

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

R & B SYSTEMS, INC
d/b/a ARGONNE FOODMART
1520 N ARGONNE RD
SPOKANE VALLEY, WA 99212

LICENSEE

LICENSE NO. 080638-4N
AVN 4N0025A

LCB NO. 23,642

OAH NO. 2010-LCB-0043

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 June 21, 2010, alleging that on January 25, 2010, the above-named Licensee, or employee(s) thereof, sold, supplied or otherwise provided alcohol to a person under the age of twenty-one (21) in violation of WAC 314-11-020(1).
2. The Licensee made a timely request for a hearing.
3. A telephonic hearing took place on February 10, 2011 before Administrative Law Judge Edward S. Steinmetz.
4. The Licensee appeared and was represented by Co-Owner and Vice President Renee Beal. Assistant Attorney General Gordon Karg represented the Enforcement Division of the Board.
5. On February 14, 2011, Administrative Law Edward S. Steinmetz entered his Findings of Fact, Conclusions of Law, and Initial Order sustaining the complaint and reducing the penalty based on mitigating circumstances.

6. The Licensee filed a Petition for Review, arguing that no penalty should be imposed. The Enforcement Division filed a Reply to Licensee's Petition for Review and a Petition for Review, arguing that the standard penalty should be imposed.

7. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises; NOW THEREFORE; IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Initial Order for case 23,642 is adopted.

IT IS HEREBY FURTHER ORDERED that the Complaint filed in case 23,642 is sustained and that the liquor license privileges granted to R & B Inc d/b/a Argonne Foodmart located at 1520 N Argonne Road, in Spokane Valley, Washington, License 080638, are hereby suspended for a term of three days (3) days; effective from 10:00 a.m. on May 13, 2011, until 10:00 a.m. on May 16, 2011; HOWEVER, the suspension shall be vacated upon payment of a monetary penalty in the amount of three hundred dollars (\$300) due within 30 days of this order.

Payment in reference to this order should be sent to:

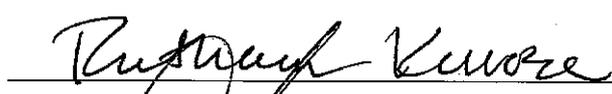
**Washington State Liquor Control Board
PO Box 43085
Olympia, WA 98504-3085**

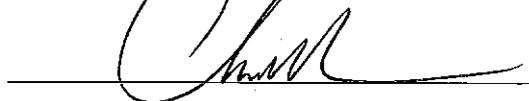
Failure to comply with the terms of this order will result in further disciplinary action.

DATED at Olympia, Washington this 29th day of March, 2011.

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).

FINAL ORDER OF THE BOARD
LCB NO. 23,642
ARGONNE FOODMART
LICENSE 080638

4

Washington State Liquor Control Board
3000 Pacific Ave, S.E.
P.O. Box 43076
Olympia, WA 98504-43076
Phone: 360-664-1602



Washington State
Liquor Control Board

March 30, 2011

R & B Systems Inc, Licensee
d/b/a Argonne Foodmart
1520 N Argonne Rd
Spokane Valley, WA 99212-2795

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

RE: FINAL ORDER OF THE BOARD
LICENSEE: R & B Systems, Inc.
TRADE NAME: Argonne Foodmart
LOCATION: 1520 N Argonne Rd, Spokane Valley, WA 99212-2795
LICENSE NO. 080638-4N
ADMINISTRATIVE VIOLATION NOTICE NO: 4N0025A
LCB HEARING NO. 23,642
OAH DOCKET NO. 2010-LCB-0043
UBI: 601 434 753 001 0004

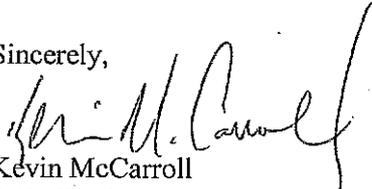
Dear Parties:

Enclosed please find a Declaration of Service by Mail and a copy of the Final Order for the above-captioned matter.

The applicable monetary penalty is due by April 29, 2011. If payment is not received timely, then suspension will take place during the dates listed in the Final Order.

The address for payment is WSLCB, P.O. Box 43085, Olympia, WA 98504-3085. Please label the check with your License Number and Administrative Violation Notice Number listed above. If you have any questions, please contact me at (360) 664-1602.

Sincerely,


Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

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

PO Box 43076, 3000 Pacific Ave. SE, Olympia WA 98504-3076, (360) 664-1602 www.liq.wa.gov

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3 **WASHINGTON STATE LIQUOR CONTROL BOARD**

4 IN THE MATTER OF:

5 R & B SYSTEMS, INC.
6 d/b/a ARGONNE FOODMART
7 1520 N ARGONNE RD
8 SPOKANE VALLEY, WA 99212-2795

LCB NO. 23,642
OAH NO. 2010-LCB-0043

DECLARATION OF SERVICE BY
MAIL

9 LICENSEE

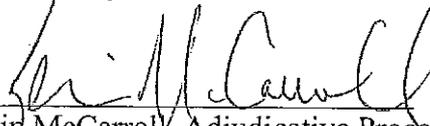
10 LICENSE 080638-4N
11 AVN NO. 4N0025A

12 I certify that I caused a copy of the *FINAL ORDER OF THE BOARD* in the above-
13 referenced matter to be served on all parties or their counsel of record by US Mail Postage
14 Prepaid via Consolidated Mail Service for Licensees; by Campus Mail for the Office of
15 Attorney General, on the date below to:

16
17 R & B SYSTEMS, INC.
18 d/b/a ARGONNE FOODMART
19 1520 N ARGONNE RD
20 SPOKANE VALLEY, WA 99212-2795

GORDON KARG, ASSISTANT ATTORNEY
GENERAL, GCE DIVISION
OFFICE OF THE ATTORNEY GENERAL
MAIL STOP 40100

21 DATED this 30th day of March, 2011, at Olympia, Washington.

22 
23 Kevin McCarroll, Adjudicative Proceedings Coordinator
24
25
26

DECLARATION OF SERVICE BY
MAIL

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

RECEIVED

MAR 03 2011

MAILED

FEB 14 2011

Office of Administrative Hearings
Spokane

LIQUOR CONTROL BOARD
BOARD ADMINISTRATION

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

In the Matter of:

R & B SYSTEMS, INC
dba ARGONNE FOODMART
1520 N ARGONNE ROAD
SPOKANE VALLEY WA 99212

Licensee

LICENSE NO. 080638

OAH DOCKET No. 2010-LCB-0043
LCB Case No. 23, 642

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND INITIAL ORDER

STATEMENT OF THE CASE

On January 28, 2010, the Washington State Liquor Control Board (Board) issued an Administrative Violation Notice to R & B Systems, Inc., dba Argonne Foodmart, with a business address of 1520 N. Argonne Rd., Spokane Valley, Washington (Licensee). In its Notice, the Board alleged that on or about January 25, 2010, the Licensee, or an employee thereof, sold or otherwise supplied liquor to a person under twenty-one (21) years of age for purposes of off-premises consumption in violation of WAC 314-11-020(1). The Board notified the Licensee that the proposed penalty for this violation was a five (5) day suspension of the Licensee's liquor license or a civil monetary penalty option in the amount of \$500.00. The Licensee made a timely request for hearing.

On June 21, 2010, the Board issued a formal Complaint naming R & B Systems, Inc., dba Argonne Foodmart, and citing that on or about January 25, 2010, the Licensee, or an employee thereof, sold, supplied, or otherwise provided alcohol to a person under the age of twenty-one (21) in violation of WAC 314-11-020(1).

This matter came on for hearing on due and proper notice on February 10, 2011, before Edward S. Steinmetz, Administrative Law Judge, Office of Administrative Hearings. At the telephonic hearing, the Board's Enforcement Division was represented by Gordon Karg, Assistant Attorney General. The Licensee appeared and was represented by Renee Beal, Co-Owner and Vice President.

Based upon the record presented, the undersigned Administrative Law Judge enters the following Findings of Fact:

FINDINGS OF FACT

1. The Licensee, R & B Systems, Inc., is the owner of Argonne Foodmart, the licensed premises at issue in this proceeding, located at 1520 N. Argonne Rd., Spokane Valley, Washington. The Licensee has been licensed to sell alcohol at the licensed premises since May 1999.
2. The Licensee's premises is licensed by the Board for the sale of beer and wine for off-premises consumption pursuant to License No. 080638.
3. On January 25, 2010, Liquor Enforcement Officer Jeremy M. Wissing, Sgt. Ryan Navrat, and Minor Investigative Aide [REDACTED] conducted a compliance check at the Licensee's premises.
4. [REDACTED] birthdate is February 15, 1991, and she was accordingly eighteen (18) years of age as of January 25, 2010.
5. At approximately 7:12 p.m., on January 25, 2010, [REDACTED] entered the Licensee's premises. At the direction of the liquor enforcement officers, [REDACTED] selected

a Bud Light beer, an alcoholic beverage. [REDACTED] then took the Bud Light beer to the cashier counter for attempted purchase.

6. On January 25, 2010, Roderick C. Gecan was employed by the Licensee, and was working as the sales clerk at the licensed premises on Argonne Rd.

7. After [REDACTED] placed the Bud Light beer on the sales counter, Mr. Gecan asked to see [REDACTED] identification. At that time, Mr. Gecan made the statement: "It's just for the cameras."

8. As requested, [REDACTED] provided Mr. Gecan her true and correct Washington State Intermediate Driver's License which confirmed her correct date of birth and demonstrated that she was 18 years of age as of January 25, 2010.

9. Mr. Gecan sold the Bud Light beer to [REDACTED] for \$2.27 after observing the provided Washington State Intermediate Driver's License. [REDACTED] purchased the Bud Light beer using only investigative funds provided to her by the Enforcement Division.

10. The Licensee's premises has a "point of sale" system that requires the cashier to enter a date of birth into the cash register before a sale of alcohol is made. The receipt for the sale of Bud Light beer to [REDACTED] by Mr. Gecan on January 25, 2010 confirms that the birthdate entered into the cash register point of sale system for [REDACTED] was "12/12/12."

11. Sgt. Ryan Navrat was waiting in a vehicle parked directly outside the Licensee's premises during the transaction described above. Sgt. Navrat had an unobstructed view into the licensed premises and observed the sale of the Bud Light beer to [REDACTED]. This sale was made by Roderick C. Gecan.

12. Following the sale of the Bud Light beer, [REDACTED] exited the Licensee's premises with the Bud Light beer in her possession and returned to Sgt. Navrat's vehicle whereupon she turned over possession of the Bud Light beer to Officer Wissing.

13. After taking possession of the Bud Light beer, Officer Wissing entered the licensed premises and contacted Mr. Gecan. Officer Wissing identified himself as a liquor enforcement officer and asked Mr. Gecan for his identification. Mr. Gecan subsequently presented his driver's license confirming his identity.

14. Officer Wissing advised Mr. Gecan that he had sold a container of Bud Light beer to an investigative aide and again displayed [REDACTED] Washington State Intermediate Driver's License which demonstrated her true and correct date of birth. Officer Wissing then issued a misdemeanor criminal citation to Mr. Gecan for the sale of alcohol to a minor. The Spokane County Prosecuting Attorney's Office ultimately declined to prosecute the citation.

15. The Licensee has policies in place to prevent the sale of alcohol to minors, including: All employees undergo responsible sales training from the Board. A point of sale cash register system requires employees to enter a patron's date of birth prior to making a sale of alcohol. Requiring that employees check identification and verify age of any patron seeking to purchase alcohol. All employees sign four different documents in their hiring packet that stipulate that each employee will check identification for alcohol or tobacco. The store manager informs all new employees of the importance of identifying all persons for the sale of alcohol and tobacco products. The Licensee issues memos reminding all employees to check identification for sales of alcohol and that they are never to override the date of birth cash register system. These memos are posted on the licensed premises regularly. Area

managers or corporate officers remind employees daily to check identification for alcohol and tobacco sales.

16. Roderick C. Gecan had undergone responsible liquor sales training from the Board's enforcement personnel on or about the time he was hired on February 22, 2008. Mr. Gecan also participated in a refresher responsible alcohol sales course in 2009, and had been fully advised of all the Licensee's policies as of January 25, 2010.

17. At hearing, Renee Beal, Vice President and Co-Owner of the licensed premises, argued that factors exist which would justify mitigation from the standard penalty to be imposed in this matter. Ms. Beal argued that the Licensee goes above and beyond requirements normally imposed upon Licensees for the sale of alcohol and tobacco products. Ms. Beal characterized Mr. Gecan as a "rogue employee" who had intentionally chosen to violate all of the training which he had received and the employer's strict policies and procedures regarding the sale of alcohol and tobacco products. Ms. Beal expressed considerable concern and dismay that her business is subject to possible sanction and penalty by the Board, but that the Spokane County Prosecuting Attorney's Office declined prosecution of the criminal citation issued to the employee, Mr. Gecan.

18. At hearing, the counsel for the Board's Enforcement Division argued that the law imposes liability for the actions of employees upon the Licensee/Employer. Mr. Karg argued that there are no aggravating or mitigating circumstances present in this matter which would justify deviation from the standard penalty imposed by law.

Based upon the above Findings of Fact, the following Conclusions of Law are entered:

CONCLUSIONS OF LAW

1. As the holder of a retail liquor license, R & B Systems, Inc., dba Argonne Foodmart, is subject to the jurisdiction of the Washington State Liquor Control Board. The Board has the authority, pursuant to RCW 66.24.010, to suspend or cancel a license so long as the Licensee is afforded an opportunity for a hearing. A proper hearing was provided in this case.

2. The provisions of RCW 66.44.270(1) are applicable and provide in relevant part as follows:

“(1) It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years....”

3. The provisions of WAC 314-11-020(1) are applicable and provide in relevant part as follows:

“(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.”

4. The facts in this matter conclusively establish that on January 25, 2010, an employee of the Licensee sold Bud Light beer, an product containing alcohol, to an individual who was only eighteen (18) years of age at the time. Although the underage individual did in fact provide true and correct identification confirming her true date of birth and age, the Licensee's employee nevertheless continued to process and did in fact sell the alcoholic beverage to the underage individual. Under these facts, this tribunal concludes that the evidence establishes that the Licensee, through the actions of its employee, has violated the provisions of RCW 66.44.270 and WAC 314-11-020.

5. The Board has the authority to establish an appropriate penalty as a matter of its discretion. Under RCW 66.24.010, the Board has the authority to suspend the Licensee's liquor license. The Board has adopted as rules a set of penalty guidelines which apply to certain "groups" or types of violations. WAC 314-29-015 through WAC 314-29-040. Pursuant to WAC 314-29-015(4), the Board retains broad discretion to impose different penalties based upon the existence of aggravating and mitigating circumstances. For Group 1 violations against public policy, including violations involving minors, WAC 314-29-020 establishes penalty guidelines under an escalating penalty scheme based upon the existence of any prior violations that the Licensee may have incurred within a prior two-year period. WAC 314-29-020.

6. The penalty guideline in this matter for a first violation of RCW 66.44.270 and WAC 314-11-020(1) is a five-day suspension of the Licensee's liquor license, or a civil monetary penalty option in the amount of \$500.00.

7. In the matter of penalties, the role of the Administrative Law Judge is to draw the Board's attention to those aggravating or mitigating factors which the Board may wish to consider in deciding whether to deviate from the penalty guidelines established by law. Examples of mitigating or aggravating circumstances are set forth at RCW 314-29-015(4) and mitigating circumstances include having a signed acknowledgment of the business's alcohol policy on file for each employee, and/or having an employee training plan that includes annual training on liquor laws. These examples of mitigating circumstances are not exclusive.

8. The facts in this case establish that the Licensee does take a strong and proactive stance with regard to implementing notice and procedures clearly advising

employees of the employer's expectation that they will comply with all laws and rules relating to the sale of alcohol and tobacco products. The Licensee requires its employees who sell alcohol and tobacco products to use a point of sale system requiring that the employee check identification of all patrons purchasing alcohol and tobacco products, and to enter in the birthdate taken from authorized identification regarding the patron's birthdate. This is obviously done to establish the age of the patron attempting to purchase alcohol or tobacco products. The facts in this case further show that the offending employee, Mr. Gecan, had attended responsible liquor sales training from the Board's Enforcement Division on at least two occasions prior to the offense found to exist herein. Having given consideration to these facts, this tribunal takes note of the argument set forth by the Enforcement Division's counsel that the Licensee is in fact responsible for the actions of its employees. As set forth above, this tribunal agrees that a violation by the Licensee has in fact been found to exist in this matter. However, this tribunal further concludes that the Licensee's proactive and strong efforts to ensure compliance with all applicable laws and rules regarding the sale of alcohol and tobacco products does in fact constitute a mitigating circumstance pursuant to WAC 314-29-015. In balance, this tribunal concludes that the Licensee should be subject to a three (3) day suspension of its liquor license, or in lieu thereof, a civil monetary penalty in the amount of \$300.00.

NOW THEREFORE,

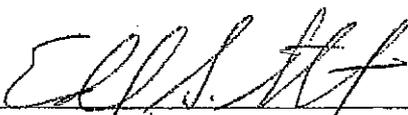
INITIAL ORDER

IT IS HEREBY ORDERED, That the Board's Complaint in this matter be SUSTAINED.

On a date to be established in the Board's Final Order, the license privileges of R & B Systems, Inc., dba Argonne Foodmart, under License No. 080638, shall be suspended for a period of three (3) days. In lieu of a license suspension, the Licensee may pay a civil monetary penalty in the amount of three-hundred dollars (\$300.00).

DATED at Spokane, Washington, this 14th day of February, 2011.

WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS



Edward S. Steinmetz
Administrative Law Judge
Office of Administrative Hearings
221 N. Wall St., Suite 540
Spokane, WA 99201-0826
Phone (Toll Free): 1-800-366-0955

NOTICE TO 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.

Copies Mailed to:

R & B Systems, Inc
Argonne Foodmart
Attn: Renee Beal
1520 N Argonne Rd
Spokane Valley WA 99212

Gordon Karg
Assistant Attorney General
Office of the Attorney General
1125 Washington St SE
Olympia, WA 98504

Licensee's Petition for Review

RECEIVED

MAR 03 2011

LIQUOR CONTROL BOARD
BOARD ADMINISTRATION

**R & B Systems, Inc.
1520. North Argonne
Spokane, WA. 99212**

March 3, 2011

Washington State Liquor Control Board
1302 West Broadway Avenue
Spokane, WA. 99201

To Whom It May Concern:

I am writing to file a petition for review of the order handed down by The Office of Administrative Hearings on the Liquor Board case number 23,642 in the matter of R & B Systems, Inc., dba Argonne Foodmart, 1520 N. Argonne, Spokane Valley, WA. 99212.

I am taking exception to the following portions of the initial order:

Judge Steinmetz agrees that R & B Systems, Inc. does take a strong and proactive stance with regard to implementing notice and procedures clearly advising employees to our expectation to comply with the law. The tribunal concluded that R & B Systems, Inc. efforts do in fact constitute a mitigating circumstance pursuant to WAC 314-29-015. However, the tribunal did not take in to consideration that the employee, Mr. Gecan attended not one, but two Washington State training classes. Mr. Gecan was given a criminal citation at the time of the violation in which he sold the alcohol to the operative. He went to court for this violation and was given no fine. I was told by the AIG that the Liquor Board has no control over the Spokane Prosecuting Attorney's Office and the decisions they make. How can the Liquor Board expect a company such as ours to have their employees follow not only the law, but their own company policies if the employees know there are no consequences? R & B Systems, Inc. has never denied that a violation existed, but again, how can a company enforce the policies and laws when there is no penalty to the employee who breaks the law?

Prior to this hearing, I requested a meeting through the AIG to meet with the Liquor Board to explain my frustration and feelings in regards to this matter. The Liquor board refused to meet with me. Additionally, in a telephone conversation with the AIG in July, 2010 I was told that the Liquor Board is "after my blood." My question is, why? If my business had been negligent, I would have paid that fine, and made the necessary changes in my business to try to insure that this not happen again. But this is not the case here. We do everything possible to follow the laws. All of our employees know that they are never to sell to a minor and are to obtain ID for all prospective sales of alcohol and/or tobacco. If they make a sale in a compliance check, they will be terminated immediately. They know they will be issued a Criminal Citation at that time, and when they go to court for this, NOTHING will happen to them. Why does the Liquor Board issue these citations when they are fully aware of this? Why are they clogging up the courts with this when there are no costs to the employee who is the one that breaks the law?

The Liquor Board offered a 'settlement' of \$200.00 in the attempt to settle this matter prior to the appeal. R & B Systems, Inc. felt it necessary to explain their position and give their mitigating circumstances in this case.

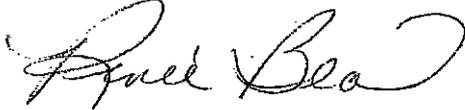
We did appeal as we felt a \$200.00 fine was inappropriate due to the fact that Mr. Gecan was given no fine at all.

Yes, the evidence shows that our employee did sell to the operative, but the evidence also shows that R & B takes a strong stance, and has policies in place for their employees to follow the law. Unfortunately, the Liquor Board has not followed through with the Prosecuting Attorney to insure these people are held accountable.

Imposing this large fine on our company is unfair and unjust. Yes, the law was broken by Mr. Gecan. Is it fair to impose this large fine when he was trained, he was sent to the Responsible Liquor sales training class twice and then given no fine when going to court for his said actions? I don't believe that it is.

I would appreciate your consideration in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Renee Beal". The signature is written in black ink and is positioned above the printed name and title.

Renee Beal
Vice President

Enforcement's Petition for Review

RECEIVED

MAR 07 2011

LIQUOR CONTROL BOARD
BOARD ADMINISTRATION

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

R & B SYSTEMS INC., d/b/a
ARGONNE FOODMART
1520 N ARGONNE ROAD
SPOKANE VALLEY, WA 99212-2522

LICENSEE

LICENSE NO. 080638

OAH NO. 2010-LCB-0043
LCB CASE NO. 23,642

ENFORCEMENT DIVISION'S
PETITION FOR REVIEW OF THE
INITIAL ORDER

The Washington State Liquor Control Board's Education & Enforcement Division (Enforcement), by and through its attorneys, ROBERT M. MCKENNA, Attorney General, and GORDON KARG, Assistant Attorney General, and pursuant to RCW 34.05.464 and WAC 314-29-010, submits the following exceptions to the Initial Order issued by Administrative Law Judge Edward S. Steinmetz (ALJ), on February 14, 2011, in the above-captioned case.

I. PROCEDURAL BACKGROUND

On June 21, 2010, the Board issued a Complaint to the Licensee, R & B Systems Inc, d/b/a Argonne Foodmart (Licensee), alleging that on or about January 25, 2010, the Licensee and/or an employee thereof, sold, served, supplied or otherwise provided alcohol to a person under the age of twenty-one (21) in violation of WAC 314-11-020(1). The Complaint was issued after the Licensee's employee, Roderick Gecan, sold alcohol to a minor investigative aide (IA) employed by and under the direction of Enforcement. Initial Order, Finding of Fact (FOF)

¶¶3-9.

1 This case was heard and considered by the Administrative Law Judge (ALJ) via
2 telephone on February 10, 2011. After a full evidentiary hearing, the ALJ entered Findings of
3 Fact and Conclusions of Law, in its Initial Order issued on February 14, 2011. In the Initial
4 Order, the ALJ sustained the Board's Complaint, but endorsed a reduction of the standard
5 penalty from \$500 to \$300. Enforcement respectfully takes exception to this reduction in
6 penalty.

7 II. DISCUSSION

8 Pursuant to WAC 314-29-010(4)(b), 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 Initial Order.

14 In concluding that a lesser penalty was appropriate in this matter the ALJ cited to the
15 variety of policies and safeguards the Licensee has in place to prevent the sale of alcohol to
16 minors. Initial Order Conclusions of Law (COL) ¶8. However, several factors militate against
17 deviating from the standard penalty.

18 The stipulated facts tend to indicate Mr. Gecan intentionally sold alcohol to a person
19 whom he either knew or should have known was under the age of twenty-one (21). At the time,
20 Mr. Gecan asked the IA for her identification and stated his request was "just for the cameras."
21 FOF ¶7. Mr. Gecan reviewed the IA's Washington State issued identification which clearly
22 indicated she was eighteen (18) years of age at the time. FOF ¶8. After being so informed, Mr.
23 Gecan not only sold the IA an alcoholic beverage, but deliberately overrode the premises' point
24 of sale system by entering a false birthday in order to complete the sale. FOF ¶10. This is not a
25 situation where the employee simply made a mistake which might reasonably be offset by the
26 Licensee's efforts to ensure such mistakes do not occur. This is compounded by one of the

1 Licensee's governing officers, Ms. Renee Beal, attempting to absolve the Licensee of any
2 responsibility by arguing Mr. Gecan was simply a "rogue employee" without any explanation as
3 to why an employee with an apparent willingness to violate the law would remain in the
4 Licensee's employ for nearly two years. FOF ¶¶16-17.

5 A violation committed by a Licensee's employee is treated as a violation committed by
6 the Licensee. WAC 314-11-015(1)(a). This was a willful act by the Licensee to sell alcohol to a
7 person it knew or should have known was a minor.

8 III. CONCLUSION

9 The stipulated facts in this matter demonstrate mitigation of penalty is not appropriate.
10 The Licensee, through its employee, willfully violated the law. Therefore, Enforcement
11 respectfully requests that the Initial Order be adopted in this matter in its sustaining of the
12 Complaint, but requests the Board impose the standard monetary penalty of \$500.

13 DATED this 7 day of March, 2011.

14 ROBERT M. MCKENNA
15 Attorney General

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18 GORDON KARG, WSBA #37178
19 Assistant Attorney General
20 Attorneys for the Washington State Liquor
21 Control Board Enforcement Division
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Enforcement's Reply to Petition for Review

RECEIVED

MAR 14 2011

**LIQUOR CONTROL BOARD
BOARD ADMINISTRATION**

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

R & B SYSTEMS INC., d/b/a
ARGONNE FOODMART
1520 N ARGONNE ROAD
SPOKANE VALLEY, WA 99212-2522

LICENSEE

LICENSE NO. 080638

OAH NO. 2010-LCB-0043
LCB CASE NO. 23,642

ENFORCEMENT DIVISION'S
REPLY TO LICENSEE'S PETITION
FOR REVIEW

The Washington State Liquor Control Board's Education & Enforcement Division (Enforcement), by and through its attorneys, ROBERT M. MCKENNA, Attorney General, and GORDON KARG, Assistant Attorney General, and pursuant to RCW 34.05.464 and WAC 314-29-010, now replies to the Licensee's Petition for Review in the above-captioned case.

I. PROCEDURAL BACKGROUND

On June 21, 2010, the Board issued a Complaint to the Licensee, R & B Systems Inc, d/b/a Argonne Foodmart (Licensee), alleging that on or about January 25, 2010, the Licensee and/or an employee thereof, sold, served, supplied or otherwise provided alcohol to a person under the age of twenty-one (21) in violation of WAC 314-11-020(1). The Complaint was issued after the Licensee's employee, Roderick Gecan, sold alcohol to a minor investigative aide (IA) employed by and under the direction of Enforcement. Initial Order, Finding of Fact (FOF) ¶¶3-9.

1 This case was heard and considered by the Administrative Law Judge (ALJ) via
2 telephone on February 10, 2011. After a full evidentiary hearing, the ALJ entered Findings of
3 Fact and Conclusions of Law, in its Initial Order issued on February 14, 2011. In the Initial
4 Order, the ALJ sustained the Board's Complaint, but endorsed a reduction of the standard
5 penalty from \$500 to \$300. Enforcement filed a petition for review taking exception to the
6 ALJ's suggested penalty. The Licensee also filed a petition for review (Lic. Pet.)¹, apparently,
7 seeking a further reduction of the penalty imposed. Pursuant to WAC 314-29-010(4)(b), any
8 party, upon receipt of a Petition for Review by another party may file a reply within ten (10)
9 days of service of Petition. Enforcement now responds.

10 II. DISCUSSION

11 The Licensee again admits its violated liquor law and rule when its employee served
12 alcohol to a minor. Lic. Pet. at 2. However, the Licensee appears to seek a reduction of its
13 monetary penalty. Initially, the Licensee attempts to rely on information it posits as fact, which
14 was not stipulated to nor was it part of the record below or the ALJ's Initial Order. Lic. Pet. at 1-
15 2. The Licensee cannot introduce or rely on alleged facts not found by the ALJ at this time and
16 must rely on the facts already in the record.² WAC 314-42-095(2)(a)(ii).

17 The stipulated facts tend to indicate Mr. Gecan intentionally sold alcohol to a person
18 whom he either knew or should have known was under the age of twenty-one (21). FOF ¶7-8,
19 10. The Licensee suggests it is not responsible for the conduct of its employee. Lic. Pet. at 2-3.
20 This is contrary to law: A violation committed by a Licensee's employee is treated as a violation
21 committed by the Licensee. WAC 314-11-015(1)(a). The Licensee has, throughout these
22

23 ¹ The Licensee's Petition comes in the form of a letter rather than a properly captioned pleading. However,
24 Enforcement's position is that it is clearly a petition for review and is being responded to as such. The letter has no
25 page numbers. For the purpose of this reply, Enforcement designates the page beginning with the Licensee's
26 address as page 1; the page beginning with "prior to this hearing" as page 2; and the page beginning with "imposing
this" as page 3.

² Enforcement will not engage in the same inappropriate conduct as the Licensee by debating or attempting
to introduce counter-facts at this time. Enforcement's position, though, is that the majority of the licensee's
allegations are inaccurate or incomplete.

1 proceedings, attempted to make a distinction between it and its employee Mr. Gecan. *See Lic.*
2 *Pet. 2.* This is incorrect. For the purpose of assessing violations of liquor laws or rules in a
3 regulatory sense, the actions of an employee are *indistinguishable from the actions of the*
4 *Licensee.* WAC 314-11-015(1)(a). The distinction the Licensee attempts to create is false. The
5 Licensee intentionally sold alcohol to a person it either knew or should have known was a minor.

6 The Licensee also suggests it is "unfair" for it to receive a penalty from the Board in this
7 proceeding when the Spokane County Prosecutor chose to not prosecute its employee with a
8 crime. *Lic. Pet.* at 2-3. First, the Board has no jurisdiction over criminal prosecution generally
9 or the Spokane County Prosecutor's office specifically and the issue raised is irrelevant to this
10 proceeding. Second, and more importantly, the Board does have jurisdiction over the Licensee.
11 *See generally, RCW 66.08.010.* The Licensee suggests the Board should ignore its statutory
12 duty to enforce liquor laws and rules even though it admits it violated those laws and rules. *See*
13 *RCW 66.44.010.* This argument cannot stand.

14 The Licensee's arguments and position are disturbing and potentially call into question its
15 fitness to hold a liquor license. It demonstrates a lack of understanding of the liquor laws and
16 rules it is required to know and abide by. The Licensee either fails to grasp, or refuses to accept,
17 that its employee's actions are its actions by law.

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III. CONCLUSION

1 The stipulated facts in this matter demonstrate mitigation of penalty is not appropriate.
2 The Licensee intentionally violated the law. Therefore, Enforcement respectfully requests that
3 the Initial Order be adopted in this matter in its sustaining of the Complaint, but requests the
4 Board impose the standard monetary penalty of \$500 or any other penalty it finds appropriate
5 under law.

6 DATED this 14 day of March, 2011.

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8 ROBERT M. MCKENNA
Attorney General

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10 
11 GORDON KARG, WSBA #37178
Assistant Attorney General
12 Attorneys for the Washington State Liquor
Control Board Enforcement Division
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