

**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF:

CLUB LEVEL, INC  
d/b/a CLUB LEVEL  
27 S CHELAN AVE STE B  
WENATCHEE, WA 98801-2202

LICENSEE

LICENSE NO. 407827-4G  
AVN NO. 4G1235A

LCB NO. 23,900  
OAH NO. 2011-LCB-0075

FINAL ORDER OF THE BOARD

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

1. The Liquor Control Board issued a complaint dated December 14, 2011, alleging that on August 14, 2011 the above-named Licensee, or employee(s) thereof, allowed a person under twenty-one (21) years of age to enter and remain in an area classified as off-limits to a person under the age of twenty-one (21), contrary to RCW 66.44.310 and/or WAC 314-11-020(2).
2. The Licensee made a timely request for a hearing.
3. An administrative hearing was held in Wenatchee, Washington on June 7, 2012, before Administrative Law Judge Mark H. Kim of the Office of Administrative Hearings.
4. At the hearing, the Education and Enforcement Division of the Board was represented by Assistant Attorney General Marisa E. Broggel, and Rodney R. Moody, Attorney at Law, represented the Licensee.
5. On July 19, 2012, Administrative Law Judge Mark H. Kim entered his Findings of Fact, Conclusions of Law and Initial Order in this matter which dismissed the Complaint.

FINAL ORDER OF THE BOARD  
LCB NO. 23,900  
CLUB LEVEL  
LICENSE 407827-4G

6. No petitions for review were filed by the parties.

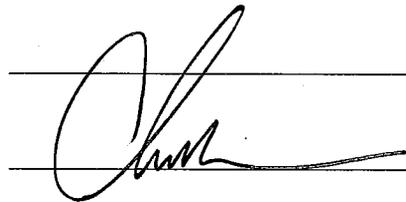
7. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises;

NOW THEREFORE; IT IS HEREBY ORDERED that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board, and the Complaint in this matter, dated December 14, 2011, charging the Licensee with allowing a minor to remain on the premises on or about August 14, 2011, is hereby DISMISSED.

DATED at Olympia, Washington this 28 day of August, 2012.

WASHINGTON STATE LIQUOR CONTROL BOARD

  
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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**

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August 29, 2012

Rodney R. Moody  
Attorney for Licensee  
2820 Oakes Ave, Ste D  
Everett, WA 98201-3667

Ryan Fila, Licensee  
Club Level, Inc.  
d/b/a Club Level  
704 N. Western Ave  
Wenatchee, WA 98801-1206

Marisa Broggel, 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: Club Level, Inc.**  
**TRADE NAME: Club Level**  
**LOCATION: 27 S Chelan Ave Ste B, Wenatchee, WA 98801-2202**  
**LICENSE NO. 407827-4G**  
**ADMINISTRATIVE VIOLATION NOTICE NO: 4G1235A**  
**LCB NO. 23,900**  
**OAH NO. 2011-LCB-0075**  
**UBI: 603 071 324 001 0001**

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. If you have any questions, please contact me at (360) 664-1602.

Sincerely,

Kevin McCarroll  
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Spokane and Wenatchee Enforcement and Education Divisions, WSLCB  
Teresa Young, WSLCB

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

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

CLUB LEVEL INC  
d/b/a CLUB LEVEL  
27 S CHELAN AVE, STE B  
WENATCHEE, WA 98801

LICENSEE

LICENSE NO. 407827-4G  
AVN NO. 4G1235A

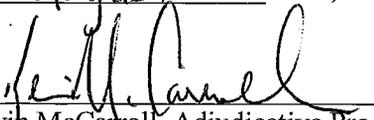
LCB NO. 23,900  
OAH NO. 2011-LCB-0075

DECLARATION OF SERVICE BY MAIL

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 for Licensees, by Campus Mail for the Office of Attorney General, on the date below to:

RODNEY R. MOODY, ATTORNEY FOR LICENSEE 2820 OAKES AVE, STE D EVERETT, WA 98201-3667	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION MARISSA BROGGEL, ASSISTANT ATTORNEY GENERAL
RYAN FILA, LICENSEE CLUB LEVEL INC, d/b/a CLUB LEVEL 1346 OAK ST WENATCHEE, WA 98801-4213	RYAN FILA, LICENSEE CLUB LEVEL, INC. d/b/a CLUB LEVEL 704 N. WESTERN AVE WENATCHEE, WA 98801-1206

DATED this 29<sup>th</sup> day of August 2012, at Olympia, Washington.

  
Kevin McCarroll, Adjudicative Proceedings Coordinator

DECLARATION OF SERVICE BY MAIL

ATTORNEY GENERAL  
OF WASHINGTON

JUL 23 2012

**MAILED**

JUL 19 2012

Office of Administrative Hearings  
Spokane

GOVERNMENT COMPLIANCE  
& ENFORCEMENT

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

**In The Matter Of:**

CLUB LEVEL INC., dba  
CLUB LEVEL

**Licensee/Respondent.**

**OAH Docket No.:** 2011-LCB-0075

**Agency No.:** 23,900

**INITIAL ORDER**

**RECITALS**

A hearing in the above-entitled matter was conducted on June 07, 2012 at Wenatchee, Washington, before Mark H. Kim, Administrative Law Judge with the Washington State Office of Administrative Hearings. Club Level Inc. dba Club Level, the Licensee, was represented by Rodney R. Moody, Attorney at Law. Marisa E. Broggel, Assistant Attorney General, appeared and represented the Washington State Liquor Control Board, Education and Enforcement Division ("Board or LCB"). The Board's Exhibits 1 – 7 and the Licensee's Exhibits C, D, and F were admitted into the record. The evidentiary record closed on June 07, 2012.

The following witnesses were called by the Board and offered testimony:  
Officer Shawndra Duke, Wenatchee Police Department.  
Sergeant Cheri Smith, Wenatchee Police Department.  
Sergeant Tom Stensatter, LCB Education and Enforcement Officer

The following witnesses were called by the Licensee and offered testimony:  
Belinda Scott, Lead Bartender for Club Level.  
John Watson, Former Security Staff Member for Club Level.  
Ryan Fila, Owner of Club Level, Inc. dba Club Level.

**ISSUE**

Whether the Licensee allowed a person under age twenty-one to remain in an area classified as off-limits to persons under twenty-one.

BASED ON THE EVIDENCE IN THIS MATTER, THE UNDERSIGNED MAKES THE FOLLOWING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INITIAL ORDER:

### FINDINGS OF FACT

1. The Licensee, Club Level, Inc. dba Club Level is the owner of a nightclub located in Wenatchee, WA.
2. The Licensee operates under license no. 407827, issued by the Washington State Liquor Control Board.
3. Ryan Fila is the President of Club Level, Inc., and the license holder.
4. The Licensee's premises are restricted to persons twenty-one (21) years or older.
5. The Licensee was open and operating in its current location on or about August 14, 2011.
6. On August 14, 2011, Officer Shawndra Duke and Sergeant Cheri Smith were dispatched to the Licensee's premises pursuant to an anonymous call reporting that a minor was currently inside the Licensee's club.<sup>1</sup> The anonymous caller provided law enforcement with the name, age, and description of the minor. The name of the minor is **Minor**.
7. Officer Duke and Sgt. Smith are law enforcement officers with the Wenatchee Police Department. They arrived at Club Level just after midnight in separate law enforcement vehicles and in their law enforcement uniforms.
8. Upon arrival at the Licensee's premises, Officer Duke and Sgt. Smith observed a line of patrons awaiting entry and one of the Licensee's employees checking the identification of entering patrons. To bypass this line, Officer Duke and Sgt. Smith entered the premises by way of the exit stairs. While entering through the exit section, Officer Duke and Sgt. Smith observed another of Licensee's employees, Eric Jackson.
9. As Officer Duke and Sgt. Smith were entering the Licensee's premises, they observed Mr. Fila escorting a patron out of the premises where they were met by Mr. Jackson. There were no discussions about a minor in the premises at that time.
10. Thereafter, Officer Duke and Sgt. Smith entered the premises. The club was filled to capacity with patrons. The club had dark walls; was dimly lit with moving lights; and the music was extremely loud.

<sup>1</sup> The reference to "minor" in this decision is regarding a person under the age of twenty-one years of age.

11. The officers began their search of the reported minor by walking on the perimeter of the club. After approximately ten minutes having returned to their beginning point, about to leave the club, Sgt. Smith observed an individual who met the description of the minor.

12. The officers approached the individual and asked for his identification. The individual replied that he did not have any identification available. Sgt. Smith asked the individual his name and he identified himself as "Ivan." Both officers asked this individual to step outside Club Level with them. Mr. Jackson followed them outside.

13. Once outside, the officers learned that the minor was **Minor** and that he was nineteen (19) years of age. They learned that the minor snuck into the Licensee's premises and was not served alcohol by any Club Level employees. Sgt. Smith directed Mr. Jackson to go get Mr. Fila to discuss what had occurred.

14. Mr. **Minor** was placed under arrest. Officer Duke transported **Minor** to the Wenatchee Police Department.

15. Mr. Fila came outside and was informed by Sgt. Smith that the minor was inside his establishment.

16. Prior to locating and placing the minor under arrest, the officers did not inform Mr. Fila or any of his employees that the officers were in search of the minor inside the club.

17. Belinda Scott is employed by the Licensee as a lead bartender. One of her duties is to check identification of individuals inside Club Level who might be under twenty-one (21).

18. Ms. Scott was working behind the bar when the minor at issue approached and ordered a drink. Ms. Scott asked for identification, at which time, the minor turned around and walked quickly into the crowd.

19. Immediately following this occurrence, Ms. Scott contacted the security employee near her station, John Watson, for assistance. Ms. Scott informed Mr. Watson what had just occurred with the minor, gave him the description of the minor, and showed him the direction the minor had gone.

20. Mr. Watson began an immediate search of the premises for anyone matching the minor's description, but was not able to locate him. Mr. Watson was unable to inform other security personnel because his communication device was not working.

21. There were approximately eight to ten security personnel working on the night of the events in questions.

22. Approximately after ten minutes of search, Mr. Watson was informed that the officers had located the minor.

23. Mr. Fila was present on the premises on the night/morning of the events in question. Prior to the officers entering the premises, Mr. Fila was assisting security personnel addressing a physical altercation between two patrons near the ladies restroom. While engaged in this situation, Mr. Fila was approached by **ComplaintID** an acquaintance, who advised Mr. Fila that there was a minor inside the club. Mr. Fila asked Mr. **ComplaintID** where he was and that as soon as he was done resolving the immediate issue between the two patrons, he would return to address **ComplaintID** concerns. Then, Mr. Fila escorted one of the patrons engaged in the altercation to the exit of the club.

24. Mr. Fila went back to the area of the altercation to make sure the issue had been resolved. Mr. Fila was unable to locate **ComplaintID** further discuss the allegation that a minor was inside his club and to obtain the minor's description.

25. Soon thereafter, Mr. Fila was notified by Mr. Jackson of the request by Sgt. Smith to go outside. There Mr. Fila learned of the arrest of the minor.

26. On August 16, 2011, Sgt. Tom Stensatter, Officer for Washington State Liquor Control Board, was notified by Officer Duke and Sgt. Smith of the complaint of a minor having been found on the premises at Club Level.

27. On August 16, 2011, Sgt. Stensatter began his investigation regarding complaints against the Licensee. He read the police incident reports and interviewed Mr. Fila. Sgt. Stensatter also interviewed **ComplaintID** the anonymous reporter, and Mr. **Minor** the minor. After his investigation, Sgt. Stensatter determined that a violation had occurred and that issuance of the Administrative Violation Notice ("AVN") was justified.

28. On August 23, 2011, Sgt. Stensatter issued to the Licensee AVN 4G1235A. The AVN states the basis for the citation as: "(WAC 314.29.020 Public Safety) Minor Frequenting". The AVN also cites Revised Code of Washington ("RCW") 66.44.310(1)(b).

29. The AVN contains a clerical error. The violation portion of the AVN cites RCW 66.44.310(1)(b) rather than RCW 66.44.310(1)(a). The substance of the AVN is correct and accurate so as to put the Licensee on notice of the alleged violation for which it was cited.

30. The Licensee requested a hearing to contest the AVN.

31. On December 14, 2011, the LCB issued it's Complaint against the Licensee arising from the AVN and the events in questions. The Complaint charged the Licensee

for violating the Washington State Liquor Act laws alleging the following:

That on or about August 14, 2011, the above-named Licensee, or an employee(s) thereof, allowed a person under twenty-one (21) years of age to enter and remain in an area classified as off-limits to person under the age of twenty one (21), contrary to RCW 66.44.310 and/or WAC 314-11-020(2).

### CONCLUSIONS OF LAW

1. There is jurisdiction to hear and issue a decision in this matter pursuant to Revised Code of Washington (RCW) 34.05 and Washington Administrative Codes (WAC) 314-42-051 and 314-42-095(1).
2. The administration of RCW Title 66 "is vested in the Liquor Control Board." RCW 66.08.020. Specifically, the Liquor Control Board is charged with the task of adopting rules to carry out the provisions of RCW Title 66. RCW 66.08.0501. To help ensure compliance with RCW Title 66, "all county and municipal peace officers are hereby charged with the duty of investigating and prosecuting all violations of this title, and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor...." RCW 66.44.010(1). Additionally, the Liquor Control Board may employ Enforcement Officers; who have the power to enforce the penal provisions of Title 66. RCW 66.44.010(4). Finally, the Board has the authority to suspend or revoke a license. RCW 66.24.010(3)(a).
3. Licensees are responsible for operating the licensed premises in compliance with all liquor laws and rules contained within Title 66 RCW and Title 314 WAC. WAC 314-11-015(1)(a). Licensees are responsible for the conduct of its employees and patrons at all times they are on the licensed premises. WAC 314-11-015(3). Any violations committed by the Licensee's employees will be considered as having been permitted or committed by the Licensee. WAC 314-11-015(1)(a).
4. With respect to patrons, it is prohibited conduct "to serve or allow to remain in any area classified by the board as off-limits to any person under the age of twenty-one years." RCW 66.44.310(1)(a). The LCB has promulgated a regulation consistent with this law. "Per RCW 66.44.310, licensees or employees may not allow persons under twenty-one years of age to remain in any premises or area of a premises classified as off-limits to persons under twenty-one...." WAC 314-11-020(2).
5. In order for a violation of RCW 66.44.310(1)(a) or WAC 314-11-020(2) to occur, a determination must be made that the Licensee and/or its employees served or allowed an individual to remain in any area classified by the Board as off limits to any person under the age of twenty-one (21) years of age. Here, it is undisputed that no minor was served by the Licensee or it's employees on August 14, 2011. Therefore, the controlling question is whether the Licensee and/or its employees allowed a minor to remain inside

a restricted area of the Licensee's premises.

6. The court in *Reeb, Inc. v. The Washington State Liquor Control Board*, 24 Wn. App. 349, 353, 600 P.2d 578, 580 (1979), established a requirement that the Licensee have "actual or constructive knowledge of the circumstances which would foreseeably lead to the prohibited activity." When a Licensee is in a position to foresee the occurrence of "questionable conduct" and fails to act, grounds for finding a violation has been committed are created. *Id.*

7. Here, constructive knowledge is attributed to the Licensee due to the minor's attempt to purchase a drink from Ms. Scott and Mr. Lovell's direct statement to Mr. Fila about a minor being present. The Licensee's actions are distinguishable from those described by the *Reeb* court. Immediate action was taken by the Licensee's staff members to investigate whether or not the youthful individual who approached Ms. Scott was of age. The Licensee's only failure was an inability to locate the minor prior to his interception by Officer Duke and Sgt. Smith. Considering the brief timeframe in which the Licensee's search took place, it appears more likely that the interception of Mr. Delapaz by the Officers was more fortuitous than a reflection of inaction on part of the Licensee.

8. The preponderance of the evidence in this case leads this Tribunal to conclude that the Licensee immediately engaged in the search of the minor upon having knowledge that the minor was present in its premises. Furthermore, it is concluded that the Licensee continued its efforts to locate the minor until the minor was located by the law enforcement officers. These efforts show that the Licensee was actively engaged in not allowing a minor to remain in its premises. Therefore, it is concluded that the Licensee or its employees did not allow a person under twenty-one years of age to remain in an off-limits area of its premises. Accordingly, the Liquor Control Board's Complaint number 23,900 and its associated Administrative Violation Notice 4G1235A should be dismissed.

### ORDER

NOW THEREFORE, IT IS ORDERED that:

The Liquor Control Board's Complaint number 23,900 dated December 14, 2011, and its associated Administrative Violation Notice AVN 4G1235A issued on August 23, 2011, are hereby dismissed.

DATED this 19<sup>th</sup> day of July, 2012.



MARK H. KIM  
Administrative Law Judge  
Office of Administrative Hearings

### Appeal Rights

Either the licensee or permit holder or the assistant attorney general may file a petition for the 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 and 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 all other parties and their representatives at the time the reply is filed.

**CERTIFICATION OF MAILING IS ATTACHED**

## CERTIFICATE OF MAILING

The undersigned certifies that true copies of the foregoing document(s) were served from Spokane, Washington by First-Class US Mail, postage prepaid on the date indicated below upon the following:

Licensee/Respondent

Ryan Fila  
704 N. Western Ave  
Wenatchee, WA 98801-1206

Licensee/Respondent Representative

Rodney R. Moody  
Attorney at Law  
2820 Oakes Avenue, Suite D  
Everett, WA 98201-3667

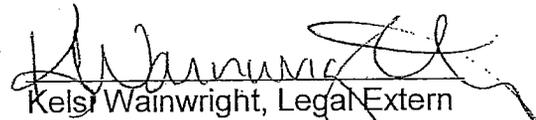
Assistant Attorney General

Marisa Bröggel, AAG  
Office of the Attorney General  
1125 Washington Street SE  
P.O. Box 40100  
Olympia, WA 98504-0100

Agency

Washington State Liquor Control Board  
3000 Pacific Avenue, PO Box 43076  
Olympia, Washington 98504-3076

Dated this 19<sup>th</sup> day of July, 2012.

  
Kelsi Wainwright, Legal Extern  
Office of Administrative Hearings