

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

HOLLENBECK, GUTZMAN, AND
HILL, INC d/b/a
COUNTRY TRAVEL PLAZA
790 S PENCE ROAD
LIND, WA 99671-9742

LICENSEE

LICENSE NO. 079806-4J
AVN 4L0092B

LCB NO. 23,698

OAH NO. 2010-LCB-0049

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 July 20, 2010, alleging that on April 2, 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 hearing took place before Greg D. Weber, Administrative Law Judge on November 30, 2010 by telephone conference call. The Licensee appeared and was represented by Baljit Singh, Manager. The Education and Enforcement Division of the Board was represented by Brian Considine, Assistant Attorney General
4. On January 3, 2011, Administrative Law Judge Greg D. Weber entered his Corrected Findings of Fact, Conclusions of Law, and Initial Order sustaining the complaint.
5. No exceptions were filed by the parties.
6. The entire record in this proceeding was presented to the Board for final decision, and the

Board having fully considered said record and being fully advised in the premises; NOW THEREFORE;

FINAL ORDER OF THE BOARD
LCB NO. 23,698
COUNTRY TRAVEL PLAZA
LICENSE 079806-4J

IT IS HEREBY ORDERED that the initial order for case 23,698 is adopted.

IT IS HEREBY FURTHER ORDERED that the Complaint filed in case 23,698 is sustained and that the liquor license privileges granted to Hollenbeck, Gutzman, and Hill, Inc d/b/a Country Travel Plaza at 790 S Pence Rd, Lind, Washington, License 079806, are hereby suspended for a term of five (5) days. In lieu of a license suspension, the Licensee may pay a monetary penalty in the amount of five-hundred dollars (\$500.00) due within 30 days of this order. If timely payment is not received, suspension will take place from 11:00 a.m. on March 18, 2011 until 11:00 a.m. on March 23, 2011. Failure to comply with the terms of this order will result in further disciplinary action.

Payment in reference to this order should be sent to:

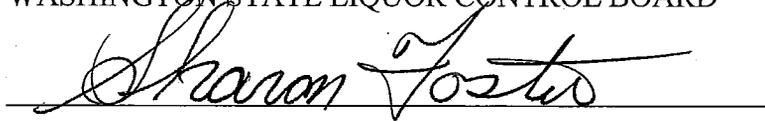
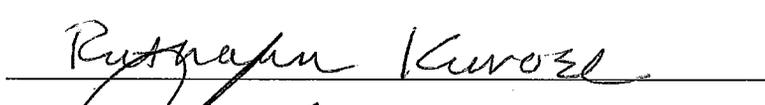
Washington State Liquor Control Board

PO Box 43085

Olympia, WA 98504-3085

DATED at Olympia, Washington this 1 day of Feb., 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

FINAL ORDER OF THE BOARD
LCB NO. 23,698
COUNTRY TRAVEL PLAZA
LICENSE 079806-4J

of record and their representatives. Filing means actual receipt of the document at the Board's office. RCW 34.05.010(6). A copy shall also be sent to Mary M. Tennyson, Senior Assistant Attorney General, 1125 Washington St. SE, P.O. Box 40110, Olympia, WA 98504-0110. A timely petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on the petition. An order denying reconsideration is not subject to judicial review. RCW 34.05.470(5). The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Stay of Effectiveness. The filing of a petition for reconsideration does not stay the effectiveness of this Order. The Board has determined not to consider a petition to stay the effectiveness of this Order. Any such request should be made in connection with a petition for judicial review under chapter 34.05 RCW and RCW 34.05.550.

Judicial Review. Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

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

MAILED

JAN 03 2011

Office of Administrative Hearings
Spokane

IN THE MATTER OF:

HOLLENBECK, GUTZMAN, AND HILL,
INC. d/b/a COUNTRY TRAVEL PLAZA

790 S Pence Rd
Lind, WA 99671-9742

LICENSEE

LICENSE NO. 079806

OAH DOCKET NO. 2010-LCB-0049

LIQUOR CONTROL BOARD
CASE NO. 23,698

**CORRECTED - FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
INITIAL ORDER**

STATEMENT OF THE CASE

On April 9, 2010, the Washington State Liquor Control Board (Board) issued an Administrative Violation Notice to Hollenbeck, Gutzman, and Hill, Inc. d/b/a Country Travel Plaza, 790 S. Pence Road, Lind, Washington. In its Notice, the Board alleged that on or about April 2, 2010, the above named Licensee and/or an employee thereof, sold alcohol to a minor in violation of WAC 314-11-020.

On July 20, 2010, the Board issued a formal complaint in which it alleged that on or about April 2, 2010, the above named Licensee or 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 before Greg D. Weber, Administrative Law Judge, Office of Administrative Hearings, by telephone conference call, on November 30, 2010. At the hearing the Board was represented by Gordon Karg, Assistant Attorney General. The Licensee appeared and was represented by Baljit Singh, Manager. Appearing as witnesses for the Board were Sergeant Ryan Navrat, Liquor Control Board Enforcement Officer, Officer Jeremy Wissing, Liquor Control Board Enforcement Officer, and [REDACTED] Liquor Control Board Minor Investigative Aide. Appearing as a witness for the Licensee was Baljit Singh, Manager.

Based upon the record presented, the undersigned Administrative Law Judge makes the following Findings of Fact.

FINDINGS OF FACT

1. The Licensee, Hollenbeck, Gutzman, and Hill, Inc. d/b/a Country Travel Plaza, operates a grocery/convenience store located at 790 S. Pence Road, Lind, Washington. The premises is licensed by the Board for the sale of alcohol for off-premises consumption pursuant to License No. 079806.
2. On April 2, 2010, Sergeant Ryan Navrat, Liquor Control Board Enforcement Officer and Officer Jeremy Wissing, Liquor Control Board Enforcement Officer were conducting compliance checks. Accompanying Navrat and Wissing was [REDACTED] a Liquor Control Board Minor Investigative Aide. [REDACTED] was born on March 3, 1992 and was therefore 18 years of age on April 2, 2010. (See Exhibit 5). Prior to conducting the compliance check, Officers Navrat and Wissing verified that [REDACTED] had in her possession only her personal driver's license and funds provided to her by the officers.
3. At approximately 9:28 p.m., on April 2, 2010, the two officers and [REDACTED] arrived at the Licensee's grocery/convenience store. [REDACTED] exited Sergeant Navrat's vehicle and entered the Licensee's premises. Sergeant Navrat parked in a position so that his vehicle was facing the store. Sergeant Navrat and Officer Wissing were both able to view [REDACTED] in the store from their position in the vehicle. [REDACTED] walked to the cooler area of the Licensee's store and selected a 24 oz. Can of Bud Light beer, an alcoholic beverage. (See Exhibit 6). [REDACTED] approached the cash register at the Licensee's premises where she made contact with a female, later identified as Cynthia J. Douglas, standing behind the cash register. Ms. Douglas asked [REDACTED] for her identification. [REDACTED] handed her valid Washington Driver's License to Ms. Douglas. [REDACTED] Washington State Driver's License is in a vertical format indicating the holder is under 21 years of age, in addition the license states [REDACTED] date of birth as 03-03-1992 and that [REDACTED] turned 18 on 03-03-2010. After viewing [REDACTED] valid Washington State Driver's License, Ms. Douglas stated "just barely" and processed the sale of the can of Bud Light beer. [REDACTED] paid approximately \$2.36 for the 24 oz. can of beer. [REDACTED] exited the Licensee's premises and returned to Sergeant Navrat's vehicle. Upon arriving at the vehicle, [REDACTED] turned over the 24 oz. can of Bud Light, her Washington State Driver's License and the receipt for the purchase, to Officers Navrat and Wissing, both of whom had witnessed the transaction from their vehicle.
4. Sergeant Navrat subsequently entered the Licensee's premises and made contact with the store cashier, Ms. Douglas. Sergeant Navrat advised Ms. Douglas of the violation. Ms. Douglas stated she was "having a bad day" and pointed to a 1992 tobacco age sticker.
5. The undersigned finds that all witnesses who testified at the hearing were credible witnesses.

CONCLUSIONS OF LAW

1. As a holder of a retail liquor license, Hollenbeck, Gutzman, and Hill, Inc. d/b/a Country Travel Plaza 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 are applicable and state 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 or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control. For purposes of this subsection is a gross misdemeanor punishable as provided for in Chapter 9A.20 RCW."

3. The provisions of WAC 314-11-020 are applicable and state 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 provisions of WAC 314-11-015(1)(a) are applicable and state in relevant part as follows:
 - (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.

5. The facts in this case establish by a preponderance of the evidence that on April 2, 2010, Cynthia J. Douglas, an employee of the Licensee, sold a 24 oz can of Bud Light beer, an alcoholic beverage, to [REDACTED] who was only 18 years of age at the time. The Licensee's employee viewed [REDACTED] Washington State Driver's License which clearly stated her date of birth of 03-03-1992 making her 18 years of age. After viewing the driver's license, Licensee's employee completed the sales transaction. [REDACTED] was allowed to pay for the beer and exit the Licensee's premises in possession of the alcohol. Under these facts, this Tribunal concludes that the Licensee, or an employee or officer thereof, did in fact violate the provisions of RCW 66.44.270 and WAC 314-16-150. The Board's complaint in this matter should therefore be sustained.

6. 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. Effective May 5, 2003, the Board has adopted as rule a set of "standard penalties" which may be applied to certain offenses. WAC 314-29-015. This regulatory provision states that the standard penalties are meant to serve as guidelines, and that the Board retains discretion to impose a different penalty based upon the existence of mitigating or aggravating circumstances. An escalating penalty scheme is adopted based upon the existence of any prior violations that the Licensee may have incurred within a prior two-year period. WAC 314-29-015.

7. The standard penalty in this matter for a first violation is a five-day suspension of the Licensee's liquor license. In lieu of license suspension, the Licensee is afforded a monetary penalty option in the amount of five-hundred dollars (\$500.00). WAC 314-29-020.

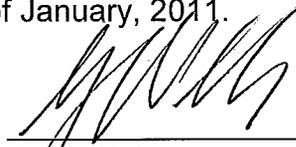
8. In the matter of penalties, the role of the Administrative Law Judge is to draw the Board's attention to those aggravating or mitigating circumstances which the Board may wish to consider in deciding whether to deviate from the standard penalty established by regulation. Examples of mitigating or aggravating circumstances are set forth at WAC 314-29-015(4). After carefully considering the facts in this matter, this Tribunal concludes that there are no sufficient aggravating or mitigating circumstances present to justify deviation from the standard penalty established by law. Therefore, a five-day suspension of the Licensee's liquor license should be imposed. In lieu of license suspension, the Licensee may pay a civil monetary penalty in the amount of five-hundred dollars (\$500.00).

Based upon the foregoing Conclusions of Law, 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 licensed privileges of Hollenbeck, Gutzman, and Hill, Inc. d/b/a Country Travel Plaza, under License No. 079806, shall be suspended for a period of five (5) days. In lieu of a license suspension, the Licensee may pay a civil monetary penalty in the amount of five-hundred dollars (\$500.00).

Dated at Spokane, Washington this 3rd day of January, 2011.



Greg Weber
Administrative Law Judge
Office of Administrative Hearings
221 N Wall Street, Suite 540
Spokane WA 99201

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.

