

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

In The Matter Of the Hearing Of:

YOGI INCORPORATED
d/b/a 7-ELEVEN 2306-27288C
6815 196TH ST SW
LYNNWOOD, WA 98036-5074

LICENSEE

UBI: 602-294-347-001-0001
TVN NO. 2R2260A / 33266

OAH DOCKET NO. 2013-LCB-0006
LCB NO. T-577

FINAL ORDER OF THE BOARD

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

1. The Licensee timely submitted a request for an administrative hearing for Notice of Board Action on Tobacco Violation No. 2R2260A, issued September 28, 2012; and
2. The Board issued a formal Complaint dated February 5, 2013 alleging that on or about September 16, 2012, the above-named Licensee, or an employee(s) or agent thereof, sold, gave, and/or permitted to be sold or given, a tobacco product to a person under the age of eighteen (18) years old, contrary to RCW 26.28.080 and is subject to the penalties set out in RCW 70.155.100; and
3. A Pre-Hearing Conference was scheduled for 11:00 a.m. on April 29, 2013 before Administrative Law Judge Lisa N.W. Dublin with the Office of Administrative Hearings; and
4. The Education and Enforcement Division of the Board was represented by Assistant Attorney General Marisa Broggel who appeared as scheduled; and
5. The Representative for the Licensee, Vijay Bharti, failed to appear as scheduled, and did not timely request a continuance; and
6. On May 1, 2013 Administrative Law Judge Lisa N.W. Dublin entered her Initial Order of Default Dismissing the Appeal of Yogi Incorporated d/b/a 7-Eleven 2306-27288C for Failure to Appear which ordered that the Licensee was in default and dismissed the appeal; and

7. A motion to vacate the default order was timely filed; and

8. On May 28, 2013, Administrative Law Judge Lisa N.W. Dublin entered her Order Denying Motion to Vacate Default Order, which denied the motion.

9. 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 Initial Order of Default is adopted as the Final Order of the Board, except for the following change:

- a. In the second paragraph on page 1 of the Initial Order of Default, the identification of the agency that appeared is modified to The Liquor Control Board.

IT IS HEREBY FURTHER ORDERED that the Complaint filed in this case is sustained and the above-named Licensee shall pay the monetary penalty of one hundred dollars (\$100) within 30 days of this order. Failure to comply with the terms of this order will subject the Licensee to further disciplinary action.

Payment in reference to this order should be sent to:

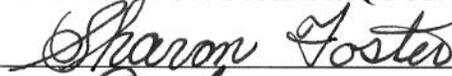
Washington State Liquor Control Board

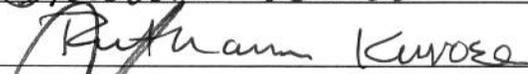
P. O. Box 43085

Olympia, WA 98504-3085

DATED at Olympia, Washington this 25 day of June, 2013.

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 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

June 26, 2013

Vijay Bharti
Yogi Incorporated
d/b/a 7-Eleven 2306-27288C
6815 196th St SW
Lynnwood, WA 98036-5074

Marisa E. 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: Yogi Incorporated, 7-Eleven Inc.
Trade Name: 7-Eleven 2306-27288C
Location: 6815 19th St SW, Lynnwood, WA 98036
License No. (UBI): 602-294-434-7001-0001
LCB Hearing No. T-577
OAH Docket No. 2013-LCB-0006
Tobacco Violation No. 2R2260A / 33266

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

The applicable monetary penalty is due by Friday, July 26, 2013. The address for payments is WSLCB, P.O. Box 43085, Olympia, WA 98504-3085. Please label the check with your License Number and Tobacco Violation Notice Number listed above. If you have any questions, please contact me at (360) 664-1602.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin McCarroll'.

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Mount Vernon Enforcement and Education Divisions, WSLCB
Lisa Red, Tobacco Violations Coordinator, WSLCB

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3 **WASHINGTON STATE LIQUOR CONTROL BOARD**

4 IN THE MATTER OF:

OAH DOCKET NO. 2013-LCB-0006
LCB HEARING NO. T-577

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6 YOGI INCORPORATED
d/b/a 7-ELEVEN 2306-27288C
7 6815 196TH ST SW
LYNNWOOD, WA 98036-5074

DECLARATION OF SERVICE BY
MAIL

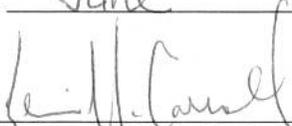
8
9 LICENSEE

10 UBI NO. 602-294-434-7001-0001
TVN NO. 2R2260A / 33266

11
12 I certify that I caused a copy of the FINAL ORDER OF THE BOARD in the above-
13 referenced matter to be served on all parties or their counsel of record by US Mail Postage
14 Prepaid via Consolidated Mail Service for Licensees; by Campus Mail for the Office of
15 Attorney General, on the date below to:

18 VIJAY BHARTI YOGI INCORPORATED 19 d/b/a 7-ELEVEN 2306-27288C 6815 196 TH ST SW 20 LYNNWOOD, WA 98036-5074	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100 GCE DIVISION MARISA E. BROGDEL, AAG
21 7-ELEVEN INC. d/b/a 7-ELEVEN 2306-27288C 22 PO BOX 219088 DALLAS, TX 75221-9088	

23 DATED this 26th day of June, 2013, at Olympia, Washington.

24
25 
26 Kevin McCarroll, Adjudicative Proceedings Coordinator

DECLARATION OF SERVICE BY
MAIL

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

MAY 29 2013

Liquor Control Board
Board AdministrationSTATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE LIQUOR CONTROL BOARD

In The Matter Of:

YOGI INCORPORATED dba 7-ELEVEN
2306-27288C,

Licensee.

OAH Docket No. 2013-LCB-0006

Agency No. T-577

ORDER DENYING MOTION TO
VACATE DEFAULT ORDER

I. ORDER SUMMARY

Appellant's Motion to Vacate the Default Order of May 1, 2013, is denied.

II. MOTION HEARING

- 2.1 **Administrative Law Judge:** Lisa N. W. Dublin
- 2.2 **Date of Hearing:** May 15, 2013
- 2.3 **Licensee/Movant:** Yogi Incorporated dba 7-Eleven
2306-27288C
- 2.3.1 **Licensee Representative:** Vijay Bharti
- 2.4 **Agency:** Liquor Control Board
- 2.4.1 **Agency Representative:** Assistant Attorney General Marissa
Broggel

III. STATEMENT OF THE CASE

Based upon the file, the pleadings submitted by the parties, and the oral argument of the parties, I make the following Findings of Fact and Conclusions of Law:

Findings of Fact

3.1 On March 26, 2013, the Office of Administrative Hearings (OAH) issued a Notice of Conference ("Notice") in this matter, which set out a prehearing conference date and time of April 25, 2013 at 2:00 p.m. In addition to establishing this prehearing conference date and time, the Notice stated in relevant part:

Telephone Instructions: At the scheduled time, please call WebEx at 1-866-699-3239 (toll-free). When prompted, enter the code above, followed by the pound sign (#).

The Notice went on to state:

You must participate in the conference. If you do not, a default may be entered. This means you lose the opportunity to further challenge the agency action. RCW 34.05.440.

3.2 On April 1, 2013, the OAH issued a Revised Notice of Prehearing Conference which changed the time of the prehearing conference on April 25, 2013 to 11:00 a.m. from 2:00 p.m. The same telephone instructions and default notice set out above appeared therein. On April 11, 2013, the OAH issued an Amended Notice of Conference which changed the date and time of the prehearing conference from April 25, 2013, at 11:00 a.m. to April 29, 2013 at 11:00 a.m. Again, the same telephone instructions and default notice set out above appeared therein.

3.3 On April 29, 2013, at 11:00 a.m., I convened the prehearing conference. The Board appeared at the prehearing conference through Assistant Attorney General Marissa Broggel. The Appellant did not attend. When the Appellant had not arrived after fifteen minutes elapsed, the Department moved for a default order under RCW 34.05.440 for the Appellant's failure to appear. Later that day, the Appellant called and then wrote to the OAH asking to continue the prehearing conference, and stating he "was under impression that someone going to call me and kept waiting for half an hour but when I checked the letter and read instructions I realized my mistake. I called the WebEx immediately and kept holding 25 min. but didn't go thru."

3.4 On May 1, 2013, I issued a Default Order due to the Appellant's failure to appear at the prehearing conference on April 29, 2013, and scheduled a hearing on the Appellant's late request to continue the prehearing conference, which I treated as a motion to vacate the Default Order.

3.5 On May 15, 2013, at the hearing on the Appellant's motion, the Appellant stated that he received the Amended Notice of Conference but did not read it except to note the date and time of the prehearing conference. The Appellant recalled that a long time ago he participated in an administrative hearing in which he was called, and expected it would be the same for the April 29, 2013 prehearing conference. When the Appellant did not receive a telephone call after waiting 30-40 minutes, he then read the instructions fully and called in to WebEx; however, no one was there.

CONCLUSIONS OF LAW

3.6 RCW 34.05.440 governs defaults in adjudicative proceedings under the Administrative Procedures Act ("APA").

3.7 Decisions to set aside a default judgment or order in cases arising under the APA are discretionary. *Graves v. The Employment Security Department*, 144 Wn.App.302, 309, 182 P.3d 1004, 1008 (2008); citing *Griggs v. Averbach Realty, Inc.*, 92 Wn.2d 576, 582, 599 P.2d 1289 (1979); *Hwang v. McMahill*, 103 Wn.App. 945, 949, 15 P.3d 172 (2000), review denied, 144 Wn.2d 1011 (2001).

3.8 The Appellant received three notices of prehearing conference, all containing the same instructions in bold-faced letters to call in to WebEx at the time of the conference, and all containing the same bold-faced warning that he may be held in default if he did not participate. The Appellant admittedly did not read the notices except to get the date and time of the conference. Although mistakes happen, Appellant's mistake in failing to fully read the telephone instructions in the Amended Notice of Conference was easily preventable, and does not amount to good cause for missing the April 29, 2013 prehearing conference. Based upon the foregoing findings of fact and conclusions of law, Appellant's motion to vacate the Default Order dated May 1, 2013 is denied.

IV. ORDER

IT IS ORDERED that the Motion to Vacate the Default Order is **DENIED**.

Signed and Issued at Tacoma, Washington, on May 28, 2013.



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 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 (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 314-42-095(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.

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.

RECEIVED

MAY 02 2013

Liquor Control Board
Board Administration

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

In The Matter Of:

YOGI INCORPORATED dba 7-Eleven
2306-27288C,

Appellant.

OAH Docket No. 2013-LCB-0006

Agency No. T-577

INITIAL ORDER OF DEFAULT
DISMISSING THE APPEAL OF
YOGI INCORPORATED dba
7-ELEVEN 2306-27288C
FOR FAILURE TO APPEAR

HEARING

The above-captioned matter was scheduled for a prehearing conference by telephone on April 29, 2013, at 11:00 a.m. pursuant to due and proper notice to all interested parties.

The Department of Labor and Industries appeared and was represented by Assistant Attorney General Marisa Broggel. The Appellant did not appear for the prehearing conference, and did not timely request a continuance.

MOTION

The Liquor Control Board moved for an order of default dismissing the administrative appeal.

CONCLUSIONS OF LAW

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." In this case, the Appellant failed to attend and participate in the April 29, 2013 telephone prehearing conference. Consequently, the Appellant is in default and the administrative appeal should be dismissed.

ORDER

Now, therefore, it is ORDERED that the Appellant is in default under RCW 34.05.440 and its administrative appeal is hereby **DISMISSED**.

Signed and Issued at Tacoma, Washington, on the date of mailing.



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

NOTICE OF RIGHT TO FILE A MOTION TO VACATE THE DEFAULT ORDER

The defaulted party may file a written motion requesting the Office of Administrative Hearings vacate the Default Order. Such a motion must be filed within seven (7) days from the date that the default order was mailed and must include the reason why the default order should be vacated. RCW 34.05.440; WAC 10-08-110.

Mail the Motion to Vacate Default to:

The Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402

CERTIFICATION OF MAILING IS ATTACHED