

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

In the Matter of:

**TAE HYUN KWON
d/b/a EZ MINI MART
924 EAST MAIN STREET
PUYALLUP, WA 98372**

**LICENSE NO. 366672
AVN NO. 1Q9092C**

Docket No. 2009-LCB-0057

LCB Case No. 23,556

FINAL ORDER OF THE BOARD

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

PROCEDURAL HISTORY OF THE CASE

1. The Liquor Control Board issued a Complaint dated November 3, 2009, alleging that on or about April 2, 2009, the above-named Licensee, or employee(s) thereof, gave, sold and/or supplied to a person 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 hearing, and Administrative Law Judge Steven C. Smith was assigned to hear the case.
3. An administrative hearing was held before Administrative Law Judge Steven C. Smith on March 17, 2010. The Licensee appeared along with Janette Kwon, his adult daughter, who acted as his spokesperson and representative at the hearing. The Washington Liquor Control Board was represented by Assistant Attorney General Brian J. Considine.
4. The Administrative Law Judge issued an Initial Order on May 17, 2010, and did not sustain the Board's Complaint.

5. The Education and Enforcement Division of the Board filed a timely Petition for Review, after obtaining an extension of the time to file a Petition, due to delays in obtaining the record. The Licensee responded to Enforcement's Petition for Review.
6. The Board has reviewed the record in this matter, and the arguments of the parties. The Board hereby adopts the Initial Order of the Administrative Law Judge as its own, incorporates it by reference into this Order, and affirms the Initial Order, with the following exceptions:
 - a. The date of the hearing stated on pages 1 and 3 of the Initial Order is modified to reflect that it occurred on March 17, 2010, not on March 17, 2009.
 - b. The Board does not adopt Finding of Fact No. 26, as it is not based on evidence, but rather the speculation and surmise of the Administrative Law Judge about possible feelings and motives that are not based in testimony or fact.

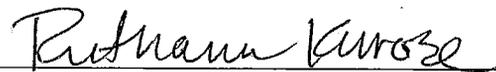
ORDER

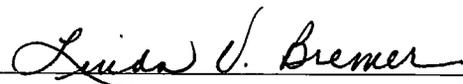
IT IS HEREBY ORDERED that the Board's Complaint in this matter is DISMISSED.

DATED at Olympia, Washington this 10 day of August, 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

August 11, 2010

Tae Hyun Kwon, Licensee
d/b/a EZ Mini Mart
924 E Main St
Puyallup, WA 98371-3123

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

**RE: ORDER GRANTING ENFORCEMENT'S MOTION TO EXTEND THE FILING TIME FOR
PETITION FOR REVIEW**

ADMINISTRATIVE VIOLATION NOTICE NO. 1Q9092C

LICENSEE: Tae Hyun Kwon

TRADE NAME: EZ Mini Mart

LOCATION: 924 E Main St, Puyallup, WA 98371

LICENSE NO. 366672-1Q

LCB HEARING NO. 23,556

OAH NO. 2009-LCB-0057

UBI: 600 520 825 001 0004

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 that reads "Kevin McCarroll".

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Tacoma Enforcement and Education Division, WSLCB
Amber Harris, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

TAE HYUN KWON
d/b/a EZ MINI MART
924 E MAIN ST
PUYALLUP, WA 98371-3123

LCB NO. 23,556
OAH NO. 2009-LCB-0057

DECLARATION OF SERVICE BY
MAIL

LICENSEE

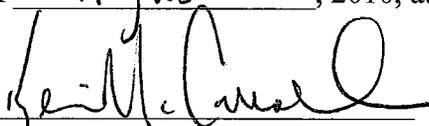
LICENSE NO. 366672-1Q
AVN 1Q9092C

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 on the date below to:

TAE HYUN KWON, LICENSEE
d/b/a EZ MINI MART
924 E MAIN ST
PUYALLUP, WA 98371-3123

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

DATED this 11th day of August, 2010, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

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

In the Matter of:

TAE HYUN KWON, dba
EZ MINI MART

924 EAST MAIN STREET
PUYALLUP, WA 98372

LICENSE NO. 366672
AVN NO. 1Q9092C

Docket No. 2009-LCB-0057

LCB Case No. 23,556

INITIAL ORDER

RECEIVED

MAY 19 2010

LIQUOR CONTROL BOARD
BOARD ADMINISTRATION

TRANSLATION SERVICES

Sai C. Kang, a court certified interpreter qualified to serve as interpreter in this matter, interpreted the proceedings in this matter into the Korean language for Tae Hyun Kwon, dba EZ Mini Mart, the Licensee. **Mr. Kwon may call the interpreter at (253) 347-3222 during normal business hours to have this order translated orally into Korean.** Mr. Kang can only translate. He cannot give legal advice.

HEARING

Administrative Law Judge Steven C. Smith, conducted an administrative hearing in this matter at the Liquor Control Board Office, Suite 208, 6240 Tacoma Mall Blvd., Tacoma, Washington on March 17, 2009. The hearing was digitally recorded.

Parties Present and Representation:

Brian J. Considine, Assistant Attorney General, appeared and represented the Washington Liquor Control Board (the "Board").

Tae Hyun Kwon, dba EZ Mini Mart, the Licensee appeared and was represented by Janette Kwon, his adult daughter who also appeared.

Interpreter:

Sai C. Kang, a court certified Korean-English interpreter, qualified to serve as such in this matter, interpreted the entire proceedings.

Witnesses Present:

Officer Kandra Ordiway
Liquor Control Board

Officer Gina Hayes
Puyallup Police Department

Officer Kevin Gill
Puyallup Police Department

Officer Tad Miniken
Puyallup Police Department


Former Underage Informant for
Puyallup Police Department

Tae Hyun Kwon, Licensee

Kyung-Ae Kwon, Wife of Licensee

STATEMENT OF THE CASE

On November 3, 2009, the Board issued a complaint in LCB Case No. 23,556 against the Licensee under RCW 66.44.270 and WAC 314-11-020(1). That complaint charged the Licensee as follows:

“That on or about April 2, 2009, the above-named [Tae Hyun Kwon, dba EZ Mini Mart] Licensee, or employee(s) thereof, gave, sold and/or supplied to a person under the age of twenty-one (21), contrary to RCW 66.44.270 and/or WAC 314-11-020(1).”

At hearing on March 17, 2009, the issues presented were: (1) whether Tae Hyun Kwon, dba EZ Mini Mart, (the “Licensee”) furnished liquor to a person under 21 years on April 2, 2009 contrary to RCW 66.44.270 and WAC 314-11-120(1); and, (2) if so, what the penalty should apply. (See, Exhibits 1 and 2.)

JURISDICTION and APPEAL RIGHTS

Pursuant to 34.05 RCW (the Administrative Procedure Act), 34.12 RCW, and WAC 314-29-010, the Notice of Administrative Violation issued under WAC 314-16-150 is appealable to an administrative law judge. The decision of the administrative law judge is an Initial Order, subject to review by the Board pursuant to RCW 34.05.464, WAC 314-42-095 and WAC 10-08-211. ***Appeal rights are described at the end of this order.***

FINDINGS OF FACT

Having considered the entire record of this proceeding, I find the following facts more probable than not under the preponderance of evidence standard:

Resolution of Conflict of Evidence

1. The testimony of, and on behalf of, the parties conflicted on material points. The undersigned, having carefully considered and weighed all the evidence, including the motivations of the parties, the reasonableness of the testimony, and the totality of the

circumstances presented resolves conflicting testimony and documentary evidence in favor of the Licensee.

The Licensee's Business

2. At all times relevant, the Licensee held the above-captioned license and operated his business, EZ Mini Mart, from the above-captioned address.

3. At all relevant times, EZ Mini Mart was a small convenience store, operated primarily by the Licensee and his wife.

Controlled, Underage Liquor Purchase:

4. On Thursday, April 2, 2009, the Puyallup Police Department undertook a plan to conduct controlled underage liquor purchases throughout Puyallup (the sting operation). The purpose of the sting operation was to determine whether alcohol retail sales licensees in Puyallup were selling to underage customers, contrary to Washington law.

5. As part of the sting operation, Officer Gina Hayes was assigned to test approximately five to six liquor retailers in Puyallup on that day along with then Puyallup Police Explorer [REDACTED], an underage informant.

6. In preparation for the sting operation, Hayes took all of [REDACTED]'s possessions from him, leaving him with only his clothing, an empty wallet, save a specially marked \$20.00 bill that had been photocopied for the sting operation ("buy money": Ex. 8), and his true Washington Driver License bearing his true birthday (ID). Just prior to the commencement of the sting operation, [REDACTED] was photographed. (See, Ex. 7.) [REDACTED] testified that he was clean shaven at the time. Exhibit 7 showed that he was not; however, [REDACTED] contented that the lighting for the photograph must have been

bad so as to give the appearance that he was not clean shaven.

7. Prior to the commencement of the sting operation, [REDACTED] was instructed that he was to attempt to buy a single can of beer, or if single cans were not available, then a case. He was instructed not to obscure his head or face in any manner. Beyond those instructions, the evidence was not clear as to any further instructions given [REDACTED]

8. At approximately 5:40 pm that day, Hayes dropped off [REDACTED] at the back of the Licensee's business, so that [REDACTED] could enter on foot. Hayes did not have a view of the interior of the business; rather, she parked her car in a position out of sight of the business and [REDACTED]. No other member of the sting operation was in the business facility. [REDACTED] then entered the EZ Mini Mart as planned. From inside, neither [REDACTED], nor the Licensee could see Hayes.

9. [REDACTED] contended that he went into the Licensee's establishment, took a can of Coors Light beer from the cooler, went to the counter, showed his ID, paid his buy money to the Licensee, then left. He said that as he reached the exit door, the Licensee, whom [REDACTED] contended had already made the sale, yelled, "Stop." Then, the Licensee ran after [REDACTED] following him outside, and ordered [REDACTED] to return. The Licensee caught up with [REDACTED] then literally grabbed [REDACTED]'s shirt and brought him back into the store. [REDACTED] testified further that the Licensee then took money out of the till and said, "I did not sell to you." Then, Hayes arrived in the Licensee's establishment.

10. In his written report of the event, dated April 2, 2009, [REDACTED] stated, "I exited the store and the associate came outside and told me I'm no[t] 21 and to come inside. He then grabbed me and proceeded to pull me inside. I then waived Officer Hayes over. She then proceeded into the store where she cited the associate." (Ex. 4; "Associate" was intended to reference the Licensee.) This was [REDACTED]'s first sting operation. This

report was neither signed by [REDACTED], nor reviewed by anyone at, or near, the time it was written.

11. Almost four months later, rather than sign his original report, [REDACTED] was requested to, and did, re-write and add to his report. (Ex. 5.)

12. Hayes contended in her written report of the events that although she did not see the transaction take place, she did see [REDACTED] after he left the EZ Mini Mart and that she saw the beer he purchased in the "nook of his arm". (Ex. 6.) She mentioned nothing about the can being in a brown paper bag. However, at hearing, Hayes stated that she was sure the can was in a brown paper bag.

13. The Licensee, with corroboration from his wife at hearing, denied that he had put the beer into a brown paper bag. If any bag had been used, it would have been a black plastic bag. This was because several years prior, the Licensee had discovered that the plastic bags were less expensive to buy for his store than paper bags, so he switched to plastic. Therefore, contended the Licensee, Hayes could not have seen the paper bag that she described; at least not in connection with this attempted purchase.

14. Hayes also saw the Licensee running after and screaming at [REDACTED]. She saw the Licensee grab at [REDACTED] and [REDACTED] turn to go back into the store. She quickly followed [REDACTED] and the Licensee into the store. When she arrived, she said that she saw the Licensee trying to give back money to [REDACTED]. However, the money was not the original buy money. From this, Hayes concluded that a sale had taken place. Hayes retrieved the buy money from the Licensee, which he got from the till. She then issued the Licensee a citation for sale of liquor to a minor.

15. Shortly after Hayes saw what was happening with [REDACTED] and the Licensee, she called for assistance and two additional police officers arrived; both additional officers

went inside the EZ Mini Mart. One officer could not remember a brown bag, the other was sure one was on the counter.

16. None of the officers confiscated the beer or the brown bag; there were no pictures produced at hearing, if any were taken; there was no surveillance video produced at hearing, if any existed.

17. This sting operation was the first for Hayes with liquor and minor informants. During the operation, as planned, Hayes and her minors visited five to six liquor merchants. The weight of the evidence was that the reports for each of the buy attempts were written after the conclusion of the entire operation, not immediately following each attempted purchase.

18. The Licensee contended that a materially different set of events took place.

19. According to the Licensee, [REDACTED] whom he did not know at the time, approached the Licensee, who was then behind the sales counter, placed a beer on the counter and tendered a \$20.00 bill which the Licensee placed on the cash register shelf designed for placement of tendered funds as change is counted out.

20. The Licensee said that he had difficulty discerning the age of [REDACTED] because he had dark facial hair and some type of head covering that obscured a full facial view. So, at first, the Licensee thought that [REDACTED] was well over the legal age to buy the alcohol. But, before giving [REDACTED] change to complete the pending purchase, the Licensee asked for [REDACTED]'s ID. [REDACTED] gave his ID to the Licensee who set the change on the counter and held the ID up into the air so that he could better see it. As the Licensee was puzzling over the ID, [REDACTED] grabbed the money from the counter, the ID and the beer and quickly left.

21. The Licensee, who was stationed behind the counter, yelled at [REDACTED] to stop. When [REDACTED] did not, the Licensee ran around the counter and chased [REDACTED] caught [REDACTED] grabbed [REDACTED]'s shirt, then brought [REDACTED] back into the store where the Licensee proceeded to lecture [REDACTED] about being under twenty-one years of age and not being allowed to buy beer.

22. Because there had been other people in the purchase line at the store when the Licensee realized what was happening and decided to chase [REDACTED], the Licensee put what turned out to be [REDACTED]'s buy money into the till before leaving the counter area. When the Licensee returned with [REDACTED], before the Licensee saw or knew that any officer, including Hayes was present, and while he carried on with his lecture about what [REDACTED] had done by grabbing the beer and money and running, the Licensee opened the till and started return to [REDACTED] the cost of the beer that the Licensee had initially deducted from the buy money while the transaction was pending. By this time, the Licensee had already taken the beer away from [REDACTED]

23. At approximately this point, Hayes came into the store, saw what was happening, and viewed it as above discussed. The Licensee was initially pleased to see Hayes, who was in uniform, because he wanted help from her with [REDACTED] whom the Licensee believed had just tried to get beer while underage. Hayes would not listen to the Licensee's side of the story, but simply cited him.

24. The Licensee contended that, because he was still looking at [REDACTED]'s ID when [REDACTED] grabbed the beer, the cash and the ID, and left the premises against the instruction of the Licensee, there was no sale to the minor. Only a pending sale gone awry while the Licensee attempted to determine [REDACTED]'s true age.

25. The weight of the evidence favored the Licensee because of the following:

a. The Licensee had no indication that a sting was going on; so, if he intended to sell alcohol to a minor, there would have been no reason for him to chase after [REDACTED] forcibly return [REDACTED] to the store, take away the beer; lecture [REDACTED] then try to give [REDACTED] his money back. And, regarding the money, it was reasonable that the Licensee would have put it into the till, even though no transaction had been completed, so that the money would be protected while the Licensee chased after [REDACTED].

b. A review of Exhibit 7 reveals [REDACTED] as a person who, as the Licensee testified, looked older than twenty-one, was not clean shaven as [REDACTED] had testified, but had dark facial hair growth. Further, in his picture taken just minutes before the sting operation began, [REDACTED] was revealed as wearing a sweatshirt with a drawstring hood capable of covering [REDACTED]'s face, just as testified by the Licensee.

c. Hayes could not have seen the beer in the paper bag as she thought she recalled, because the un-refuted testimony of the Licensee and his wife was that the Licensee only used cheaper plastic bags in his store. Further, she made no mention of such in her detailed report of the event. So, the implication that the Licensee deliberately put the beer into a paper bag for [REDACTED] was not supported.

d. [REDACTED]'s initial report was unsigned and incomplete. It remained so for almost four months. Thus, it was not reviewed or approved initially.

e. There were no pictures or video presented to show the store, the beer, the [REDACTED]; no one else was in the store on behalf of the sting and Hayes did not

there were no.

position herself so she could see into the store and observe the attempted transaction. So, the only witnesses to the actual sale or aborted sale were the Licensee and an inexperienced, underage informant.

26. In short, the evidence supported the likelihood that in the rush of getting to every liquor merchant in Puyallup in one day, and the excitement of the underage sting operation for those new to the process, material mistakes were made. For example, so many stings were conducted on this day, with either no time, or hurried time, to write reports, that Hayes probably believed she had seen a brown paper bag, and maybe she did; but, in another attempted sting. [REDACTED], who looked in his picture just as the Licensee had described, most likely, in an understandable enthusiasm to succeed on his first sting and impress the "real officers", pulled up his hood, then when he left, but before he was seen by Hayes, flipped the hood back. [REDACTED] also likely believed that he was about to lose the sale from the Licensee who had become concerned about [REDACTED]'s age, so [REDACTED] grabbed everything, as the Licensee said, and tried to get out quickly to have a "win" in his sting operation column. Hayes, the real officer, was not in position to know what [REDACTED] did.

27. Based on the foregoing, the bulk of the relevant and material evidence against the Licensee was not credible.

CONCLUSIONS OF LAW

From the foregoing findings of fact, the administrative law judge now enters the following conclusions of law:

Jurisdiction

1. The Washington State Liquor Control Board has jurisdiction over the Licensee, who holds a liquor license issued pursuant to chapter 66.24 RCW and is subject to the provisions of RCW 66.24.010.

Service of Liquor to Underage People

2. No one may supply liquor to any person under 21 years old. RCW 66.44.270(1). Specifically, liquor licensees may not supply liquor to any person under 21. WAC 314-11-020(1). "Liquor" means any alcoholic beverage, including beer, wine, and spirits. WAC 314-01-005. Liquor licensees must operate licensed premises in compliance with the liquor laws and rules of the board. Employee violations count as licensee violations. WAC 314-11-015(1)(a).

3. When a licensee has violated the provisions of RCW 66.44.270(1) and WAC 314-11-020(1), the Board may, in its discretion, suspend or cancel its liquor license and all rights to keep and sell liquor thereunder. RCW 66.24.010(3).

Penalties to Licensees for Unlawful Provision of Liquor to A Minor

4. Selling, supplying or otherwise giving liquor to a person under 21 years of age, or otherwise allowing a person under 21 years to possess liquor is a group 1 violation against public safety. WAC 314-29-015(2)(a) and 314-29-020. For a first violation of RCW 66.44.270(1) in a period of two years, the standard penalty is a five day liquor license suspension waived on payment of a \$500 fine: WAC 314-29-020. For a second violation of RCW 66.44.270(1) in a period of two years, the standard penalty is a seven day suspension. WAC 314-29-020.

5. However, the Board may impose a different penalty based on the presence of mitigating or aggravating factors. WAC 314-29-015(4).

6. Based on the foregoing facts, the evidence was inadequate to establish that the Licensee completed a sale to [REDACTED], a minor, in violation of the law. To be sure, the Licensee initially thought that [REDACTED] was old enough to purchase and started the sale process. However, just as the law required the Licensee to do, the Licensee, before completing any sale to [REDACTED] decided to carefully examine [REDACTED]'s ID. The Licensee never completed the sale, and the evidence established that the Licensee tried to abort the sale. However, [REDACTED] grabbed the alcohol and left against the intention of the Licensee. No sale or voluntary delivery of alcohol to [REDACTED] took place.

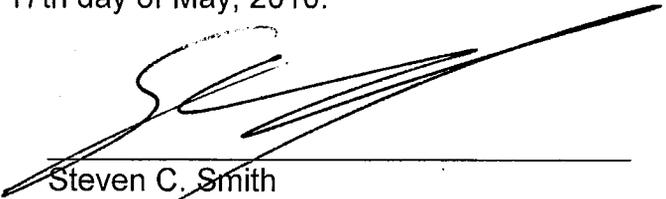
7. As the Liquor Control Board did not meet its evidentiary burden, no violation of the law by the Licensee was proved. Therefore, the Licensee should maintain his license, without fine, suspension or other discipline.

INITIAL ORDER

Based on the foregoing conclusions of law, IT IS HEREBY ORDERED:

1. The Liquor Control Board's Complaint No. 23,556, of November 3, 2009, is **NOT SUSTAINED**.
2. The Licensee shall maintain his license, without fine, suspension or other discipline.

DATED at Olympia, Washington, this 17th day of May, 2010.



Steven C. Smith
Administrative Law Judge
Office of Administrative Hearings