

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

In The Matter Of the Hearing Of:

AMAN ABDI
12668 NE 10TH PLACE, APT D5
BELLEVUE, WA 98005-2516

AN INDIVIDUAL

AVN 24159

OAH No. 2008-LCB-0037
LCB No. T-502

FINAL ORDER OF THE BOARD

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

1. An administrative hearing was held on February 3, 2009 at the licensee's timely request regarding an Administrative Violation Notice issued on July 8, 2008.

2. On August 19, 2008 the Board issued a Complaint alleging that on April 23, 2008 the above named individual sold/supplied tobacco to a person under the age of eighteen (18) contrary to RCW 26.28.080 and WAC 314-10-050.

3. At the hearing the Education and Enforcement Division of the Board was represented by Assistant Attorney General Brian Considine and Aman Abdi represented himself with assistance of an interpreter, Debessai Teclarmariam.

4. On June 2, 2009 Administrative Law Judge Lisa M. Groeneveld-Meijer entered her Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the Complaint.

5. No exceptions 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 heretofore made and entered in this matter be, and the same hereby are, adopted as Findings of Fact, Conclusions of Law and Final Order of the Board, so that Aman Abdi of Bellevue, Washington shall be subject to a monetary penalty of fifty dollars (\$50.00) due within thirty days of service of this order. Failure to comply with the terms of this Order will subject the individual to further disciplinary action.

Payment should be sent to:

Washington State Liquor Control Board

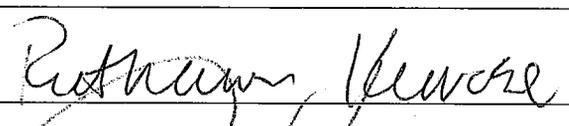
Attention: Monika Taylor

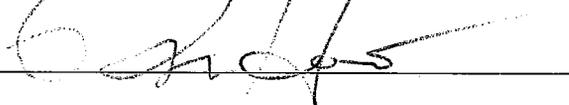
PO Box 43085

Olympia, WA 98504-3085

DATED at Olympia, Washington this 30th day of June, 2009.

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 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).

RECEIVED

JUN 25 2009

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

**LIQUOR CONTROL BOARD
BOARD ADMINISTRATION**

**MAILED
JUN 02 2009
SEATTLE - OAH**

In the Matter of:

Aman Abdi

RESPONDENT

OAH NO. 2008-LCB-0037

AGENCY NO. T-502

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

On July 08, 2008, the Washington State Liquor Control Board (Board) issued a Notice of Board Action on Tobacco Violation to the Respondent, Aman Abdi, for selling tobacco products to a person under age 18 in violation of RCW 26.28.080. The Respondent made a timely request for a hearing.

The hearing commenced pursuant to due and proper notice at Seattle, Washington, on February 03, 2009, before Administrative Law Judge, Lisa Groeneveld-Meijer via telephone. Mr. Abdi appeared. The Board was represented by Assistant Attorney General Brian Considine. Also appearing by telephone were Fel Pajimula-Youth Tobacco Prevention Program, Department of Health and C.W.-minor investigative aid, witnesses for the Board; and Amharric interpreter, Debessai Teclamariam.

Based upon the evidence presented, the undersigned Administrative Law Judge finds the following:

FINDINGS OF FACT

1. The Department of Health operates a Youth Tobacco Prevention Program to ensure compliance with RCW 26.28.080.
2. C.W. is a volunteer minor investigative aid for the Youth Tobacco Prevention Program. He secret-shops at gas stations and convenience stores and he tries to buy cigarettes to help the Department of Health gauge vendor compliance with RCW 26.28.080.
3. On April 23, 2008, C.W. was sixteen years old. He went to the convenience store where the Respondent was working as a clerk. He waited in line behind one or two customers. He then approached the counter and asked the Respondent if he could buy a pack of Camel Light cigarettes.
4. He presented no other items for purchase. The Respondent asked to see C.W.'s identification.

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Findings of Fact, Conclusions of Law,
And Initial Order

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5. C.W. presented his Washington State issued identification card (ID) to the Respondent. The ID clearly shows that C.W.'s date of birth is "10/01/1991;" it also states "Age 18 on 10/01/2009." Exhibit 1-2.
6. Despite checking C.W.'s ID, the Respondent sold C.W. the pack of Camel Lights cigarettes.
7. The Respondent knew it was illegal to sell cigarettes to someone under 18 years old.
8. The Respondent testified that he was preoccupied or distracted by another customer when C.W. approached the counter and asked to buy cigarettes. He said that he was thinking about the other customer's prior request that he pump gas for her.
9. The Respondent believed he continued to be distracted by the other customer while he was in the process of checking C.W.'s identification. He believes he may have miskeyed C.W.'s birth year into his register as "1981" instead of "1991," causing him to believe C.W. was old enough to buy the cigarettes. The undersigned did not find this testimony to be persuasive or credible.
10. The April 23-sale of cigarettes to C.W. was the Respondent's first violation of RCW 26.28.080.

CONCLUSIONS OF LAW

1. As a seller of tobacco, the Respondent is subject to the jurisdiction of the Liquor Control Board pursuant to RCW 82.24.500.
2. The provisions of RCW 26.28.080 are applicable. Under RCW 26.28.080, every person who sells cigarettes to a person under the age of eighteen years old is guilty of a gross misdemeanor. RCW 50.20.080 and RCW 82.24.550 (1).
3. The provisions of RCW 70.155.100 are also applicable. Under RCW 70.155.100(3), the liquor control board may impose a monetary penalty upon any person other than a licensed cigarette retailer if the liquor control board finds that the person has violated RCW 26.28.080. The monetary penalty that the liquor control board may impose for a first violation of RCW 26.28.080 is fifty dollars (\$50.00). RCW 70.155.100(4)(a). In the alternative, the liquor control board may develop and offer a class for retail clerks and use this class in lieu of a monetary penalty for the clerk's first violation of RCW 26.28.080. RCW 70.155.100(5). Further, the liquor control board may reduce or waive a penalty as set forth in RCW 70.155, where the elements of proof are inadequate or where there are mitigating circumstances. Mitigating circumstances may include, but are not limited to, an exercise of due diligence by a retailer. RCW 70.155.100(9).
4. On April 23, 2008, the Respondent checked the identification card of C.W., a person under the age of eighteen years old. The identification card clearly showed that C.W. was under the age of eighteen. By checking the identification, the Respondent knew or should have known that C.W.

INITIAL ORDER

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was less than eighteen years old and without authority to buy cigarettes. Nevertheless, the Respondent sold C.W. the cigarettes. Accordingly, he is guilty of a gross misdemeanor.

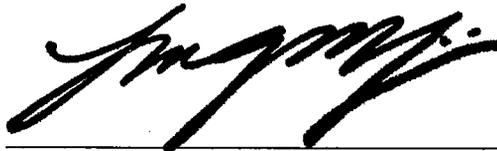
5. In this case, Respondent testified that when C.W. approached the counter, he was preoccupied with or distracted by another customer. He said he believed this distraction caused him to mistakenly miskey C.W.'s date of birth into his register, which in turn caused him to believe C.W. was old enough to buy cigarettes. The undersigned did not find this testimony to be persuasive. It is not uncommon for a line to form at a convenience store counter. The Respondent knew it was illegal to sell cigarettes to a minor. Despite reportedly being distracted by another customer, he still took the time to ask for and check C.W.'s identification. Once he saw it, he knew or should have known that he should not have sold C.W. the cigarettes. But he chose to do so. Whether he did it to rush to a waiting customer, to keep his line moving or even to avoid taking extra time to confront C.W. about his age is irrelevant. In all, the Respondent sold cigarettes to a person under the age of eighteen in violation of RCW 26.28.080. For his first offense, he is liable for a \$50.00 fine under RCW 70.155.100(3).

From the foregoing conclusions of law, **NOW THEREFORE,**

INITIAL ORDER

The Board's Notice of Board Action on Tobacco Violation is sustained. The Respondent, Aman Abdi, shall pay a monetary penalty in the amount of fifty dollars (\$50.00) for violation of RCW 26.28.080(3) and in accordance with RCW 70.155.100(3) as directed by the Board upon issuance of a final order.

SERVED on the date of mailing.



Lisa M. Groeneveld-Meijer
Administrative Law Judge
Office of Administrative Hearings

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INITIAL ORDER

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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.

INITIAL ORDER

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