

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)
Proposed Suspension of the)
Package Store (PS))
License held by:) FINAL
) FINDINGS OF FACT,
Charles D. Bronson) CONCLUSIONS OF LAW,
Southland Corporation) AND ORDER
7-ELEVEN #23007)
16221 SE Stark)
Portland, Oregon 97233)
- - - - -)
Multnomah County)

A hearing in the above matter was held on the 14th day of July, 1983, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Licensee appeared in person and was not represented by legal counsel. The Commission was not represented by legal counsel.

RECORD OF PREVIOUS VIOLATIONS

NONE.

The Commission having considered the record of the hearing, the applicable law and regulations, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and now being fully advised, makes the following:

FINDINGS OF FACT

1. Licensee has held a Package Store (PS) license at 7-ELEVEN #23007 at all times relevant to these Findings of Fact.
2. Licensee has been charged with violation of ORS 471.315(1)(g) (sale to a minor) and ORS 471.130(1) (no S-146).

3. On May 9, 1983, at approximately 11:00 p.m., Mark R. Randolph entered 7-Eleven Store #23007 and purchased two 12-packs of Budweiser Beer.

4. Mr. Randolph was not asked for identification at the time of purchase nor did he produce any identification.

5. Mr. Randolph was born on May 19, 1963, and was therefore 19 years of age at the time of sale.

6. Mr. Randolph was dressed in blue jeans and a jacket, and had a slight mustache. He is five-feet-two-inches in height and weighs approximately 120 pounds. He appeared to be 17 or 18 years of age at the time of sale.

DISCUSSION

Licensee presented the argument that Mr. Randolph did not purchase the beer himself but that it had perhaps been purchased by someone else and given to him inside the store. However, the OLCC Inspectors, although they could not see the actual sale, did view the interior of the premises at the time of sale and observed that no one else was present. The Commission therefore concludes that this defense is not credible.

This case presents an unusual question regarding a licensee's responsibility. Prior to this violation, the 7-Eleven Store involved was operated as a "company store," rather than as a franchised operation. Charles D. Bronson was a prospective franchisee. Mr. Bronson had filed an application for a liquor license prior to this violation and, on April 29, 1983, he was issued an "Authority to Operate" by the OLCC. Thus, on

the day of the violation, May 9, 1983, Mr. Bronson was technically a Licensee (or at least he was subject to the liquor laws relating to licensees). However, Mr. Bronson was merely undergoing training by the Southland Corporation at another 7-Eleven Store at this time. He had no access to the premises involved in this violation, no control over the employees, and no right to any profits from the sale of alcoholic liquor. Mr. Bronson and the Southland Corporation, which was and is a co-Licensee according to Commission records thus ask that Mr. Bronson be exonerated from any responsibility for this violation. They are concerned not about the payment of a fine, which can be a matter between them, but the fact that the violation would go on Mr. Bronson's record.

Given the absence of any access or control by Mr. Bronson, the Commission believes that he should be exonerated from any responsibility for this violation and it should consequently not appear on his record with the Commission. It should, of course, appear on the record of The Southland Corporation.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission may cancel or suspend any license, or impose a monetary penalty in lieu of or in addition to suspension if it finds or has reasonable grounds to believe that the licensee knowingly has sold alcoholic liquor to persons under 21 years of age or to persons visibly intoxicated at the time of sale. ORS 471.315(1)(g).

The evidence establishes that on May 9, 1983, at approximately 11:00 p.m., the clerk on duty at 7-Eleven Store #23007 sold beer, an alcoholic liquor, to Mark R. Randolph, a person under the age of 21 years.

The fact that Mr. Randolph appeared to be only 17 or 18 years of age establishes that the sale was knowingly made.

2. All licensees, and their agents, representatives and employees, and all service permittees of the Commission, before selling or serving alcoholic liquor to any person about whom there is any reasonable doubt of the persons having reached 21 years of age, shall require such person to produce the person's motor vehicle operator's license or if the license does not bear a photograph of the operator, then an identification card issued by the Oregon Department of Motor Vehicles pursuant to ORS 482.900, et seq. However, if the person has no motor vehicle operator's license or identification card, the licensee, or his agent, representative or employee, or the service permittee shall require such person to make a written statement of age and furnish evidence of the person's true age and identity. Licensees, permittees and employees of licensees must examine all documents submitted as evidence of age and identity by persons of questionable age, shall be responsible for accurately recording the information from any such documents on statement of age forms, and shall refuse to sell or serve any alcoholic liquor to any person offering any altered, erased or falsely represented document of age and identification. ORS 471.130(1), and OAR 845-06-035(5).

The evidence establishes that Mr. Randolph was not asked to produce identification or to sign a Statement of Age form prior to the sale although there was reasonable doubt that he was 21 years of age.

ULTIMATE CONCLUSIONS OF LAW

The Commission may cancel or suspend any license, or impose a monetary penalty in lieu of or in addition to suspension as provided by ORS 471.322, if it finds or has reasonable ground to believe that the licensee has violated any provision of this chapter or any rule of the Commission adopted pursuant thereto. ORS 471.315(1)(a).

The Commission concludes that Licensee has violated ORS 471.315(1)(g) and ORS 471.130(1).

FINAL ORDER

It is hereby ordered that the Package Store (PS) license held by the Southland Corporation and Charles D. Bronson in the trade name 7-Eleven Store #23007, 16221 SE Stark Street, Portland, Oregon 97233, be SUSPENDED for seven (7) days or that Licensee pay a fine of \$455 in lieu of the suspension.

It is further ordered that Licensee Charles D. Bronson be exonerated from responsibility for this violation and that such exoneration appear on his record with the Commission.

It is further ordered that due notice of such action, stating the reasons therefor, be given as provided by law.

If you choose to pay the fine it must be paid within ten (10) days of the date of this Order, otherwise the suspension must be served.

Dated this 23rd day of August, 1983.



C. Dean Smith
Administrator
OREGON LIQUOR CONTROL COMMISSION

NOTICE: You are entitled to Judicial Review of this Order. Judicial Review may be obtained by filing a Petition for Review within 60 days from the service of this Order. Judicial Review is pursuant to the Provisions of ORS Chapter 183.