

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF

ANKO BUILDING MAINTENANCE,
PC DELI MART
3025 STEILACOOM BOULEVARD
STEILACOOM, WA 98388

LICENSEE

UBI No. 6012565000010003

NO. T-470

OAH NO. 2006-LCB-0075

FINAL ORDER OF THE BOARD

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

1. A formal hearing was held on November 21, 2006 at Licensee Anko Building Maintenance, PC Deli Mart's timely request for a hearing on the September 21, 2006 Complaint issued by the Liquor Control Board.

2. The Complaint alleged that on July 12, 2006 the Licensee or an employee of the Licensee sold or supplied tobacco to a person under the age of eighteen, contrary to RCW 26.28.080. The Complaint sought the standard \$300 penalty required by RCW 70.155.100 (2).

3. On January 12, 2007 Administrative Law Judge Jane Habegger (ALJ) entered Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the Complaint, but modified the penalty to \$150.

4. At the hearing the Education and Enforcement Division of the Board was represented by Assistant Attorney General Jennifer Elias and the Licensee was represented by owner Charles Chey.

5. The Board affirms and adopts the ALJ's findings of fact.

The above findings and the Board's consideration of the entire record of this matter, which includes the totality of the evidence presented during the hearing result in the following

CONCLUSIONS:

1. The Board hereby agrees with, and adopts, the ALJ's Conclusions of Law Nos. 1-12;
2. The Board rejects the ALJ's Conclusion of Law No. 13 in that the ALJ's analysis erroneously applies WAC 314-29-015 to conclude the identified activities engaged in by Mr. Chey constitute mitigating circumstances such that a penalty reduction to \$150 is appropriate. WAC 314-29-015 sets out mitigating circumstances for liquor license holders who violate liquor laws or rules. The presence or absence of mitigating circumstances to a tobacco Licensee's violation of tobacco laws is found in RCW 70.155.100 (9);
3. Even if the proper statute for tobacco violations is applied, the Board concludes Mr. Chey's conduct does not establish mitigating circumstances under RCW 70.155.100 (9) such that the unconditional penalty reduction from \$300 to \$150 contained in the Initial Order is appropriate;
4. The Board hereby enters the following Conclusion of Law No. 13, in place of the rejected Conclusion of Law No. 13 entered by the ALJ:

Conclusion of Law No. 13: The record establishes that employees of the Licensee have in the past at least on some occasions properly refused to sell tobacco to minors; that the Licensee was in the possession of some tobacco awareness and tobacco sale training materials and that the Licensee posted materials provided by the LCB to inform customers that identification is required for purchase of tobacco products. The record therefore supports the conclusion that the Licensee exercised at least a minimal degree of due diligence to ensure compliance with tobacco laws, which may be viewed as a mitigating circumstance under RCW 70.155.105 (9) to justify departure from and modification of the standard penalty.

4. The Board also enters Conclusion of Law No. 14:

Conclusion of Law No. 14: A modified penalty in the amount of \$150 is imposed, provided that within 60 days of the date of this Final Order the Licensee sends all employees to the Liquor Control Board's tobacco training class and demonstrates that all employees have completed the Liquor Board's training. If compliance with the above condition is not demonstrated within 60 days from the date of this Final Order, the original penalty amount of \$300 will be reinstated on the 61st day following the date of this Final Order.

NOW THEREFORE; IT IS HEREBY ORDERED that that the ALJ's Findings and Fact and Conclusions of Law are hereby adopted as the final decision of the Board except that the ALJ's Conclusion of Law No. 13 is rejected and is replaced with the Board's Conclusion of Law No. 13 as set out above. The Board also enters Conclusion of Law No. 14 as set out above. The Board's complaint is SUSTAINED and a modified penalty of \$150 is imposed, conditioned upon the Licensee's compliance with the requirements set out in Conclusion of Law No. 14 within 60 days of the date of this Final Order. If compliance is not demonstrated within 60 days, the original penalty amount of \$300 will become due effective on the 61st day following the date of this Final Order.

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. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order or (b) there is specific material error of fact or law. 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 Martha P. Lantz, 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).

DATED at Olympia, Washington this 14th day of May, 2007.

WASHINGTON STATE LIQUOR CONTROL BOARD






