BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

In The Matter Of the Hearing Of: SOON KIM INDIVIDUAL TVN: 2P2010A/35165	OAH NO. 2012-LCB-0050 LCB NO. T-561 FINAL ORDER OF THE BOARD

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

1. On October 26, 2012 the Board issued a Complaint alleging that on January 10, 2012, the above-named Individual sold, gave, and/or permitted to be sold or given, 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 (3) and (4).

2. The Individual timely requested a hearing.

3. The hearing took place on April 4, June 11, September 18, October 29 and 30, 2013 before Administrative Law Judge Lisa N.W. Dublin with the Office of Administrative Hearings.

4. At the hearing, the Individual, Soon Kim, was represented by Attorney at Law Alex S. Chun. Assistant Attorney General Marisa Broggel represented the Enforcement and Education Division of the Board.

5. On January 8, 2014, Administrative Law Judge Lisa N.W. Dublin entered her Findings of Fact, Conclusions of Law and Initial Order in this matter, which sustained the violation.

6. No petitions for review were filed by the parties

Washington State Liquor Control Board
3000 Pacific Ave, S.E.
P.O. Box 43076
Olympia, WA 98504-3076
Phone: 360-664-1602

7. 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-561 is adopted.

IT IS HEREBY FURTHER ORDERED that the Complaint filed in case T-561 is sustained and that the above-named Individual, Soon Kim, 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 11 day of February, 2014.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

Ruthann Kurose

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
3000 Pacific Ave, S.E.
P.O. Box 43076
Olympia, WA 98504-3076
Phone: 360-664-1602

Washington State
Liquor Control Board

February 12, 2014

Alex S. Chun,
Attorney for Licensee
Orion Law Firm, PLLC
11400 SE 8th Street Ste 460
Bellevue, WA 98004-6431

Soon Kim
538 19th Avenue
Kirkland, WA 98033-4926

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

RE: *FINAL ORDER OF THE BOARD*
Individual: Soon Kim
LCB Hearing No. T-561
OAH No. 2012-LCB-0050
Tobacco Violation No. 2P2010A / 35165

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. **A check for the applicable monetary penalty was received on January 31, 2014.**

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

Sincerely,

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Federal Way Enforcement and Education Division, WSLCB
Jamie Marshall, Tobacco Violations Coordinator, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: SOON KIM 538 19TH AVENUE KIRKLAND, WA 98033-4926 INDIVIDUAL TVN NO. 2P2010A / 35165	LCB NO. T-561 OAH NO. 2012-LCB-0050 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:

ALEX S. CHUN, ATTORNEY FOR LICENSEE ORION LAW FIRM, PLLC 11400 SE 8TH STREET STE 460 BELLEVUE, WA 98004-6431	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100 GCE DIVISION CHAD STANDIFER, AAG
SOON KIM, 538 19TH AVENUE KIRKLAND, WA 98033-4926	

DATED this 12th day of February, 2014, at Olympia, Washington.

Kevin McCarroll, Adjudicative Proceedings Coordinator

Washington State Liquor Control Board
3000 Pacific Avenue SE
PO Box 43076
Olympia, WA 98504-3076
(360) 664-1602

RECEIVED
JAN 16 2014
Liquor Control Board
Board Administration

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

In The Matter Of: **SOON KIM,** **TVN NO. 2P2010A/35165** **Appellant.**	**OAH Docket No. 2012-LCB-0050** **LCB No. T-561** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INITIAL ORDER**

I. ISSUES PRESENTED

1.1 On or around January 10, 2012, did Appellant sell, give, and/or permit to be sold or given, tobacco to a person under the age of eighteen (18), in violation of RCW 26.28.080?

1.2 If so, what is the appropriate penalty?

II. ORDER SUMMARY

1.1 Yes. On or around January 10, 2012, Appellant sold tobacco to a person under the age of eighteen (18), in violation of RCW 26.28.080.

1.2 Because this is Appellant's second violation, the appropriate penalty is $100.00.

III. HEARING

3.1 **Hearing Dates:** April 4, June 11, September 18, October 29, and October 30, 2013[1]

3.2 **Administrative Law Judge:** Lisa N. W. Dublin

3.3 **Appellant:** Soon O. Kim

[1] The record in this matter remained open until November 8, 2013, for purposes of receiving a readable copy of Appellant's Exhibit A. OAH received a readable copy of Appellant's Exhibit A prior to November 8, 2013, and admitted it into evidence.

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Tacoma, WA 98402
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3.3.1 **Representative:** Alex Chun, Esq.

3.3.2 **Witnesses:**

3.3.2.1 Dennis Hwang, owner of Cougar Ridge Management, Inc., dba Bellevue Cigar Bound (herein "Cigar Bound")

3.3.2.2 Soon Kim, employee

3.4 **Agency:** Liquor Control Board (herein "Board")

3.4.1 **Representative:** Marisa Broggel, Assistant Attorney General

3.4.2 **Witnesses:**

3.4.2.1 Diana Peters, Enforcement Officer

3.4.2.2 Alene Birkel, Investigative Aid

3.5 **Interpreter:** Kun Park

3.6 **Exhibits:** Board Exhibits 1-6, and 8-9, as well as Appellant's Exhibits A-E, were admitted into the record.

IV. FINDINGS OF FACT

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

Jurisdiction

4.1 On or around January 13, 2012, Enforcement Officer Diana Peters served Notice of Board Action on Tobacco Violation (herein "Notice of Violation") on Soon Kim. (Ex. 1)

4.2 The Board received Appellant's request for Settlement Conference, requesting a hearing if settlement could not be reached. (Ex. 2) The Board accepted this request as timely.

Cigar Bound

4.3 Cigar Bound is a tobacco shop located in Bellevue, Washington that is licensed with the State of Washington to sell tobacco products. Mr. Hwang has owned Cigar Bound for over eight years. Ms. Soon Kim is Cigar Bound's only full-time employee. Prior to working for Cigar Bound, Ms. Kim operated her own

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business for approximately twenty (20) years, which included a grocery store. Ms. Kim has worked over ten years at the tobacco shop now known as Cigar Bound.

4.4 Cigar Bound maintains policies and practices against the sale of tobacco products to those under age eighteen (18). Because the profit margin is relatively small on cigarettes, Cigar Bound finds no profit incentive to sell them to underage minors. Cigar Bound also understands that if he sells tobacco products to one underage minor, his store will soon be full of underage minors.

4.5 Cigar Bound provides training to its employees regarding the sale of tobacco products to underage minors, including to Ms. Kim. Ms. Kim was trained to check the identification of all those who look younger than thirty (30) years old, and not to allow underage minors in the store. Cigar Bound has posted signage around the store, stating "Under 18 No Tobacco." (*See* Ex. D)

4.6 On or around December 20, 2011, while working at Cigar Bound, Ms. Kim sold tobacco products to an underage minor. The Board cited Ms. Kim; this was her first citation from the Board. Ms. Kim paid the monetary penalty of $50.00. (*See* Ex. 8) There is no evidence of other, prior citations against Ms. Kim for selling tobacco products to underage minors.

Sale to Ms. Birkel

4.7 The late afternoon of Tuesday January 10, 2012, Board Enforcement Officer Diana Peters picked up Investigative Aide Alline Birkel after school and brought her to the Board's Tukwila office, where Officer Peters photographed Ms. Birkel, gave her cash to conduct compliance checks that day, and ensured that the only identification Ms. Birkel had on her person was her Washington State issued driver's license. Officer Peters and Ms. Birkel then left Tukwila for the city of Bellevue to commence compliance checks. Ms. Birkel was age sixteen at this time.

4.8 At approximately 5:00 p.m. on Tuesday January 10, 2012, Ms. Birkel entered Cigar Bound while Officer Peters stood outside Cigar Bound. Ms. Birkel made her way to the back of the store, where the cash register was located, and asked Soon Kim, the clerk, for a box of Newport cigarettes. Ms. Kim asked to see Ms. Birkel's identification, and Ms. Birkel gave it to her. *See* Ex. 9. Ms. Kim examined it, gave Ms. Birkel the cigarettes, accepted payment for the cigarettes, and gave Ms. Birkel a receipt. *See* Ex. 6. Ms. Birkel then left Cigar Bound.

4.9 At the hearing, Ms. Kim argued that Ms. Birkel was not the person who purchased the Newport cigarettes from her that day. Ms. Kim and Mr. Hwang testified that an older woman bought the cigarettes, and presented identification

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showing she was well above legal age to purchase tobacco products. Ms. Kim presented a copy of in-store video of the purchaser, contrasted this with pictures of Ms. Birkel on Facebook, and argued that the purchaser was not Ms. Birkel. Ms. Kim also testified that the purchaser was smaller than Ms. Birkel, had a longer neck and different body style, and presented identification showing her hair in a ponytail and a birthdate of June 23, 1992. Having carefully considered and weighed all of the evidence, including party motivations, the reasonableness and consistency of testimony throughout the hearing, and the totality of the circumstances presented, I have determined that Ms. Birkel, not a different, older female, was in fact the person to whom Ms. Kim sold Newport cigarettes on January 10, 2012. The female in Cigar Bound's January 10, 2012 video is dressed in what appears to be the same black jacket with light-colored lettering on the left chest area, the same light-colored shirt below the black jacket, the same jeans, and with her hair pulled back in the same manner as Ms. Birkel was wearing on January 10, 2012. (*Compare* Ex. 5) In addition, the video shows Officer Peters entering Cigar Bound as Ms. Birkel was leaving, and handing Ms. Birkel something, which is consistent with Officer Peters' and Ms. Birkel's testimony that Officer Peters handed Ms. Birkel the car keys on her way out of Cigar Bound. The video adds additional credibility to Ms. Birkel's and Officer Peters' written accounts of the incident.

4.10 After leaving Cigar Bound, Ms. Birkel returned to Officer Peters' car, where she completed her report of the incident. (*See* Ex. 4) Officer Peters went into Cigar Bound and notified Ms. Kim that she had just sold cigarettes to an underage minor. Ms. Kim challenged this, and contacted Mr. Hwang, who also challenged this. The following day, Officer Peters wrote her report of the incident (*see* Ex. 3), and on or around January 13, 2012, issued a citation to Ms. Kim for selling cigarettes to an underage minor, in violation of state law. (*See* Ex. 1)

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 34.05 RCW, and chapter 10-08 WAC.

Soon Kim sold tobacco to someone under the age of eighteen (18), in violation of state law.

5.2 Every person who sells or gives, or permits to be sold or given, to any person under the age of eighteen (18) years any cigar, cigarette, cigarette paper

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or wrapper, tobacco in any form, or a vapor product is guilty of a gross misdemeanor. RCW 26.28.080. It is no defense that the person acted, or was believed by the defendant to act, as agent or representative of another. *Id.*

5.3 The Board may impose a monetary penalty upon any person other than a licensed cigarette retailer if the Board finds that the person violated RCW 26.28.080. For a second violation of RCW 26.28.080, the Board may impose upon a person a monetary penalty of one hundred dollars ($100.00). RCW 70.155.100(3),(4).

5.4 Soon Kim has made a significant effort over the course of her career to comply with the law prohibiting the sale of tobacco products to minors, and has only one prior citation for selling tobacco to a minor. However, mistakes happen, and the weight of credible evidence establishes that on or around January 10, 2012, Ms. Kim mistakenly sold cigarettes to a person under the age of eighteen (18) in violation of RCW 26.28.080.

Penalty

5.5 This is Ms. Kim's second violation of RCW 26.28.080. Consequently, the Board's assessment of a $100.00 fine against her is hereby upheld.

INITIAL ORDER

IT IS HERBY ORDERED THAT:

Ms. Kim violated RCW 26.28.080 in selling an underage person cigarettes on or around January 10, 2012. Because this is a second violation of this kind for Ms. Kim, she is required to pay a $100.00 penalty under RCW 70.155.100.

Signed and Issued at Tacoma, Washington, on January 8th, 2014.

Lisa N. W. Dublin
Administrative Law Judge
Office of Administrative Hearings

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NOTICE OF APPEAL RIGHTS – PLEASE READ CAREFULLY

Petition for Review of Initial Order

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; 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

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (253) 476-6888 • Fax: (253) 593-2200

Certificate of Service – OAH Docket No. 2012-LCB-0050

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

Soon Kim **538 - 19th Avenue** **Kirkland WA 98033-4926**	☒First Class US mail, postage prepaid ☐Certified mail, return receipt ☐Campus Mail ☐Facsimile ☐1st Class, postage prepaid, Certified mail, return receipt
Alex S. Chun **Attorney at Law** **Orion Law Firm PLLC** **11400 SE 8TH Street, Suite 460** **Bellevue, WA 98004**	☒First Class US mail, postage prepaid ☐Certified mail, return receipt ☐Campus Mail ☐Facsimile ☐1st Class, postage prepaid, Certified mail, return receipt
Marisa E. Broggel **Assistant Attorney General** **Office of the Attorney General** **PO Box 40100** **Olympia WA 98504-0100**	☒First Class US mail, postage prepaid ☐Certified mail, return receipt ☐Campus Mail ☐Facsimile ☐1st Class, postage prepaid, Certified mail, return receipt
Kevin McCarroll **Adjudicative Proceedings Coordinator** **Washington State Liquor Control Board** **PO Box 43076** **Olympia WA 98504-3076**	☒First Class US mail, postage prepaid ☐Certified mail, return receipt ☐Campus Mail ☐Facsimile ☐1st Class, postage prepaid, Certified mail, return receipt

Date: January 8, 2014

Cyndi Michelena
Office of Administrative Hearings

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Tacoma, WA 98402
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BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: SOON O. KIM 538 19TH AVE KIRKLAND, WA 98033-4926 INDIVIDUAL RE: TVN NO. 2P2010A / 35165	NO. T-561 COMPLAINT

The Washington State Liquor Control Board charges the above-named Individual with the following violation(s) of the Washington State Liquor Act and/or Rules and Regulations of the Board:

That on or around January 10, 2012, the above-named Individual sold, gave, or permitted to be sold or given, 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(3) and (4).

DATED this 26 day of OCTOBER, 2012.

WASHINGTON STATE LIQUOR CONTROL BOARD

JUSTIN NORDHORN, CHIEF
ENFORCEMENT AND EDUCATION DIVISION