BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF STEVE & STARLARE HOVANDER d/b/a HOLY SMOKE BAR AND GRILL 8794 KENDALL RD. SUMAS, WA 98295-8204 LICENSEE License No. 360777	NO. 22,741 OAH NO. 2007-LCB-0009 FINAL ORDER OF THE BOARD

I. BOARD'S CONSIDERATION

The above entitled matter coming on regularly before the Board to review the Findings of Fact, Conclusions of Law and Initial Order entered by Administrative Law Judge Robert P. Kingsley on August 10, 2007, and it appearing:

1. A formal hearing was held on June 6, 2007 on the issue of whether the Hovanders application for a liquor license for Holy Smoke Bar and Grill should be denied. The Liquor Board notified the Hovanders (applicants) and Whatcom County (County) on January 17, 2007 that the Board intended to issue a license to the applicant and the Whatcom County Executive timely requested a hearing.

2. At the hearing the Licensing Division of the Board was represented by Assistant Attorneys General Jennifer Elias and Kate Reynolds. Tom Mumford, Attorney, appeared on behalf of the applicants and Karen L. Frakes, Deputy Prosecuting Attorney appeared on behalf of the County.

3. On August 10, 2007 Administrative Law Judge Robert P. Kingsley (ALJ) entered Findings of Fact, Conclusions of Law and Initial Order in this matter which upheld the Board's decision to issue the license over the objection of the County but which also remanded to the Board's Licensing Division to "investigate the criminal history of the applicant's adult children to determine whether the license should be issued subject to a condition that the children be excluded form operation or maintenance of the business or the licensed premises."

4. The applicant and the Board's Licensing Division each filed timely a timely Exception to or Petition for Review of the ALJ's initial order, each taking exception to the ALJ's Conclusion of Law No. 8 as incorrectly imposing a duty on the Licensing Division to investigate the criminal history of the adult children when those children did not appear on the license application filed by the limited liability company comprised only of Steve and Starlare Hovander. The applicant also alleged errors contained in Finding of Fact Nos. 5 and 6 and the Licensing Division asserted an error contained in Finding of Fact No. 16.

5. The County filed a timely response to the Licensing Division's Petition for Review and to the applicant's Exceptions. The County asserted the involvement of the applicant's adult children in the business, whether the children were parties on the license application, or not, posed a threat to public safety and urged the Board to affirm the ALJ's Order and requested the "license contain a condition excluding all or some of the children from the operation or maintenance of the business or the licensed premises."

6. The entire record of this proceeding was presented to the Board for its review and the entry of a final decision.

II. FINDINGS OF FACT

1. The Board affirms and adopts the ALJ's Findings of Fact, except as noted below.

2. The Board substitutes the following language for the existing Finding of Fact No. 5. The substitute Finding of Fact No. 5 which corrects the typographical errors noted by applicant, is as follows:

Finding of Fact No. 5:

The applicants have three sons. Aron was born in 1975 and Guy was born in 1977. Hal was born in 1985. They also have a daughter named Holly.

III. CONCLUSIONS OF LAW

The Board hereby adopts Conclusions of Law Nos. 1-7 and 9 as entered by the ALJ. The Board hereby **rejects** Conclusion of Law No. 8. The Board hereby enters the following Conclusion of Law No. 8 to substitute for the original, rejected, Conclusions of Law No. 8.

Conclusion of Law No. 8:

The applicants have testified that their children are not involved in the business project consisting of Holy Smoke Bar and Grill. Other evidence calls into question the credibility of the applicants' testimony on that matter. Therefore, the Board imposes upon the approved liquor license the following condition:

> Aron Hovander, Guy Hovander, Hal Hovander and Holly Hovander may not be owners of, participate in or otherwise be involved with the operation of the licensee's business Holy Smoke Bar and Grill, License No. 360777.

Violation of the above condition may subject the licensee to enforcement action by the Board's Enforcement Division and to sanctions including monetary penalties, license suspension, license revocation or license cancellation.

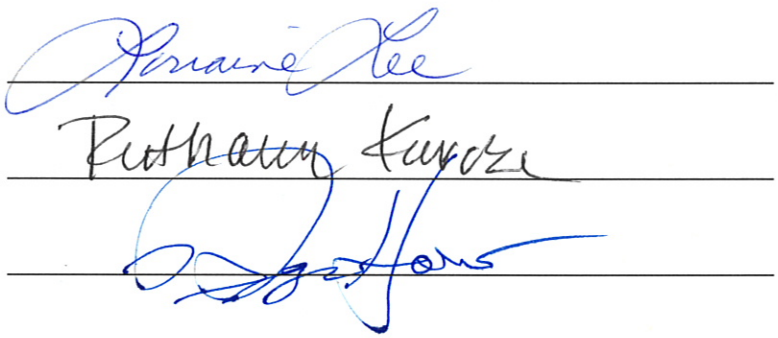
IV. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Board ORDERS:

The ALJ's Initial Order upholding the Board's decision to grant the license is AFFRIMED except as to Conclusion of Law No. 8. License No. 360777 is issued subject to the condition imposed in the Board's Conclusion of Law No. 8 above.

DATED at Olympia, Washington this 19th day of October, 2007.

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. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order or (b) there is specific material error of fact or law. 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 Martha P. Lantz, 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).