

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

In The Matter Of the Hearing Of:

DOLLAR PLUS AUBURN LLC
d/b/a DOLLAR PLUS AUBURN
3930 A STREET SE STE 304
AUBURN, WA 98002-3857

Licensee

UBI: 602 886 156 001 0001
TVN: 2R3108A

OAH NO. 2014-LCB-0003
LCB NO. T-593

FINAL ORDER OF THE BOARD

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

1. On October 30, 2013 the Board issued a Complaint alleging that on April 18, 2013 the above-named Licensee, sold/supplied 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(2).
2. The Licensee timely requested a hearing.
3. The hearing took place on May 13, 2014 before Administrative Law Judge Lisa N.W. Dublin with the Office of Administrative Hearings.
4. At the hearing, Dollar Plus Auburn LLC d/b/a Dollar Plus Auburn did not appear. Assistant Attorney General Isaac Williamson represented the Education and Enforcement Division of the Board.
5. On June 19, 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

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-593 is adopted.

IT IS HEREBY FURTHER ORDERED that the Complaint filed in case T-593 is sustained and that the above-named Licensee, Dollar Plus Auburn LLC d/b/a Dollar Plus Auburn shall be subject to a monetary penalty of three hundred dollars (\$300.00) due within 30 days of this order. Failure to comply with the terms of this Order will subject the Licensee to further disciplinary action.

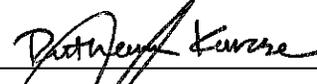
Payment should be sent to:

**Washington State Liquor Control Board
PO Box 43085
Olympia, WA 98504-3085**

DATED at Olympia, Washington this 22 day of July, 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

July 23, 2014

Amleset Hagos
Dollar Plus Auburn LLC
d/b/a Dollar Plus Auburn
3930 A Street SE Ste 304
Auburn, WA 98002-3857

Isaac Williamson, 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: Dollar Plus Auburn LLC

Trade Name: Dollar Plus Auburn

Location: 3930 A Street SE Ste 304, Auburn, WA 98002-3857

License No. (UBI): 6028861560010001

LCB Hearing No. T-593

Tobacco Violation No. 2R3108A

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 August 22, 2014. 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,

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

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

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

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

DOLLAR PLUS AUBURN LLC
D/B/A DOLLAR PLUS AUBURN
3930 A STREET SE STE 304
AUBURN, WA 98002-3857

LICENSEE

UBI NO. 6028861560010001
TVN NO. 2R3108A

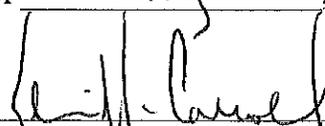
LCB NO. T-593

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:

AMLESET HAGOS DOLLAR PLUS AUBURN LLC D/B/A DOLLAR PLUS AUBURN 3930 A STREET SE STE 304 AUBURN, WA 98002-3857	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100 GCE DIVISION ISAAC WILLIAMSON, AAG
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DATED this 23rd day of July, 2014, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

RECEIVED

JUL 15 2014

Liquor Control Board
Board Administration

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

In The Matter Of:

DOLLAR PLUS AUBURN LLC dba
DOLLAR PLUS AUBURN,

Appellant.

OAH Docket No. 2014-LCB-0003
LCB No. T-593

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND
INITIAL ORDER

I. ISSUES PRESENTED

- 1.1 On or around April 18, 2013, did Appellant and/or its employee(s) 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?
- 1.3 In the alternative, is Appellant in default for failing to attend the May 13, 2014 telephone hearing?

II. ORDER SUMMARY

- 2.1 Yes. On or around April 18, 2013, Appellant and/or its employees sold tobacco to a person under the age of eighteen (18), in violation of RCW 26.28.080.
- 2.2 Because this is Appellant's second violation, the appropriate penalty is \$300.00.
- 2.3 Yes. In the alternative, Appellant is in default for failing to attend the May 13, 2014 telephone hearing.

III. HEARING

- 3.1 **Hearing Date:** May 13, 2014
- 3.2 **Administrative Law Judge:** Lisa N. W. Dublin

3.3 **Appellant:** Dollar Plus Auburn LLC dba Dollar Plus Auburn¹ ("Appellant" or "Dollar Plus Auburn")

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

3.4.1 **Representative:** Isaac Williamson, Assistant Attorney General

3.4.2 **Witnesses:**

3.4.2.1 Robert Thomas, Enforcement Officer

3.4.2.2 Lieutenant Tim Thompson

3.4.2.3 JE, Investigative Aid

3.4.2.4 Compliance Check Coordinator Fel Pajimula

3.5 **Exhibits:** Board Exhibits 1-5 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 June 3, 2013, Lieutenant Timothy Thompson served Notice of Board Action on Tobacco Violation (herein "Notice of Violation") on Amleset Hagos, owner of Appellant. (Ex. 1)

4.2 The Board received Appellant's request for Settlement Conference, requesting a hearing if settlement could not be reached. (Ex 1, p. 2) The Board accepted this request as timely.

Motion to Continue

4.3 At the prehearing conference held on March 11, 2014, the parties agreed to a telephone hearing date of May 13, 2014 and a telephone hearing start time of 9:00 AM. In the Prehearing Conference Order issued March 14, 2014, appeared the following paragraph:

//

¹ Appellant did not attend the hearing.

If you do not participate in any stage of the proceedings or if you fail to appear at your hearing, you may be held in default. This means you lose the right to a hearing and your appeal will be dismissed. RCW 34.05.440.

4.4 Paragraph 5.1 of the Prehearing Conference Order stated:

CONTINUANCES: You may request a continuance of any hearing event. Please send your request and reason to the assigned Administrative Law Judge. You must send a copy of your request to everyone listed on the Certificate of Service. If the request is urgent, call (253) 476-6888. If you do not receive confirmation that your request for a continuance has been granted, you must appear at the hearing event.

4.5 On May 12, 2014 at 9:33 PM, the Office of Administrative Hearings received correspondence from Ms. Hagos requesting another hearing date. The letter stated, "The reason for this last-minute request is that I am currently 8 months pregnant, experiencing severe sickness and have a doctor's appointment on the [sic] May 13." I did not rule on this motion prior to the hearing.

4.6 On May 13, 2014 at 9:00 AM I convened the hearing as scheduled. Appellant did not attend the hearing on May 13, 2014. At approximately 9:15 AM, when Appellant had not yet appeared, the Board opposed Appellant's written motion to continue the hearing due to the significant efforts the Board's witnesses made to attend the hearing that morning, and the difficulty the Board would encounter in trying to again coordinate the testimony of these four witnesses. The Board moved to go forward with the hearing, or in the alternative, for an order of default.

4.7 Because Appellant's letter did not alone establish good cause to continue the hearing, and because Appellant was not present to provide additional grounds for the motion, I denied Appellant's motion to continue, took the Board's motion for default order under advisement, and proceeded with the hearing.

Dollar Plus Auburn

4.8 Dollar Plus Auburn is a tobacco shop located in Auburn, Washington that is licensed with the State of Washington to sell tobacco products. Amleset Hagos owns Dollar Plus Auburn.

4.9 On June 20, 2012, Dollar Plus Auburn sold tobacco products to an underage minor. The Board cited Dollar Plus Auburn for violating RCW 26.28.080; this was Appellant's first citation from the Board. Dollar Plus Auburn paid

the monetary penalty of \$100.00. (See Ex. 5) There is no evidence of other, prior citations against Dollar Plus Auburn for selling tobacco products to underage minors.

Sale to JE

4.10 Fel Pajimula is a Compliance Check Coordinator who works directly with the King County Health Department to conduct tobacco compliance checks on behalf of the state Department of Health. Mr. Pajimula reports any violation of tobacco laws to the Liquor Control Board for follow-up. Mr. Pajimula has conducted thousands of compliance checks over the years on behalf of the state Department of Health.

4.11 Mr. Pajimula works with youth operatives when conducting tobacco compliance checks. Before setting out to conduct these compliance checks, Mr. Pajimula picks up a youth operative in a county vehicle, ensures that his or her clothing is age-appropriate, verifies that his or her identification is accurate, and selects an area of the county where the youth's time will be well spent conducting compliance checks. Mr. Pajimula gives the youth operative cash to use during the compliance checks and instructs him or her to carry only the cash given, his or her personal ID, and his or her cell phone for safety.

4.12 On April 18, 2013, Ms. Hagos worked as clerk at Dollar Plus Auburn. That day, Mr. Pajimula performed a compliance check at Dollar Plus Auburn along with youth operative JE. Exhibit 2. JE was 15 years old. JE entered Dollar Plus Auburn and approached Ms. Hagos at the counter. JE asked for a package of Camel Blues cigarettes. Ms. Hagos asked to see JE's identification. Ms. Hagos then checked JE's identification and sold him the cigarettes for \$6.55. JE left the store with the cigarettes and went into the parking lot where Mr. Pajimula photographed him holding the cigarettes in his right hand and his identification in his left hand. Exhibit 3. Mr. Pajimula and JE then went back into Dollar Plus Auburn to speak with Ms. Hagos, who admitted she sold cigarettes to JE, and that she read the birthdate on his identification as 1987, not 1997. Exhibit 2. Mr. Pajimula and JE then left and completed the Compliance Check Data Reporting form, which Mr. Pajimula later submitted to the Liquor Control Board.

4.13 On June 3, 2013, Officer Thompson issued a citation to Dollar Plus Auburn for selling cigarettes to a 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, chapter 314-34 WAC, and chapter 10-08 WAC.

Dollar Plus Auburn sold tobacco to JE, who was 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 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 suspend or revoke a retailer's license, or may impose a monetary penalty, if it finds that the licensee has violated RCW 26.28.080. For a second violation of RCW 26.28.080 within any two-year period, the Board may impose a monetary penalty of three hundred dollars (\$300.00). RCW 70.155.100.

5.4 The weight of credible evidence establishes that on April 18, 2013, Dollar Plus Auburn, through its owner Amleset Hagos, mistakenly sold cigarettes to a person under the age of eighteen (18) in violation of RCW 26.28.080. Ms. Hagos admitted to Mr. Pajimula on April 18, 2013, that she mistakenly sold cigarettes to JE. Neither Ms. Hagos nor anyone on behalf of Dollar Plus Auburn attended the hearing in this matter to testify about this incident. Although mistakes happen, they are not a defense to RCW 26.28.080. TVN No. 2R3108A is AFFIRMED.

Penalty

5.5 The Board may impose a monetary penalty if the licensee violates RCW 26.28.080. The penalty for a second violation of RCW 26.28.080 within any two-year period may not exceed a \$300.00 monetary fine. RCW 70.155.100(2)(a). This is Dollar Plus Auburn's second violation of RCW 26.28.080 within two years. Consequently, the Board's assessment of a \$300.00 fine against Dollar Plus Auburn is hereby upheld.

Default

5.6 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."

5.7 In this case, Appellant failed to attend and participate in the May 13, 2014 telephone hearing. Consequently, in the alternative, Appellant is in default under RCW 34.05.440(2).

INITIAL ORDER

IT IS HERBY ORDERED THAT:

1. Dollar Plus Auburn violated RCW 26.28.080 in selling an underage person cigarettes on April 18, 2013.
2. Because this is a second violation of this kind for Dollar Plus Auburn, Dollar Plus Auburn is required to pay a \$300.00 penalty under RCW 70.155.100.
3. In the alternative, Appellant is in default under RCW 34.05.440(2). If in default, the administrative appeal is 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 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

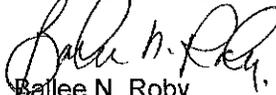
CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 2014-LCB-0003

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

<p>Amleset B. Hagos Owner Dollar Plus Auburn, LLC 3930 A St SE Ste 304 Auburn, WA 98002-3857 Respondent</p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Isaac B. Williamson Assistant Attorney General Office of the Attorney General 1125 Washington St SE PO Box 40100 Olympia, WA 98504-0100 Fax: (360) 664-0229 Agency Representative</p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Kevin McCarroll Adjudicative Proceedings Coordinator Washington State Liquor Control Board 3000 Pacific Ave SE PO Box 43076 Olympia WA 98504-3076 Fax: (360) 586-3190 Department Representative</p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Thursday, June 19, 2014

OFFICE OF ADMINISTRATIVE HEARINGS


 Ballee N. Roby
 Legal Secretary