

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

In The Matter Of the Hearing Of:

TESORO REFINING &
MARKETING COMPANY LLC
D/B/A USA GAS

5204 W CLEARWATER AVE
KENNEWICK, WA 99336-1906

LICENSEE

UBI: 601-688-778-001-0071

TOBACCO VIOLATION NO. 4C3268B

OAH DOCKET NO. 2014-LCB-0032
LCB NO. T-595

FINAL ORDER OF THE BOARD

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

1. The Board issued a Complaint dated May 6, 2014 alleging that on or about September 25, 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 submitted a request for an administrative hearing for Notice of Board Action on Tobacco Violation No. 4C3268B, issued October 4, 2013;
3. A Pre-Hearing Conference was scheduled for 9:00 a.m. on July 1, 2014 before Administrative Law Judge Robert M. Boggs with the Office of Administrative Hearings;
4. The Education and Enforcement Division of the Board was represented by Assistant Attorney General Justin Kjolseth who appeared as scheduled. The Licensee/Respondent Tonya Gillespie failed to appear as scheduled, and failed to make a timely request for a continuance;
5. On July 2, 2014 Administrative Law Judge Robert M. Boggs entered his Initial Order of Default Dismissing Respondent's Appeal for Failure to Appear;
6. No motion to vacate the default order was received;

FINAL ORDER OF THE BOARD
USA GAS #62507
UBI: 601-688-778-001-0071
T-595

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

7. No petition for review was received.

8. 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.

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 three hundred dollars (\$300) 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 9 day of September, 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

FINAL ORDER OF THE BOARD

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USA GAS #62507

UBI: 601-688-778-001-0071

T-595

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Olympia, WA 98504-3076
Phone: 360-664-1602

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

September 11, 2014

Tonya Gillespie
Tesoro Refining & Marketing Company LLC
d/b/a USA Gas
2306 W 26th Place
Kennewick, WA 99337-2904

Justin Kjolseth, 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: Tesoro Refining & Marketing Company LLC

Trade Name: USA Gas

Location: 5204 W Clearwater Ave, Kennewick, WA 99336-1906

UBI: 601-688-778-001-0071

LCB Hearing No. T-595

OAH NO. 2014-LCB-0032

Tobacco Violation No. 4C3628B

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 October 13, 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: Spokane and Pasco Enforcement and Education Divisions, WSLCB
Jamie Marshall, Tobacco Violations Coordinator, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

In The Matter Of the Hearing Of:

TESORO REFINING &
MARKETING COMPANY LLC
D/B/A USA GAS

5204 W CLEARWATER AVE
KENNEWICK, WA 99336-1906

LICENSEE

UBI: 601-688-778-001-0071
TOBACCO VIOLATION NO. 4C3268B

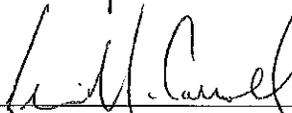
OAH DOCKET NO. 2014-LCB-0032
LCB NO. T-595

FINAL ORDER OF THE BOARD

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:

TONYA GILLESPIE TESORO REFINING & MARKETING COMPANY, LLC d/b/a USA GAS 2306 W 26 TH PLACE KENNEWICK, WA 99337-2904	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100 GCE DIVISION JUSTIN KJOLSETH, AAG
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DATED this 11th day of September, 2014 at Olympia, Washington.



Kevin McCarroll, Adjudicative Proceedings Coordinator

RECEIVED

JUL 28 2014

Liquor Control Board
Board Administration

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR LIQUOR CONTROL BOARD

IN THE MATTER OF:

TESORO REFINING AND MARKETING
CO DBA USA GAS,

5204 W. CLEARWATER
KENNEWICK, WA 99336

TVN NO. 4C3268B
UBI NO. 601-688-778-001-0001

Respondent

OAH Docket No. 2014-LCB-0032
AGENCY NO. T-595

INITIAL ORDER OF DEFAULT
DISMISSING RESPONDENT'S
APPEAL FOR FAILURE TO
APPEAR

HEARING

The above-captioned matter was scheduled for a prehearing conference by telephone on July 1, 2014, at 9:00 a.m. pursuant to due and proper notice to all interested parties.

The Respondent named above did not appear for the prehearing conference or request a continuance.

The Liquor Control Board appeared and was represented by Justin Kjolseth, Assistant Attorney General.

MOTION

The prehearing conference was scheduled to convene at 9:00 a.m. The Respondent did not appear at 9:00 a.m. The undersigned Administrative Law Judge ("ALJ") waited 15 minutes for the Respondent to appear until 9:15 a.m. before convening.

The Liquor Control Board moved for an order of default dismissing the Respondent's Appeal.

The ALJ reviewed the file and observed that the notice of the pre-hearing conference issued in this matter provided notice to the parties of the date and time of the prehearing conference by telephone, along with the necessary phone number, code, and instructions for appearing. The notice of the pre-hearing

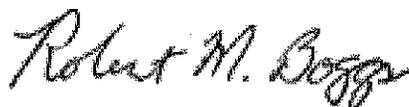
conference was mailed to the Respondent at its address of record on June 12, 2014. The notice of the pre-hearing conference was not returned to the Office of Administrative Hearings as undelivered. The notice of the pre-hearing conference included a warning that failure to participate in the pre-hearing conference could result in entry of a default order that would cost the Respondent its opportunity to challenge the Liquor Control Board's action.

The ALJ granted the Liquor Control Board's motion for default of the Respondent and dismissal of the Respondent's Appeal.

ORDER

Now, therefore, it is ORDERED that the Respondent named above is in DEFAULT pursuant to RCW 34.05.440 and the Respondent's Appeal is hereby **DISMISSED**.

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



Robert M. Boggs
Administrative Law Judge
Office of Administrative Hearings

Sent to:

Respondent: Tonya Gillespie
Dept Rep: Kevin P. McCarroll
AAG: Justin Kjolseth

NOTICE OF APPEAL RIGHTS - PLEASE READ CAREFULLY

Motion to Vacate Default

RCW 34.05.440(3) provides: "Within seven days after service of a default order under subsection (2) of this section, or such longer period as provided by agency rule, the party against whom it was entered may file a written motion with the Administrative Law Judge who issued the Initial Order of Default requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the presiding officer may adjourn the proceedings." By agency rule (WAC 10-08-110), service is complete upon mailing of this order. Therefore, **any motion to vacate a default order must be received by this OAH office within a total of seven (7) days after the date of the mailing of the default order.**

Address for filing a motion to vacate default with the Administrative Law Judge:

Office of Administrative Hearings
32 N. 3rd Street Suite 320
Yakima, Washington 98901

Petition for Review of Initial Order

Either the licensee or permit holder or the assistant attorney general may file a petition for the 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 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)(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 SE
PO Box 43076
Olympia, Washington 98504-3076.