. The Licensee maintains a video surveillance system with a two week recording cycle. After two weeks the recordings are automatically erased and taped over. At the time, Officer Murphy met with Steve Baik and Christopher Camarata, the video was still available and had not yet been erased by the recording cycle. None of them though to retrieve the

recording from February 6, 2009.

12. The Licensee has had one prior violation of RCW 66.44.270(1) for furnishing liquor to a minor on June 2, 2007. The Board penalized the Licensee with a five-day suspension effective July 12, 2007 through July 17, 2007.

13. The evidence in this matter pivots on the credibility of the evidence presented. Based on this tribunal's opportunity to view all of the witnesses' demeanor, which includes their attire, agitation or lack thereof, their facial expressions, their eye contact, the tones and inflections of their voices in conjunction with their body movements in the delivery of their testimonies during this six hour hearing, coupled with the error by [REDACTED] identifying Young Bin Park selling Tilt to him when Young Bin Park was not in the Ellensburg area, it is found that the testimonies of [REDACTED] J.D. and J.E. are not credible. Without other evidence verifying their testimonies, such as a sales receipt, surveillance tapes, or testimony of an individual who actually saw the transaction, there is no basis for a finding that the Licensee furnished liquor to [REDACTED] on February 6, 2009.

CONCLUSIONS OF LAW

1. There is jurisdiction to hear and decide this matter pursuant to Title 66 RCW, chapter 34.05 RCW and chapters 314-29 and 314-42 WAC.

2. The Board holds licensees responsible for violations of the liquor laws which occur on their premises. WAC 314-11-015(1)(a) states:

(1)(a) Liquor licensees are responsible for the operation of their licensed premises in compliance with the liquor laws and rules of the board (Title 66 RCW and Title 314 WAC). Any violations committed or permitted by employees will be treated by the board as violations committed or permitted by the licensee.

3. RCW 66.44.270(1) prohibits the sale or furnishing of liquor to a minor. It states:

(1) It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control. . .

4. The liquor control regulations reiterate the same prohibition. WAC 314-11-020(1) states:

(1) 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.

5. In this case, the determination of whether a minor has been furnished liquor is a factual issue. Where there is a conflict in the evidence, the credibility of the evidence must be determined. Any findings based substantially on credibility of evidence or demeanor of witnesses shall be so identified. RCW 34.05.461(3). The demeanor of the witnesses provides an important basis for determining the credibility of the evidence presented here.

6. Based on the findings of fact, the evidence relied on by the Division is not credible and no other evidence exists to show, by a preponderance of the evidence, that the Licensee or its employees violated RCW 66.44.270(1) or WAC 314-11-020(1). Since such a violation has not been shown, it must be concluded that the Licensee should not be subject to a penalty as claimed in the AVN.

INITIAL ORDER

The Licensee did not violate RCW 66.44.270(1) on February 6, 2009 as alleged. The Licensee is not subject to a penalty.

Dated and Mailed this 31 day of December, 2009 at Yakima, Washington.



Chris Blas
Administrative Law Judge
Office of Administrative Hearings
32 North Third Street, Ste 320
Yakima, WA 98901

Notice to Parties:

Copies mailed to:

YS Park, Licensee
Kenneth Beckley, Attorney for Licensee
Brian Considine, AAG

NOTICE TO PARTIES

Either the licensee, 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. With notice to all parties the board may change the time for filing a petition for review of the initial order. The board may extend or shorten the filing time based on a voluntary stipulation of the parties or upon motion of a party that demonstrates a clear and convincing showing of exigent circumstances. The petition for review must: (i) Specify the portions of the initial order to which exception is taken; and (ii) Refer to the evidence of record which is relied upon to support the petition. Within ten days after service of the petition for review, any party may file a reply with the liquor control board and copies of the reply must be mailed to all other parties or their representatives at the time the reply is filed. WAC 314-42-095(2).

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JAN 25 2010

Received

**LIQUOR CONTROL BOARD
BOARD ADMINISTRATION**

JAN 25 2010

WSLCB

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

YS PARK, INC. d/b/a HAPPY'S
MARKET

207 WEST UNIVERSITY WAY
ELLENSBURG, WA 98926

LICENSEE.

LICENSE NO. 350252
AVN NO. 4E9056A

OAH NO. 2008-LCB-0032
LCB NO. 23,513

ENFORCEMENT DIVISION'S
PETITION FOR REVIEW OF THE
INITIAL ORDER

The Washington State Liquor Control Board's (Board) Education & Enforcement Division (Enforcement), by and through its attorneys, ROBERT M. MCKENNA, Attorney General, and BRIAN J. CONSIDINE, Assistant Attorney General, and pursuant to RCW 34.05.464 and WAC 314-42-095(2), submits the following exceptions to the Initial Order issued by Administrative Law Judge Chris Blas, on December 31, 2009, in the above-captioned case.

I. PROCEDURAL BACKGROUND

On June 10, 2009, the Board issued a Complaint to the Licensee, YS Park Inc. d/b/a Happy's Market, alleging that on or about January 6, 2009, the Licensee and/or an employee thereof, gave, sold, and/or 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).

1 This case was heard and considered by the Administrative Law Judge (ALJ) in
2 Ellensburg, Washington, on November 5, 2009. After a full evidentiary hearing, the ALJ entered
3 Findings of Fact, Conclusions of Law, and Initial Order on December 31, 2009. The ALJ
4 dismissed the Board's complaint in this case. The Education and Enforcement Division
5 respectfully takes exception to the Findings of Fact, Conclusions of Law, and Initial Order of the
6 ALJ.

7 II. DISCUSSION

8 Pursuant to WAC314-42-095(2)(a), any party, upon receipt of a proposed order, may file
9 exceptions within twenty days of service of the order. The reviewing officer (including the
10 agency head reviewing an initial order) "shall exercise all the decision-making power that the
11 reviewing officer would have had to decide and enter the final order had the reviewing officer
12 presided over the hearing[.]" RCW 34.05.464(4). Therefore, the Washington State Liquor
13 Control Board is not bound by the ALJ's Findings of Facts or Conclusions of Law in the Initial
14 Order.

15 A. Exceptions to Findings of Fact¹

16 1. Exceptions to Finding of Fact Number 1

17 Finding of Fact Number 1 incorrectly states that Officer Murphy went to Happy's Market
18 on February 26, 2009. Officer Murphy testified that he went to Happy's Market on February 19,
19 2009 to investigate the allegation that the Licensee sold liquor to a minor on February 6, 2009.

20 2. Exceptions to Finding of Fact Number 8

21 Finding of Fact Number 8 omits [REDACTED] testimony that he cannot remember
22 which clerk sold him the Tilt alcohol, but knows it was a younger Asian male. Mr. [REDACTED]
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25 ¹ There is a typographical error in Finding of Fact Number 4. It reads, "Copies of the sales receipt,
26 videotape or a confirmation from a third party witness were presented to confirm the testimony." It appears that the
ALJ meant to have the Finding of Fact read, "were not presented to confirm the testimony" based on Finding of Fact
Number 7.

1 admits that he picked out Mr. Young Bin Park when given the photos of Mr. Park and Mr. Steve
2 Baik, but he testified that he does not know which of them sold him the Tilt alcohol.

3 **3. Exceptions to Finding of Fact Number 9**

4 Finding of Fact Number 4 is incorrect. Mr. Young Bin Park's bank records establish that
5 debit card transactions were made in Issaquah, Bellevue and Federal Way on February 6, 2009,
6 not that he was physically present in those cities on that day.

7 **4. Exceptions to Finding of Fact Number 10**

8 Finding of Fact Number 10 incorrectly states the testimony of Steve Baik and
9 Christopher Camarata. Both witnesses testified that they did not sell liquor to a minor on
10 February 6, 2009; however, both men also testified that they could not remember who they sold
11 liquor on February 6, 2009, because it was hard to remember anything that happened on
12 February 6, 2009. Additionally, Mr. Camarata admitted that Mr. ██████████ could have been in the
13 store on February 6, 2009. Further, Mr. Camarata's testified that he does not remember if he was
14 working the counter around 7:00 p.m. on February 6, 2009—the time ██████████ entered
15 Happy's Market. Similarly, Mr. Baik also testified that he could not remember who was
16 working the counter around 7:00 p.m. on February 6, 2009.

17 **5. Exceptions to Finding of Fact Number 11**

18 Finding of Fact Number 11 incorrectly states that none of the parties sought to retrieve
19 the video surveillance footage. To the contrary, Officer Murphy testified that when he spoke
20 with Steve Baik on February 19, 2009, he asked Mr. Baik for a copy of the surveillance video
21 from February 6, 2009, and that in response, Mr. Baik told him that the video had already been
22 erased. Additionally, Yong Sun Park, the Licensee's sole shareholder, testified that the
23 surveillance videos are erased after two weeks and that the surveillance video from February 6,
24 2009, should have been available for viewing when Officer Murphy spoke with Mr. Baik on
25 February 19, 2009. Mr. Park also testified that Mr. Baik never informed him about Officer
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1 Murphy's visit on February 19, 2009, nor informed him of Officer Murphy's request for a copy
2 of the video from February 6, 2009.

3 **6. Exceptions to Finding of Fact Number 12**

4 Finding of Fact Number 12 incorrectly states the Licensee's violation history. The Board
5 did not penalize the Licensee with a five (5) day suspension for a sale to a minor on June 2,
6 2007. The record shows that the Licensee's violation history indicates that he paid five hundred
7 dollars (\$500) in lieu of the five (5) day suspension on June 18, 2007, which is the standard
8 penalty for a first sale of liquor to a minor in a two-year period. *See Exhibit 6.*

9 **7. Exceptions to Finding of Fact Number 13**

10 In Finding of Fact Number 13, the ALJ lists indicators that he utilizes to determine the
11 credibility of a witness. However, in Finding of Fact 13, the tribunal does not indicate how such
12 indicators were applied in the current case. Finding of Fact 13 fails to specify on what grounds
13 the ALJ discredits the testimonies of [REDACTED], J.D., and J.E. Additionally, Finding of Fact
14 13 does not indicate how evidence of the written and verbal statements given by [REDACTED]
15 J.D., and J.E. to Officer Clayton and Officer Murphy discredit their testimonies. *See Exhibits 4,*
16 *5, and 6.* [REDACTED], J.D., and J.E. all testified consistently throughout Officer Murphy's and
17 Officer Clayton's investigation and at hearing. It should be noted that none of the minors had
18 any motivation to provide false testimony as each had already been arrested for minor in
19 possession prior to being interviewed by Officer Murphy.

20 **B. Exceptions to Conclusions of Law**

21 **1. The ALJ erred in omitting WAC 314.42.070 from his consideration in**
22 **Conclusion of Law Number 5.**

23 The ALJ erred in omitting WAC 314-42-070 from his consideration in Conclusion of
24 Law Number 5. At the hearing, Enforcement did not argue that the ALJ should consider
25 WAC 314-42-070 because it believed that it showed that the Licensee had the ability to produce
26 the video surveillance and failed to do so when asked. However, it appears that the ALJ did not

1 consider WAC 314-42-070 when making his credibility determinations. WAC 314-42-070 states
2 that when a licensee withholds, destroys, or suppresses evidence material to the case, the court
3 can presume the evidence would have been unfavorable to the licensee. See WAC 314-42-
4 070(3). The record shows that Officer Murphy informed Mr. Baik on February 19, 2009, of the
5 alleged violation from February 6, 2009, and requested a copy of the surveillance video from the
6 day of the violation. Officer Murphy was told by the Licensee's employee, Mr. Steve Baik, that
7 it had been erased. Testimony in the record establishes that the Licensee's surveillance videos
8 are automatically erased after fourteen days, and the Licensee's sole shareholder, Mr. Yong Park,
9 stated that the video should have been available on February 19, 2009—thirteen (13) days after
10 the violation occurred. Moreover, Mr. Park testified that he never remembered Mr. Baik
11 informing him of Officer Murphy's request for a copy of the surveillance video from February 6,
12 2009, and he would expect Mr. Baik to inform him of any interaction with the Liquor Control
13 Board.

14 Therefore, the ALJ should have considered the fact that the Licensee withheld the
15 surveillance video from Officer Murphy when he was determining the credibility of Mr. [REDACTED]
16 J.D., and J.E.

17 **2. Conclusion of Law Number 6 is not supported by the Record.**

18 Under RCW 34.05.461(3) an initial order issued by an ALJ must include a statement of
19 findings and conclusions and the reasons thereof on all issues of material fact.
20 RCW 34.05.461(3). Any of the ALJ's findings which are based substantially on the credibility
21 of evidence or the demeanor of witnesses must be so identified. *Id.*

22 In Conclusion of Law Number 6, the ALJ concludes that Enforcement's evidence was not
23 credible based on the "Findings of Fact." Conclusion of Law 6. However, because Conclusion
24 of Law Number 6 is substantially based on the ALJ's adverse credibility determination of
25 Enforcement's witnesses, it must identify what evidence was specifically found not to be
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1 credible. A general determination that *all* of enforcement's evidence was not credible lacks the
2 specificity required by RCW 34.05.461(3).

3 Moreover, the Findings of Fact in the Initial Order are not specific as to which facts in the
4 record support an adverse credibility determination against Mr. [REDACTED], J.E., and J.D. The
5 ALJ's credibility determination is insufficient under RCW 34.05.461 because findings of fact
6 and conclusions of law lack citation to evidence in the record that Mr. [REDACTED] J.D. and J.E. were
7 not credible witnesses. While the ALJ is given deference in his opportunity to observe the
8 witnesses under RCW 34.05.464(4), the ALJ is nonetheless required by statute to cite to the
9 record and give a basis for factual determinations.

10 Here, Mr. [REDACTED] J.D., and J.E.'s statements were consistent throughout the
11 investigation and hearing, and the court failed to specify in the record the basis for the finding
12 that Mr. [REDACTED] J.D., and J.E. were not credible witnesses. Although the ALJ provided a long
13 list of criteria he relies upon when determining a witness's credibility, he fails to cite to anything
14 specific in the record about Mr. [REDACTED] J.D. and J.E.'s appearance that would discredit them and
15 fails to cite to any specific testimonial evidence in the record that would discredit any or all of
16 their testimonies.²

17 Finding of Fact Number 13 is the foundation for Conclusion of Law Number 6.
18 However, Finding of Fact 13 appears to suggest that Mr. [REDACTED] should be discredited because
19 he may have misidentified who sold him the Tilt alcohol, but the ALJ's finding does not balance
20 that potential error with the reliable and corroborating statements and testimonies of J.D. and J.E.
21 The ALJ simply discredits each witness without explaining the reasoning for the determination.
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24 ² It should also be noted that the evidence presented by the Licensee did not discredit the testimonies of
25 Mr. [REDACTED] J.D., and J.E. Licensee presented testimony from its sole corporate shareholder, Yong Park, and four
26 employees, Mr. Park, Mr. Camarata, Mr. Baik, and Mr. Searle. However, only Mr. Camarata and Mr. Baik would
have personal knowledge of the events from February 6, 2009 around 7:00 p.m., and their testimonies were
inconsistent. Neither Mr. Camarata nor Mr. Baik could remember any transactions during the evening of February
6, 2009, yet both were certain that they did not sell liquor to a minor.

1 Thus, the Board should not adopt Conclusion of Law 6 of the ALJ's initial order and should find
2 the statements and testimonies of Mr. [REDACTED] J.E., and J.D to be credible.

3 **III. CONCLUSION**

4 At hearing, Enforcement demonstrated by a preponderance of the evidence, through the
5 sworn testimony of Officer Murphy, Officer Clayton of the Ellensburg Police Department,
6 Mr. [REDACTED] J.D., and J.E., that the Licensee sold, gave, or supplied liquor to a person under the
7 age of twenty-one (21) on February 6, 2009. Therefore, the Enforcement Division respectfully
8 requests that the Initial Order not be adopted in this matter, that the complaint be sustained, and a
9 seven (7) day suspension be imposed.³

10
11 DATED this 25th day of January, 2010.

12 ROBERT M. MCKENNA
13 Attorney General

14
15 
16 BRIAN J. CONSIDINE, WSBA #39517
17 Assistant Attorney General
18 Attorneys for the Washington State Liquor
19 Control Board Enforcement Division

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26 ³ If the Board sustains its complaint in this matter, it would be a second violation for selling liquor to a
minor in a two-year period.

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**LIQUOR CONTROL BOARD
BOARD ADMINISTRATION**

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

In the Matter of:

YS PARK INC.,
dba HAPPY'S MARKET,

Licensee.

License No. 350252

OAH No. 2009-LCB-0032
LCB Case No. 23,513

LICENSEE PARK RESPONSE TO
ENFORCEMENT DIVISION'S PETITION
FOR REVIEW OF THE INITIAL ORDER

INTRODUCTION:

Licensee Park believes the following summarization will be of benefit in reviewing the Enforcement Division's Petition for Review of the Initial Order of highly experienced and longtime standing Administrative Law Judge Chris Blas Initial Order entered on December 31, 2009 which terminated any administrative sanction to be imposed upon Licensee Park.

The following summarization is applicable:

1. The Department sought to enforce a sanction upon Licensee Park based upon an alleged violation occurring or about June 10, 2009 based upon a Notice of Violation on February 26, 2009.

2. Licensee Park timely filed a Request for Administrative Appeal.

3. Following exchange of discovery between Licensee Park and the Department the administrative hearing was scheduled in Ellensburg, Washington before longtime experienced Administrative Law Judge Chris Blas.

LICENSEE PARK RESPONSE TO ENFORCEMENT DIVISION'S
PETITION FOR REVIEW OF THE INITIAL ORDER - 1

LAW OFFICE OF
KENNETH D. BECKLEY
A PROFESSIONAL SERVICE CORPORATION
701 NORTH PINE
ELLENSBURG, WA 98926
TELEPHONE (509) 925-4128
FAX (509) 962-2914

1 4. The hearing took place on November 5, 2009. The hearing was held in conjunction
 2 with another hearing involving Licensee Park under OAH No. 2009-LCB No. 0031.

3 5. The hearing took a full 8-hour day. Multiple witnesses were personally present and all
 4 parties, including Licensee Park, and the Department had the opportunity to present any and all
 5 evidence that was applicable with respect to the action south the Defendant the defense of
 6 Licensee Park.

7 6. Longtime experienced Administrative Law Judge Chris Blas following the hearing
 8 considered all testimony, exhibits introduced into evidence and the administrative record as
 9 applicable and entered an Initial Order on December 31, 2009. The thrust of the Initial Order
 10 based upon detailed Findings of Fact and Conclusions of Law state:

11 "The Licensee did not violate RCW 66.44.270(1) on February 26, 2009"
 12 in Ellensburg, Washington.

13 The precise date may be inaccurate a bit but it was based upon the alleged violation
 14 occurring on February 6, 2009.

15 7. The Initial Order provided notice to parties that either party may file a petition for
 16 review with the Liquor Control Board within twenty (20) days of the date of service of the Initial
 17 Order. Assuming the Initial Order was served by being mailed on December 31, 2009 the 20-day
 18 period would have expired on January 20, 2010. However, if there is a procedure to allow an
 19 additional "3 days" - within the policy of the Department then the notification date would be
 20 extended 3 days commencing January 4th. If that date is eliminated under customary
 21 complication of time and then 20 days is allowed the 20th day would have been on January 24th
 22 and if the customary rule of the Department is there would be an extension of the next business
 23 day it would be to January 25th. The notice of Petition for Review is dated January 25, 2010.
 24 Licensee Park does not know whether it was filed with the Department on January 25, 2010 or
 25 not. However, it was mailed and not received by mail communication until January 27, 2010 by
 26 Licensee Parks' attorney.
 27

1 8. The Initial Order by Administrative Law Judge Blas specified that a licensee within 10
 2 days after service of the Petition for Review may file a response. The Petition for Review was
 3 officially received by mail on January 27th although a faxed copy came in on January 25, 2010
 4 and may have been received on January 25th or reviewed on January 26th. The 10-day period for
 5 filing a response to the Petition for Review has been met by the Licensee Park.

6
 7 **SPECIFIC RESPONSE TO PETITION FOR REVIEW:**

8 Licensee Park succinctly states the following pertaining to a response for Petition for
 9 Review:

10 1. The Department outlines a variety of objections as to the evidence presented, what
 11 weight should be given to the evidence and what credibility should have been established or
 12 accepted by Administrative Law Judge Blas pertaining to the testimony presented. Licensee
 13 Park has not received a copy of a transcribed record with respect to the actual testimony
 14 presented nor a copy of any disc pertaining to the testimony presented. Consequently, it is
 15 assume that the Department acting through Assistant Attorney General Considine is relying on
 16 his memory or other sources that are not officially before the Department with respect to his
 17 derivation and beliefs as to what the Findings of Fact may have stated. However, it is clear that
 18 in an administrative hearing all issues of credibility and weight to be given to testimony
 19 presented are within the discretion of the Administrative Law Judge. See RCW 34.05.461(3)
 20 which provides in pertinent part:

21 "Any findings based substantially on credibility of evidence or demeanor of
 22 witnesses shall be so identified."
 23

24 Administrative Law Judge Blas clearly set forth specific basis and reasons as to credibility of
 25 witnesses and what weight he would provide as to the credibility of the various witnesses who
 26 testified. That credibility determination and weight to be provided to the testimony of witnesses
 27 should not be intruded upon by a Petition for Review. In that regard, attention is addressed to
 28

1 Nationscapital v. Department of Financial Institutions, 133 Wn.App. 723 (2006) at p.751

2 wherein there is recitation of RCW 34.05.461(3) and the following statement:

3 "In evaluating whether findings and conclusions satisfied the statute, 'adequacy
4 not eloquence is the test' The statute does not require that findings and
5 conclusions contain an exhaustive analysis."

6 Counsel for Licensee Park sites that general authority which is well known to the Department.

7 However, under the circumstances of this particular appeal the Findings of Fact made by

8 Administrative Law Judge Blas are eloquent, detailed, comprehensive and satisfy any

9 requirement of any nature whatsoever with respect to factual determinations to be made.

10 2. Counsel for Licensee Park could set forth a detailed recitation of recollection of what

11 the "evidence" was at the time of the hearing and how it supports the determination of Findings

12 of Fact made by Administrative Law Judge Blas but does not wish to do so because there is

13 administrative record where there can be a specific focus on a particular word or absence of word

14 as relied upon by the Department acting through Assistant Attorney General Brian Considine.

15 3. The factual findings made were supported by substantial evidence. The Department

16 failed to present sufficient credible evidence to support to support the claim. The legal

17 conclusions correctly flowed from the factual findings.

18
19 **CONCLUSION:**

20
21 The Initial Order entered by Administrative Law Judge Blas on December 31, 2009
22 should be affirmed.

23 DATED this A day of February, 2010 in Ellensburg, Kittitas County, Washington.

24
25 
26 Kenneth D. Beckley
27 Attorney for Licensee Park
28 WSBA#00469

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**LIQUOR CONTROL BOARD
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BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

YS PARK, INC. d/b/a HAPPY'S
MARKET

207 WEST UNIVERSITY WAY
ELLENSBURG, WA 98926

LICENSEE.

LICENSE NO. 350252
AVN NO. 4E9056A

OAH NO. 2008-LCB-0032
LCB NO. 23,513

ENFORCEMENT DIVISION'S
MOTION TO EXTEND THE TIME
FOR FILING PETITION FOR
REVIEW

The Washington State Liquor Control Board's (Board) Education & Enforcement Division (Enforcement), by and through its attorneys, ROBERT M. MCKENNA, Attorney General, and BRIAN J. CONSIDINE, Assistant Attorney General, and pursuant to WAC 314-42-095, respectfully move the Board for an Order extending the time for filing Enforcement's Petition for Review.

Enforcement may petition the Board for an extension of the filing time for its petition for review. WAC 314-42-095(2)(a). Enforcement's counsel mistakenly calendared February 25, 2010, as the due date for Enforcement's Petition for Review in the above-referenced matter. See Attachment 1, Declaration of Brian J. Considine. Enforcement respectfully requests that the Board extend the filing period to allow Enforcement to have filed its Petition for Review on February 25, 2010. The Licensee will not be prejudiced if the Board grants Enforcement's

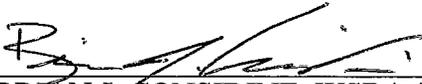
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Received
FEB 05 2010
WSLCB

1 Motion because the time frame for the Licensee to file a reply does not start until after
2 Enforcement submits its Petition for Review.¹

3
4 DATED this 5th day of February, 2010.

5 ROBERT M. MCKENNA
6 Attorney General

7 
8 ~~BRIAN J. CONSIDINE, WSBA #39517~~
9 Assistant Attorney General
10 Attorneys for the Washington State Liquor
11 Control Board Enforcement Division

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26 ¹ Enforcement received the Licensee's Reply to its Petition for Review by fax on February 4, 2010.

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7 **STATE OF WASHINGTON**
8 **OFFICE OF ADMINISTRATIVE HEARINGS**
9 **FOR THE WASHINGTON STATE LIQUOR CONTROL BOARD**

10 IN THE MATTER OF:

11 YS PARK, INC. d/b/a HAPPY'S
12 MARKET

13 207 WEST UNIVERSITY WAY
14 ELLENSBURG, WA 98926

15 LICENSEE.

16 LICENSE NO. 350252
17 AVN NO. 4E9056A

OAH NO. 2008-LCB-0032
LCB NO. 23,513

DECLARATION OF BRIAN J.
CONSIDINE IN SUPPORT OF
ENFORCEMENT'S MOTION TO
EXTEND THE TIME FOR FILING
PETITION FOR REVIEW

18 I, BRIAN J. CONSIDINE, hereby declare as follows:

19 1. I am currently the attorney of record for the Washington State Liquor Control
20 Board, Education and Enforcement Division (Enforcement) in this matter.

21 2. I am over the age of eighteen, and am competent to testify hereto, and make this
22 Declaration upon personal knowledge of its contents.

23 3. On January 4, 2010, I received Administrative Law Judge Blas' Initial Order in
24 the above-referenced matter, and erroneously calendared January 25, 2010, as the due date to
25 submit Enforcement's Petition for Review (Petition) with the Board.

26 4. On January 25, 2010, I submitted Enforcement's Petition in the above-
referenced matter to the Board. I also faxed and mailed a copy of Enforcement's Petition to
the Licensee's attorney.

DECLARATION OF BRIAN J.
CONSIDINE IN SUPPORT OF
ENFORCEMENT'S MOTION TO
EXTEND THE TIME FOR FILING
PETITION FOR REVIEW

Received

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FEB 05 2010

WSLCB

ATTORNEY GENERAL OF WASHINGTON
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23,513

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January 4, 2010

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JAN 05 2010
OAH - YAKIMA

State of Washington
Office of Administrative Hearings
Attn: Chris Blas, Administrative Law Judge
Washington State Liquor Control Board
32 North Third Street, Ste 320
Yakima, WA 98901

RE: Initial Order under OAH Docket No. 2009-LCB-0032
In the Matter of: YS Park, Inc., dba Happy's Market

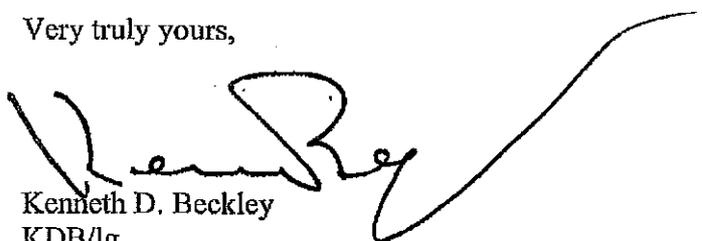
Dear Judge Blas:

I have read and carefully reviewed the initial Order.

I have but one comment at this point and it is: I direct you attention to Findings of Fact No. 4, page 3 and the last sentence of it. I believe the word "not" was inadvertently omitted between the words *third party witnesses were* and *presented* since the absence of that evidence was carried forward in to Findings of Fact No. 13 and the last sentence thereof as set forth on initial Order, page 5.

The insertion of the word "not" in Findings of Fact No. 5 would then support and make it consistent with the Findings of Fact in ¶ 13.

Very truly yours,



Kenneth D. Beckley
KDB/lg

Cc: Mr. Yong Sun Park (w/enc.)
Mr. Brian Considine, Assistant Attorney General

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LIQUOR CONTROL BOARD
BOARD ADMINISTRATION