

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

DERAL WOODROW JAMES
PO BOX 954
BREWSTER, WA 98812

INDIVIDUAL

LCB NO. T-500

OAH NO. 2008-LCB-0040

~~PROPOSED~~

FINAL ORDER OF THE BOARD

The above-titled matter having come before the Board, the Board finds:

1. That a telephonic prehearing conference was held on December 4, 2008, on the following violation:

On or about May 21, 2008, the above-named Individual, sold tobacco product(s) to a person under the age of 18 years of age in violation of RCW 26.28.080.

2. That the Licensee failed to appear for the telephonic prehearing conference and Enforcement moved for a default;

3. That on December 9, 2008, Administrative Law Judge Edward S. Steinmetz entered an Order of Default; and that no motion to vacate the default has been filed; and

4. That the Board having considered the file materials maintained in this matter, including:

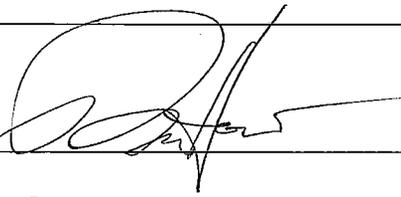
- a) AVN No. 22,914;
- b) Case Report for No. 22,914, and attachments thereto;
- c) Complaint filed in LCB No T-500; and

d) Findings of Fact, Conclusion of Law and Initial Order on Default, OAH Docket No. 2008-LCB-0040, dated December 9, 2008; and the Board having adopted in their entirety the Order of Default, OAH Docket No. 2008-LCB-0040, dated December 9, 2008; NOW, THEREFORE;

IT IS HEREBY FURTHER ORDERED that the Complaint filed in Liquor Control Board Case T-500 is sustained, and a fifty dollar (\$50) monetary penalty is assessed against Deral Woodrow James.

DATED this 28th day of January, 2009.

WASHINGTON STATE LIQUOR CONTROL BOARD



Patricia Kurve

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, Attention: 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 Street SE, PO 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

IN THE MATTER OF THE HEARING OF:

Deral James

APPELLANT

OAH Docket No. 2008-LCB-0040
Case No. T-500

INITIAL ORDER OF DEFAULT

FINDINGS OF FACT

1. On May 23, 2008, the Washington State Liquor Control Board (Board) issued a Notice of Board Action on Tobacco Violation to Deral Woodrow James, Appellant. In this Notice of Board Action on Tobacco Violation, the Board alleged that on May 21, 2008, Mr. James had sold tobacco products to a person under the age of 18 years of age in violation of RCW 26.28.080. The Notice further advised that this was Mr. James' first violation and that the assessed penalty was a civil monetary penalty in the amount of \$50.00, or attendance at an identification checking class. This Notice was served on Mr. James on May 23, 2008. Mr. James subsequently filed a request for a formal administrative hearing.

2. On July 30, 2008, the Board issued a formal Complaint in which it alleged that on or about May 21, 2008, Mr. James sold and/or supplied tobacco to a person under the age of 18 contrary to RCW 26.28.080 and WAC 314-10-050.

3. On November 12, 2008, the Washington State Office of Administrative Hearings issued a Notice of Telephonic Prehearing Conference for the purpose of preparing this matter for a formal administrative hearing. Notice of this Telephonic Prehearing Conference was

RECEIVED

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mailed to Appellant, Deral James, at P.O. Box 954, Brewster, Washington 98812. The Notice advised that the prehearing conference would be convened at 9 a.m., on December 4, 2008, by telephone conference. The parties were advised: "To register your appearance you must call the Office of Administrative Hearings ten (10) minutes before the scheduled hearing time at 509-456-3975 or 1-800-366-0955." The parties were further advised in this Notice of Telephonic Prehearing Conference: "Parties who fail to attend or participate in the hearing or other stage of the adjudicative proceeding may be held in default. RCW 34.05.440(2).

4. On December 4, 2008, the Assistant Attorney General assigned to the case, Brian Considine, complied with the direction to contact the Office of Administrative Hearings prior to the scheduled hearing. Appellant did not appear. At the convened telephonic prehearing conference, the Board moved for entry of an Order of Default due to Mr. James' failure to appear for the telephonic prehearing conference. This motion was granted by the undersigned Administrative Law Judge.

CONCLUSIONS OF LAW

1. RCW 34.05.440(2) states: "If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, other than failing to timely request an adjudicative proceeding as set out in subsection (1) of this section, the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order.

2. The facts in this case establish that a Notice of Telephonic Prehearing Conference was mailed to the Appellant on November 12, 2008. This Notice of Telephonic Prehearing Conference advised of the time and date for the prehearing conference. The

Notice further advised Appellant to register his appearance by calling the Office of Administrative Hearings 10 minutes before the scheduled hearing time. Appellant was further advised that parties who fail to attend or participate in the hearing or other stage of the adjudicative proceeding may be held in default. Appellant failed to appear for the telephonic prehearing conference. Appellant therefore failed to participate in this stage of the adjudicative proceeding. This tribunal concludes that the Appellant is in default due to his failure to appear, and Appellant's request for hearing should be dismissed.

ORDER

IT IS HEREBY ORDERED, that Deral W. James, Appellant, is in DEFAULT.

IT IS FURTHER ORDERED, that the Board's Complaint be SUSTAINED. On a date to be established by the Board's Final Order, Appellant, Deral W. James, will be found to have committed a violation of RCW 26.28.080 by selling or providing a tobacco product to a person under the age of 18 years of age, and will be subject to a civil monetary penalty in the amount of fifty dollars (\$50.00) or will be required to attend an ID checking class.

Dated at Spokane, Washington this 9th day of December, 2008.



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: WITHIN SEVEN (7) DAYS AFTER NOTICE OF THIS DEFAULT ORDER, THE PARTY AGAINST WHOM IT IS ENTERED MAY FILE A WRITTEN MOTION REQUESTING THAT THE ORDER BE VACATED, AND STATING THE GROUNDS RELIED UPON. RCW 34.05.440(3).

Initial Order of Default Mailed to:

Deral W James
PO Box 954
Brewster, WA 98812

Brian Considine
Assistant Attorney General
1125 Washington St SE
PO Box 40100
Olympia, WA 98504-0100