

**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

In The Matter Of the Hearing Of:

376,852 PACKS OF CIGARETTES,  
Defendant in rem,

ROBERT REGINAL COMENOUT, SR.,  
AND (The Estate of) EDWARD  
COMENOUT,

CLAIMANTS, and

PUYALLUP TRIBE OF INDIANS

CLAIMANT

OAH NO. 2008-LCB-0035  
LCB NO. T-585

FINAL ORDER OF THE BOARD

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

1. On July 25, 2008, the Liquor Control Board executed a search warrant at the Indian Country Store at 9087 River Road, Puyallup, WA, 98375, and seized property, pursuant to RCW 82.24 RCW. The Board returned the search warrant and provided notice to the property owner of the seized property on July 30, 2008. Per RCW 82.24.135, persons claiming an interest in the property may make a claim. Robert Comenout, Sr. and Edward Comenout filed claims on or about August 7, 2008. On August 12, 2008, the Puyallup Tribe of Indians filed a claim regarding the seized cigarettes.

2. The issue for decision in this case was whether any of the claimants have proven by a preponderance of the evidence that such Claimant is the lawful owner or has the lawful right to

possession of the 376,852 packs of cigarettes which the Liquor Control Board seized on July 25, 2008 from the "Indian Country Store" in Puyallup, Washington.

3. The case was assigned to an Administrative Law Judge from the Office of Administrative Hearings, on August 29, 2008. The parties received Notice of Re-assignment of the Administrative Law Judge on January 22, 2010 and September 2, 2010, when Administrative Law Judge Terry Schuh was ultimately assigned to hear the matter.

4. Criminal charges were also filed against Edward and Robert Comenout, who requested that the administrative proceedings be postponed to avoid concerns that testimony in the administrative case might affect the criminal proceedings. Stipulated orders of continuance were entered on November 4, 2008 and July 13, 2009, with additional Motions for Stay or continuances granted in April, 2010, August and November 2010, May and October 2011, January, February, March, May, September and December, 2012.

5. On January 30, 2013, after argument and telephonic hearing about the issue to be decided in this case, Administrative Law Judge Terry Schuh issued an Order Amending Statement of Issue. That order states that the issue for hearing in the case was:

Regarding Claimant Robert Reginald Comenout, Sr., the Estate of Edward Comenout, and Puyallup Tribe of Indians, and pursuant to RCW 82.24.135(5): Whether any Claimant has proven by a preponderance of the evidence that such claimant is the lawful owner or has the lawful right to possession of the 376,852 packs of cigarettes which the Liquor Control Board seized on July 25, 2008, from the "Indian Country Store" in Puyallup, Washington.

6. On January 30, 2013, the Puyallup Tribe of Indians filed a Memorandum agreeing not to participate in the determination under RCW 82.24.135 of whether the forfeiture of the property at issue should be upheld or reversed. However, the Tribe stated it sought only to assert its interest in the seized property if the forfeiture was upheld.

7. Edward Comenout died on July 5, 2010, and his Estate, through Judge Mary L. Pearson, Administrator WWA of the Estate of Edward A. Comenout petitioned to, and was allowed to participate in this case as the representative of Edward A. Comenout's interests. Robert Reginald Comenout, Sr., also participated in the case. The Estate of Edward A. Comenout moved for Summary Judgment, and the Enforcement and Education Division also filed a Motion for Summary Judgment. Oral argument on both motions was heard on May 29, 2013, July 1, 2013, and July 25, 2013.

8. At the hearing, Claimant the Estate of Edward Comenout was represented by Robert E. Kovacevich, Attorney. Claimant Robert Reginald Comenout, Sr. was represented by Randall Brown, Attorney. Senior Counsel Todd Bowers represented the Liquor Control Board.

9. On August 26, 2013, Administrative Law Judge Terry A. Schuh entered his Order Granting the Liquor Control Board's Motion for Summary Judgment and Denying the Estate of Edward Comenout's Motion for Summary Judgment, holding that neither claimant had shown a right to claim the seized property.

10. On September 13, 2013, the Board received a Petition for Administrative Review from Robert Kovacevich on behalf of the Estate of Edward Comenout, Claimant. The Petition requested the Board reverse the Order Granting the Liquor Control Board's Motion for Summary Judgment and Denying the Estate of Edward Comenout's Motion for Summary Judgment, which was entered on August 26, 2013.

11. On September 16, 2013, the Board received a Petition for Administrative Review from Randall Brown, on behalf of Claimant Robert Reginald Comenout, Sr.

12. On September 26, 2013, counsel for the Enforcement and Education Division of the Board requested additional time to respond, due to change of counsel/association of new counsel. The Board granted the request, and on October 30, 2013, the Board's Enforcement and Education Division filed its Response to the Petition for Administrative Review.

13. 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-585 is adopted as the Final Order of the Board.

IT IS HEREBY FURTHER ORDERED that the claims of the Estate of Edward Comenout and Robert Reginald Comenout, Sr. to the property seized on July 25, 2008, are DENIED. Claimants have not shown by a preponderance of the evidence that they could lawfully own or possess the cigarettes at issue in this case. The 376,852 packs of cigarettes are forfeit to the Board.

ADDITIONAL BRIEFING MAY BE SUBMITTED ON THE DISPOSITION OF THE PROPERTY

The Notice issued to Robert Comenout and Edward Comenout on July 30, 2008 notified them that the 376,852 packs of cigarettes would be sold at public auction by an agent of the Liquor Control Board, if the property was forfeited to the state. The Board also reserved the right to reject any and all bids and retain the property. The Board is concerned that the cigarettes at issue may not be suitable for sale, given the passage of time since the cigarettes were seized. The Puyallup Tribe of Indians asserted a claim to the proceeds of the seized property, due to the alleged unlicensed sale of cigarettes at the Indian Country Store drawing sales from properly licensed locations on the

nearby Puyallup Indian reservation. Therefore, the Board invites briefing from the parties, including the Puyallup Tribe of Indians, about how the property in question should be disposed of. Briefing may be submitted 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. 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. Briefing must be received at the Board's offices no later than June 16, 2014, at which time the Board will consider the disposition of the seized property.

DATED at Olympia, Washington this 29 day of April, 2014.

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

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April 30, 2014

Mary L. Pearson,  
Representative for The Estate Of Edward Comenout  
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Office of Attorney General  
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Seattle, WA 98104-3188

**RE: FINAL ORDER OF THE BOARD**

*376,852 Packs of Cigarettes*

*Claimants: Robert Reginald Comenout Sr, Edward A. Comenout, J., and  
Puyallup Tribe of Indians*

*OAH Hearing No. 2008-LCB-0035*

*LCB No. T-585*

Dear Parties:

Please find the enclosed Final Order of the Board and Declaration of Service in the above-referenced matter. If you have any questions, please contact me at (360) 664-1602.

Sincerely,

Kevin McCarroll  
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Steven Johnson, Deputy Chief, Enforcement and Education Division, WSLCB

PO Box 43076, 3000 Pacific Ave. SE, Olympia WA 98504-3076, (360) 664-1602  
www.liq.wa.gov

**WASHINGTON STATE LIQUOR CONTROL BOARD**

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CLAIMANTS, and  
  
PUYALLUP TRIBE OF INDIANS  
  
CLAIMANT

OAH NO. 2008-LCB-0035  
LCB NO. T-585

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 or by Campus Mail for state offices, on the date below to:

MARY L. PEARSON,  
REPRESENTATIVE FOR THE ESTATE OF  
EDWARD COMENOUT  
12407 N NINE MILE RD  
NINE MILE FALLS, WA 99026-9274

RANDAL B. BROWN  
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KIM O'NEAL, AAG  
OFFICE OF THE ATTORNEY GENERAL  
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MAIL STOP 40100

DECLARATION OF SERVICE BY  
MAIL

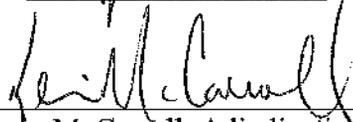
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TODD BOWERS  
SR. ASST ATTORNEY GENERAL  
OFFICE OF ATTORNEY GENERAL  
800 5<sup>TH</sup> AVE STE 2000  
SEATTLE, WA 98104-3188

DATED this 30<sup>th</sup> day of April, 2014, at Olympia, Washington.

  
Kevin McCarroll, Adjudicative Proceedings Coordinator