

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

In The Matter Of the Hearing Of:

SS, INC.
d/b/a SMOKE STOP
219 BROADWAY E STE 17
SEATTLE, WA 98102-5797

Licensee

UBI: 601 769 062 001 0001
TVN: 34954/2Y1104B

OAH NO. 2011-LCB-0037
LCB NO. T-538

FINAL ORDER OF THE BOARD

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

1. On June 2, 2011 the Board issued a Complaint alleging that on April 14, 2011 the above-named Licensee, sold/supplied tobacco to a person(s) under the age of eighteen (18), contrary to RCW 26.28.080 and is subject to the penalties set out in RCW 70.155.100.
2. A hearing was held on November 29, 2011 at the Licensee's timely request.
3. At the hearing, the Licensee was represented by Mustafa Choudhary, owner. Assistant Attorney General Timothy Ford represented the Education and Enforcement Division of the Board.
4. On January 3, 2012, Administrative Law Judge Terry A. Schuh entered his Findings of Fact, Conclusions of Law and Initial Order in this matter, which sustained the violation.
5. No petitions were filed by the parties.

6. The entire record in this proceeding having been reviewed by the Board, and the Board having fully considered said record and being fully advised in the premises; NOW THEREFORE,

IT IS HEREBY ORDERED that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order for case T-538 is adopted.

IT IS HEREBY FURTHER ORDERED that the Complaint filed in case T-538 is sustained and that the above-named Licensee, SS, Inc. d/b/a Smoke Stop shall be subject to a monetary penalty of one hundred dollars (\$100.00) due within 30 days of this order. Failure to comply with the terms of this Order will subject the Licensee to further disciplinary action.

Payment should be sent to:

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

DATED at Olympia, Washington this 1ST day of FEBRUARY, 2012.

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,

FINAL ORDER T-538
SMOKE STOP
6017690620010001

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**

February 2, 2012

SS Inc, Licensee
d/b/a Smoke Stop
2519 15th Ave S
Seattle, WA 98144-5022

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

RE: *Final Order of the Board*
SS Inc, Licensee
Trade Name Smoke Stop
Location: 219 Broadway E Ste 17, Seattle, WA 98102-5797
LCB No. T-538
OAH No. 2011-LCB-0037
Administrative Violation Notice No. 3Y1104B / 34954

Dear Parties:

Please find the enclosed Declaration of Service by Mail and a copy of the Final Order of the Board in the above-referenced matter

The applicable monetary penalty is due by March 5, 2012. The address for payments 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,

A handwritten signature in black ink that reads "Kevin McCarroll".

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Tukwila and Seattle Enforcement and Education Divisions, WSLCB
Teresa Young, Tobacco Violations Coordinator, 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 SS INC
6 d/b/a SMOKE STOP
7 219 BROADWAY E STE 17
8 SEATTLE, WA 98102-5797

9 LICENSEE

10 UBI NO. 601 769 062 001 0001
11 AVN NO. 34954 / 2Y1104B

LCB NO. T-538
OAH NO. 2011-LCB-0037

DECLARATION OF SERVICE BY
MAIL

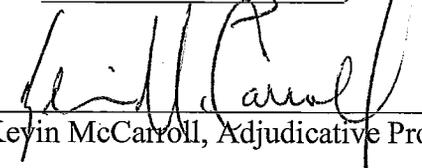
12 I certify that I caused a copy of the FINAL ORDER OF THE BOARD in the above-
13 referenced matter to be served on all parties or their counsel of record by US Mail Postage
14 Prepaid via Consolidated Mail Service for Licensees; by Campus Mail for the Office of
15 Attorney General, on the date below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

16 SS INC, LICENSEE
17 d/b/a SMOKE STOP
18 2519 15TH AVE S
19 SEATTLE, WA 98144-5022

OFFICE OF THE ATTORNEY GENERAL
MAIL STOP 40100
TIMOTHY FORD, ASSISTANT ATTORNEY
GENERAL, GCE DIVISION

20 SS INC
21 d/b/a SMOKE STOP
22 219 BROADWAY E STE 17
23 SEATTLE, WA 98102-5797

24 DATED this 2nd day of February, 2012, at Olympia, Washington.

25 
26 Keyin McCarroll, Adjudicative Proceedings Coordinator

DECLARATION OF SERVICE BY
MAIL

RECEIVED

JAN 06 2012

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

Liquor Control Board
Board Administration

In The Matter Of:

**SS, INC. dba
SMOKE STOP,**

**219 Broadway Ave. E., Suite 17
Seattle, WA 98102-5797,**

Licensee.

UBI No. 601769062

OAH Docket No. 2011-LCB-0037

AVN. No. 34954

Complaint No. T-538

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

I. ISSUE PRESENTED

Whether, on or about April 14, 2011, the Licensee sold tobacco to a person under the age of 18 years in violation of RCW 26.28.080 and subject to a monetary penalty of \$100.00.

II. ORDER SUMMARY

On or about April 14, 2011, the Licensee sold tobacco to a person under the age of 18 years in violation of RCW 26.28.080 and is subject to a monetary penalty of \$100.00.

III. HEARING

3.1 Hearing Date: November 29, 2011

3.2 Administrative Law Judge: Terry A. Schuh

3.3 Licensee: SS, Inc. dba Smoke Stop

3.3.1 Representative: Mustafa Choudhary, owner

3.4 Agency: The Liquor Control Board

3.4.1 Representative: Timothy Ford, Assistant Attorney General

3.4.2 Witnesses:

3.4.2.1 Fel Pajimula, Compliance Check Coordinator

3.4.2.2 **UnderAgeOp** Youth Operative

3.4.2.3 Lt. Frank Gallegos, Liquor Control Board

3.5 **Exhibits:** Exhibits 1 through 4 were admitted.

IV. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

4.1 Lt. Frank Gallegos served the Notice of Board Action on Tobacco Violation No. 34954 on Mustafa Choudhary on April 21, 2011, at approximately 2:30 p.m. Testimony of Gallegos; Ex. 1, p. 1. Mr. Choudhary is the owner of Smoke Stop. Ex. 2, p. 1.

4.2 Mr. Choudhary requested a settlement conference and, subsequently, a formal administrative hearing.

4.3 On June 2, 2011, the Liquor Control Board issued Complaint No. T-538, charging that "on or about April 14, 2011, the . . . Licensee sold/supplied tobacco to a person under the age of eighteen (18), contrary to RCW 26.28.080 and is subject to the penalties set out in RCW 70.155.100."

The Tobacco Transaction

4.4 **UnderAgeOp** is a youth operative trained to conduct tobacco compliance checks. Testimony of Pajimula; Testimony of **UnderAgeOp**

4.5 On April 14, 2011, **UnderAgeOp** was age 16. Testimony of **UnderAgeOp**

4.6 Fel Pajimula was **UnderAgeOp** supervisor on April 14, 2011. Testimony of Pajimula.

4.7 On April 14, 2011, late in the morning, **UnderAgeOp** and a second youth operative entered Smoke Stop. Testimony of Pajimula; Testimony of **UnderAgeOp**

4.8 **UnderAgeOp** had with her the valid state-issued identification approved by Mr. Pajimula and a ten-dollar bill provided by Mr. Pajimula. Testimony of Pajimula; Testimony of **UnderAgeOp**

4.9 Mr. Pajimula waited outside. Testimony of Pajimula.

4.10 The second youth operative observed **UnderAgeOp** for training purposes but did not directly participate in the transaction. Testimony of Pajimula.

4.11 Mr. Choudhary was the only representative of Smoke Stop present in the store when **UnderAgeOp** entered. Testimony of Choudhary.

4.12 When **UnderAgeOp** entered Smoke Stop, Mr. Choudhary was helping another customer and was experiencing difficulty completing the credit card transaction for that customer. Testimony of Choudhary. Mr. Choudhary did not want the pending credit card transaction to delay his serving **UnderAgeOp**.

4.13 **UnderAgeOp** requested Camel Lites. Testimony of **UnderAgeOp** Testimony of Choudhary.

4.14 Mr. Choudhary placed the cigarettes on the counter, collected \$10.00, and placed \$3.00 change on the counter. Testimony of **UnderAgeOp** Testimony of Choudhary. **UnderAgeOp** picked up the cigarettes and change and exited the store. Testimony of **UnderAgeOp** Testimony of Choudhary.

4.15 The parties agree that Mr. Choudhary asked **UnderAgeOp** if she was 18 and to show him her identification. They disagree regarding when he did so.

4.16 **UnderAgeOp** testified and reported as follows. Mr. Choudhary did not ask her if she was 18 and did not ask for identification prior to the sale. Testimony of **UnderAgeOp** Ex. 2, p. 1. After **UnderAgeOp** picked up the cigarettes and change, Mr. Choudhary said that she had better not get him in trouble and that she had better be 18. Testimony of **UnderAgeOp**

4.17 Mr. Pajimula testified as follows. **UnderAgeOp** told Mr. Pajimula that Mr. Choudhary did not ask her if she was 18 until after she had the cigarettes and change and the sale was complete. Testimony Pajimula. Mr. Choudhary told Mr. Pajimula that he asked **UnderAgeOp** if she was 18. Testimony of Pajimula.

4.18 Mr. Choudhary testified as follows. Mr. Choudhary placed the pack of cigarettes on the counter, told **UnderAgeOp** that the price was \$7.00, and asked if she was 18. She had an identification card in her right hand that Mr. Choudhary could not read. **UnderAgeOp** did not answer Mr. Choudhary's question about her age. Nevertheless, Mr. Choudhary gave **UnderAgeOp** her change. **UnderAgeOp** picked up the cigarettes and \$3.00 change and began to leave. The counter was only six to eight feet from the door. Mr. Choudhary told **UnderAgeOp** to wait because she was leaving and had not shown him her identification. **UnderAgeOp**

left nevertheless.

4.19 Although the evidence conflicts regarding whether Mr. Choudhary asked UnderAgeOp her age near the beginning of the transaction, I nevertheless find the following: UnderAgeOp never misrepresented her age; Mr. Choudhary did not confirm UnderAgeOp age prior to tendering the cigarettes and change; Mr. Choudhary challenged UnderAgeOp age and demanded she show identification after she possessed the cigarettes but before she left the store.

4.20 Upon exiting the store, UnderAgeOp gave the cigarettes and change to Mr. Pajimula. Testimony of UnderAgeOp Testimony of Pajimula. The two of them completed their respective portions of the report. Testimony of UnderAgeOp Testimony of Pajimula.

4.21 Mr. Pajimula and UnderAgeOp entered Smoke Stop. Testimony of Pajimula; Testimony of UnderAgeOp Mr. Choudhary admitted to Mr. Pajimula that he had sold cigarettes to UnderAgeOp without confirming that she was 18. Testimony of Pajimula; Ex. 2, p. 1.

4.22 The alleged violation was Smoke Stop's first such violation during at least the prior two years. Ex. 1, p. 2.

V. CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I make the following Conclusions of Law:

Jurisdiction

5.1 I have jurisdiction to hear and decide this matter under Chapter 70.155 RCW and Chapter 34.05 RCW.

The Licensee Sold Cigarettes to a Person Under the Age of 18

5.2 It is illegal to sell cigarettes to a person under the age of 18. RCW 26.28.080.

5.3 "Where there may be a question of a person's right to purchase or obtain tobacco products by reason of age, the retailer or agent thereof, shall require the purchaser to present . . . [an] officially issued identification that shows the purchaser's age and bears his or her signature and photograph." RCW 70.155.090.

5.4 Here, the Licensee sold cigarettes on or about April 14, 2011, to a person

under the age of 18 years. The Licensee did not confirm her age by checking identification prior to tendering the cigarettes to her. The Licensee violated both RCW 26.28.080 and RCW 70.155.090.

5.5 For the first violation of RCW 26.28.080 within a two-year period, the monetary penalty may not exceed \$100.00. RCW 70.155.100.

5.6 This was the Licensee's first such violation. Accordingly, the Licensee was properly assessed a monetary penalty of \$100.00.

INITIAL ORDER

IT IS HERBY ORDERED:

AVN No. 34954 issued on April 21, 2011, is **AFFIRMED** and Complaint T-538 issued on June 2, 2011, is **SUSTAINED**.

The Licensee, SS, Inc. dba Smoke Stop is liable for payment of the monetary penalty of \$100.00.

Signed and Issued at Tacoma, Washington, on the date of mailing.



Terry A. Schuh
Administrative Law Judge
Office of Administrative Hearings

NOTICE OF APPEAL RIGHTS – PLEASE READ CAREFULLY

Petition for Review of Initial Order

Either the licensee or permit holder of 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; WAC 10-08-211; WAC 314-42-095.

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 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 ten (10) 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 314-42-095(2)(a) and (b). Copies of the reply must be mailed to the all other parties and their representatives at the time the reply is filed.

Address for filing a petition for review with the board:

Washington State Liquor Control Board
Attention: Kevin McCarroll
3000 Pacific Avenue, PO Box 43076
Olympia, Washington 98504-3076.

Final Order and Additional Appeal Rights: The administrative record, the initial order, any petitions for review, and any replies filed by the parties will be circulated to the board members for review. WAC 314-42-095(3).

Following this review, the board will enter a final order. WAC 314-42-095(4). Within ten days of the service of a final order, any party may file a petition for reconsideration with the board, stating the specific grounds upon which relief is granted. RCW 34.05.470; 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 (Washington Administrative Procedure Act).

CERTIFICATION OF MAILING IS ATTACHED

Certificate of Service – OAH Docket No. 2011-LCB-0037

I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

Address: Mustafa Choudhary SS Inc. dba Smoke Stop 219 Broadway Ave. E., Ste 17 Seattle, WA 98102-5797	First Class US Mail, postage prepaid
Address: Timothy Ford Assistant Attorney General Office of the Attorney General PO Box 40100 Olympia, WA 98504-0100	First Class US Mail, postage prepaid
Address:	
Address:	
Address:	
Address:	

Date: January 3, 2012



Edie Ali
Office of Administrative Hearings