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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for a)	
Package Store (PS))	
License by:)	
)	FINAL
Arlie C. and Charles L. Woodard)	FINDINGS OF FACT,
TIGARD WINE AND BEER,)	CONCLUSIONS OF LAW,
OLCC AGENCY 1048)	AND ORDER
12490 SW Main Street)	
Tigard, OR 97223)	
-----)	
Washington County)	

A hearing in the above matter was held on the 23rd day of March, 1983, in Portland, Oregon, before Hearings Examiner Jill Thompson. The Applicants appeared in person and were not represented by legal counsel. The Commission was represented by legal counsel. The Commission having considered the record of the hearing, the Proposed Order of the Hearings Examiner, and the entirety of the Criteria for the Issuance and Maintenance of Licenses and applicable statutes and regulations, enters the following:

FINDINGS OF FACT

1. Applicant Charles Woodard is the agent for OLCC AGENCY 1048, which is an exclusive agency. Applicant's contract with the OLCC expires November 1, 1989.

2. Applicants applied in January, 1982 for a Package Store (PS) license, to be utilized on the agency premises.

3. On December 9, 1982, Commission staff recommended the application be denied based on OAR 845-05-020(6), which prohibits granting PS licenses to exclusive agencies.

4. The agency's 1982 gross sales were approximately \$1,300,000.

5. Charles Woodard's contract with the OLCC includes the following provisions:

Agent will devote full time to operation of the agency and will sell only liquor and any other items approved by the Commission, except that if the agent has a nonexclusive agency, agent may operate the agency as an adjunct to another business . . .

. . .

The Commission may change a nonexclusive agency to an exclusive agency, and vice versa, in accordance with standards set forth in its rules.

DISCUSSION

During the hearing Mr. Woodard stated he had made expenditures in anticipation of being granted a PS license. These expenditures included moving his premises in August, 1981 and removing a partition. He testified that his wife applied in September, 1981 for a PS license to be exercised at a different location, but they later decided to apply jointly and operate the package store on the agency's premises in order to economize on overhead expenses. The Commission concludes that if the Applicants did make expenditures in reliance on being granted a PS license the reliance was unreasonable, being based on an application which had not been made at the time of the expenditures and the grant of which was contraindicated by the existing "related items" rule, discussed below. Further, the language of the contract between Mr. Woodard and the OLCC cited

in Findings of Fact No. 5 inhibits any reasonable expectation that exclusive agents have a property right to a PS license.

Mr. Woodard argued that the rule cited as a basis for refusing their application discriminates against exclusive agents in favor of nonexclusive agents, and that the rule was retroactively applied to their application. He also stated that nonexclusive status is not uniformly applied because some nonexclusive agents' gross sales exceed the income limits for nonexclusive agency designation. These arguments challenge the validity of the Commission's rule and are not cognizable in a contested case proceeding, in which the Commission must presume the Commission's rule is valid. The Commission also presumes Applicants' arguments were raised and deliberated prior to adoption of the rule. A contested case hearing is a procedure whereby controverted facts are heard. Arguments attacking the policy or validity of a rule do not constitute controverted facts. Other channels exist for obtaining agency or judicial review of an administrative rule.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Criteria precluding issuing license. The following criteria shall preclude issuing a license:

. . . .

(6) The applicant is a retail sales agent of the Commission with a contract for an exclusive agency, or seeks to exercise the privileges of the license in the premises of an exclusive sales agent. OAR 845-05-020.

Applicant Charles Woodard is an exclusive retail sales agent of the OLCC. Both applicants seek to utilize a PS license on the agency premises.

2. (1) A retail sales agent with a contract for an exclusive agency is prohibited from selling, giving away, or otherwise making available in an agency store any item which is not designated in this rule as "related" to the sale of alcoholic liquors.

(2) Related items include the following:

- (a) Ice and mixers;
- (b) Foods such as olives, onions, and cherries which are used in drinks;
- (c) Bartender's guides, shakers, strainers, mixing spoons, swizzle sticks, and similar paraphernalia used in the preparation of drinks;
- (d) Glassware, coasters, straws, napkins, and other such items associated with the drinking of alcoholic liquors;
- (e) Items such as chewing gum, breath mints, and tobacco products.

(3) A retail sales agent with a contract for an exclusive agency shall not conduct any wholesale business, nor any other business not authorized by statute or by rule of the Commission, out of the agency store. OAR 845-15-045.

Sales of beer and wine permitted by a PS license are not "related items" allowed to be sold by exclusive retail sales agents. The above rule became effective January 1, 1981.

ULTIMATE CONCLUSIONS OF LAW

The Woodards' PS license application is precluded by the standards contained in OAR 845-05-020 and 845-15-045 as Charles Woodard is an exclusive retail sales agent of the OLCC, seeking to sell items not related to the sale of alcoholic liquor.

FINAL ORDER

It is hereby ordered that the application for a Package Store (PS) license by Arlie C. and Charles L. Woodard at TIGARD

WINE AND BEER, OLCC Agency 1048, 12490 SW Main Street, Tigard,
Oregon, be DENIED.

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

Dated this 23rd day of May, 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.