

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

In The Matter of:

WAHIDI CORPORATION
d/b/a 99 STORE

19904 AURORA AVE N
SHORELINE, WA 98133

Licensee

UBI: 602 234 479 001 0001
TVN: 3L3340E

OAH NO. 2014-LCB-0031
LCB NO. T-598

FINAL ORDER OF THE BOARD

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

1. On April 30, 2014 the Board issued a Complaint alleging that on December 6, 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 September 9, 2014 before Administrative Law Judge Lisa N.W. Dublin with the Office of Administrative Hearings.
4. At the hearing, the Licensee was represented by President Syed R. Wahidi of Wahidi Corporation d/b/a 99 Store. Assistant Attorney General Justin Kjolseth represented the Enforcement and Education Division of the Board.
5. On November 10, 2014, Administrative Law Judge Lisa N.W. Dublin entered the Initial Order in this matter, which sustained the violation.

6. A petition for review was filed by the Licensee and a response was filed by the Enforcement and Education Division of the Board.

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-598 are adopted.

IT IS HEREBY FURTHER ORDERED that the Complaint filed in case T-598 is sustained and that the above-named Licensee, Wahidi Corporation d/b/a 99 Store 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:

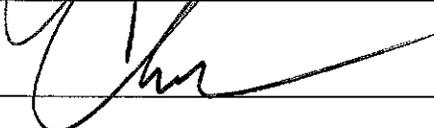
**Washington State Liquor Control Board
PO Box 43085
Olympia, WA 98504-3085**

DATED at Olympia, Washington this 27th day of JANUARY, 2015.

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

January 28, 2015

Syed Wahidi, President
Wahidi Corporation
d/b/a 99 Store
19904 Aurora Ave N
Shoreline, WA 98133-3526

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: Wahidi Corporation
Trade Name: 99 Store
Location: 19904 Aurora Ave N, Shoreline, WA 98133-3526
License No. (UBI): 602 234 479 001 0001
LCB Hearing No. T-598
OAH No. 2014-LCB-0031
Tobacco Violation No. 3L3340E

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 March 2, 2015. 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: Mt Vernon and Mountlake Terrace Enforcement and Education Divisions, WSLCB
Lisa Red, Tobacco Violations Coordinator, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

WAHIDI CORPORATION
d/b/a 99 STORE
19904 AURORA AVE N
SHORELINE, WA 98133-3526

LICENSEE

UBI NO. 602 234 479 001 0001
TVN NO. 3L3340E

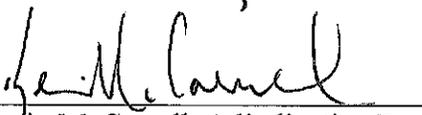
LCB NO. T-598
OAH NO. 2014-LCB-0031

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 Applicants and Licensees; by email for WSLCB employees; by Campus Mail for the Office of Attorney General, on the date below to:

SYED WAHIDI, PRESIDENT WAHIDI CORPORATION d/b/a 99 STORE 19904 AURORA AVE N SHORELINE, WA 98133-3526	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100 GCE DIVISION JUSTIN KJOLSETH, AAG
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DATED this 28th day of JANUARY, 2015, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

RECEIVED

DEC 19 2014

Liquor Control Board
Board Administration

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

In The Matter Of:

WAHIDI CORPORATION d/b/a 99 STORE

Location address:

19904 AURORA AVENUE NORTH

SHORELINE WA 98133

Licensee

OAH Docket No. 2014-LCB-0031

Agency No. T-598

INITIAL ORDER

1. ISSUES

1.1. Did Licensee violate Washington law as alleged by the Liquor Control Board in its complaint dated April 30, 2014 by selling or supplying tobacco to a person under the age of eighteen (18) contrary to RCW 26.28.080?

1.2. If so, what is the appropriate remedy or penalty under Washington Law?

2. ORDER SUMMARY

2.1. Wahidi Corporation, through its employee, sold tobacco to a person under the age of eighteen, in violation of RCW 26.28.080.

2.2. Because this is a first violation within a two year period, the appropriate penalty is a monetary penalty of \$100.00.

3. HEARING

3.1. Hearing Date: September 9, 2014

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

3.3. Appellant: Wahidi Corporation

3.3.1. Representative: Syed R. Wahidi, President of Wahidi Corp.

3.3.2. Witness: Syed R. Wahidi.

3.3.3. Exhibits: Mr. Wahidi had a written statement and a photograph which he offered into evidence. The Board objected. Mr. Wahidi was allowed to read the statement and discuss the photograph, but the documents were not admitted as exhibits.

3.4. Agency: Liquor Control Board (Board)

3.4.1. Representative: Justin Kjolseth, Assistant Attorney General¹

3.4.2. Witnesses:

3.4.2.1. Troy McCallister, Liquor and Tobacco Enforcement Sergeant.

3.4.2.2. D.O., Investigative Aide for the Board

3.4.3. Exhibits: The Board's Exhibits 1 through 5 were admitted.

4. FINDINGS OF FACT

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

Jurisdiction

4.1. On or about December 10, 2013, Sergeant McCallister served the Notice of Board Action on Tobacco Violation on Mr. Wahidi. Attachment to Request for Assignment of Administrative Law Judge and Exhibit 1.

4.2. In early May 2014, the Board's Education & Enforcement Division referred this matter to the Office of Administrative Hearings.

Wahidi Corporation d/b/a 99 Store

4.3. Mr. Wahidi has operated the 99 Store for nearly 15 years as of the date of the hearing. Testimony of Mr. Wahidi.

4.4. He does not sell alcoholic beverages, but he does sell cigarettes. *Id.*

¹ Liquor Enforcement Officer Mark Postma attended the hearing as an observer.

- 4.5. One of Mr. Wahidi's employees is Mohammad Afsar. Mr. Afsar only works part time, and had been working for Mr. Wahidi for about one year as of December 2013. *Id.*
- 4.6. Mr. Wahidi has instructed his employees not to sell tobacco to minors. *Id.*
- 4.7. Wahidi Corporation has previously received letters and commendations from the Liquor Control Board. After nearly 15 years in business, this is the store's first violation. *Id.*
- 4.8. After he was issued the Tobacco Violation Notice in this case, Mr. Wahidi put additional signs in his store stating that the store will not sell to minors, and he has placed a sign in the cash register to remind employees not to sell to minors. *Id.*

Sale of Tobacco to a Minor

- 4.9. On December 6, 2013, Sgt. McCallister was conducting a compliance check at the 99 Store with Investigative Aide D.O. Testimony of Sgt. McCallister and Investigative Aide D.O.
- 4.10. D.O. entered the 99 store. Sgt. McCallister followed D.O. into the store to observe. *Id.*
- 4.11. D.O. asked the clerk, Mr. Afsar, for a package of Marlboro cigarettes. Mr. Afsar did not ask D.O. his age and did not ask to see identification. *Id.*
- 4.12. Mr. Afsar sold D.O. the cigarettes. *Id.*

Investigative Aide D.O.

- 4.13. D.O.'s birthdate is November 7, 1996, and he was 17 years old at the time of the compliance check. *Id.*
- 4.14. Exhibit 4 contains a copy of D.O.'s Driver License, and two photographs of D.O. taken on December 6, 2013, which accurately depict the appearance of D.O. on that date. *Id.*
- 4.15. According to D.O.'s Driver License, he is 6' 7" tall. Exhibit 4.

- 4.16. Despite his height, D.O. is sufficiently youthful in appearance that one might reasonably question whether he was older or younger than 18 years of age.
Observation of D.O. during hearing; Exhibit 4.

5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions:

Jurisdiction

- 5.1. The administrative law judge has jurisdiction to hear this matter under Chapter 34.05 RCW, Chapter 34.12 RCW, WAC 10-08-050, and WAC 314-29-010.

Sale of Tobacco to a Minor

- 5.2. It is a gross misdemeanor for a licensee to permit cigarettes or tobacco in any form to be given or sold to any person under the age of eighteen. RCW 26.28.080(1).
- 5.3. When there is a reasonable question as to whether a person may be below the age of eighteen, and therefore not have the right to purchase tobacco products, the licensee "shall require" official identification that shows the purchaser's age. RCW 70.155.090(1).
- 5.4. The Board has the authority to suspend or revoke a license, or to impose a monetary penalty if a licensee is found to have violated RCW 26.28.080. RCW 70.155.100(1).
- 5.5. For a first violation within any two year period, the monetary penalty authorized is One Hundred Dollars (\$100). RCW 70.155.100(2)(a)(i).
- 5.6. Mr. Wahidi argued that there should be leniency for licensees who have good records of compliance and who take reasonable steps to avoid violations. The schedule of authorized penalties recognizes that leniency is appropriate in some situations.
- 5.7. A \$100.00 penalty is the most lenient penalty authorized, and significantly more severe penalties may be imposed when there are more violations within a two year period. RCW 70.155.100(2)(1)(ii) – (v).

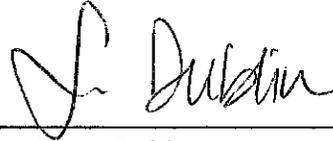
5.8. The weight of the evidence establishes that on December 6, 2013, Wahidi Corporation, through its employee Mr. Afsar, mistakenly sold cigarettes to a person under the age of eighteen in violation of RCW 26.28.080. It is not a defense that this was not an intentional violation or that Mr. Wahidi acted reasonably before and after the offense to avoid selling tobacco products to minors.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

Wahidi Corporation violated RCW 26.28.080 on December 6, 2013 by selling an underage person cigarettes. Because this is a first violation of this kind for Wahidi Corporation, Wahidi Corporation is required to pay a \$100.00 penalty under RCW 70.155.100.

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 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 response must be mailed to all other parties and their representatives at the time the response 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 requested. RCW 34.05.470 and 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).

CERTIFICATE OF MAILING IS ATTACHED

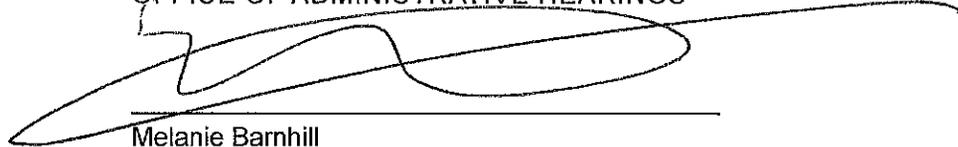
CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 2014-LCB-0031

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

<p>Syed Wahidi Wahidi Corporation dba 99 Store 19904 Aurora Ave N Shoreline, WA 98133</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>Justin Kjolseth Office of the Attorney General PO Box 40100 Olympia, WA 98504</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 P. McCarroll Adjudicative Proceedings Coordinator Washington State Liquor Control Board 3000 Pacific Ave SE PO Box 43076 Olympia WA 98504</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: Monday, November 10, 2014

OFFICE OF ADMINISTRATIVE HEARINGS



Melanie Barnhill
Legal Secretary