

BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the	)	
Proposed Letter of Reprimand	)	
re: the Dispenser Class A (DA)	)	
License held by:	)	FINAL
	)	FINDINGS OF FACT,
Richard and Sunya Porter	)	CONCLUSIONS OF LAW,
PORTERHOUSE	)	AND ORDER
331 Fifth Street	)	
Madras, Oregon 97741	)	
- - - - -	)	
Jefferson County	)	

A hearing in the above matter was held on the 25th day of January, 1983, in Madras, Oregon, and on the 16th day of March, 1983 in Portland, Oregon, before Hearings Examiner Douglas Crumme'. The Licensees appeared in person and were represented by D. Michael Mills, Attorney at Law. The Commission was represented by legal counsel.

RECORD OF PREVIOUS VIOLATIONS

<u>DATE</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
Dec 3, 1978	Drinking on Duty	\$300 fine
Jan 21, 1979	Disorderly Premises	Letter of Warning
Jun 14, 1980	Food Service	\$300 fine

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

FINDINGS OF FACT

1. Richard and Sunya Porter have held a Dispenser Class A (DA) license at the PORTERHOUSE, 331 Fifth Street, Madras, Oregon, at all times relevant to the Findings of Fact below.

2. The Commission's Enforcement Division has charged the Licensees with the violation of OAR 845-06-065(1) (purchased malt beverages or wine from licensed wholesalers and issued in payment therefor checks which were returned marked "NSF" by the bank).

3. On April 19, 1982, the Licensees wrote a check for \$118.00 in payment for beer and/or wine purchased from Central Oregon Distributors, a Wholesale Malt Beverage and Wine (WMBW) licensee. The check was returned unpaid due to insufficient funds in the Porters' account.

4. On April 20, 1982, the Licensees wrote a check for \$235.70 in payment for beer and/or wine purchased from Haines Distributing, a Wholesale Malt Beverage and Wine (WMBW) licensee. The check was returned unpaid due to insufficient funds in the Porters' account.

5. the Licensees received an information letter from the Commission on May 30, 1980 concerning the Commission's regulations against purchasing beer or wine from wholesale licensees with checks that are returned unpaid due to insufficient funds. The Licensees received a warning letter from the Commission on the same subject on or about December 4, 1981.

6. The Licensees made good the checks for \$118.00 and \$235.70 to wholesalers described in the Findings of Fact above.

7. From April 19, 1982 through April 22, 1982, ten checks written by the Licensees to various payees, including the two to wholesalers described above, were returned due to insufficient funds.

8. Licensee Richard Porter entered prison on March 8, 1982. Mr. Porter had been primarily responsible for the paperwork and purchasing at the Porterhouse prior to his entering prison. Mr. Porter's wife, Licensee Sunya Porter, took these duties over after Mr. Porter entered prison on March 8, 1982.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. No retail licensee shall pay for malt beverages or wines purchased from a wholesale licensee with a check or other instrument which upon presentation shall not be paid by the party on whom it is drawn. OAR 845-06-065(1).

The Licensees violated OAR 845-06-065(1) on April 19, 1982 and April 20, 1982 for the two checks written on these dates to wholesalers in payment for malt beverages or wines that were returned unpaid due to insufficient funds.

ULTIMATE CONCLUSIONS OF LAW

1. When there has been a violation of ORS Chapter 471 or 472, or any rule adopted thereunder, upon any premises licensed by the Commission, the Commission may revoke or suspend either the service permit of the employee who violated the law or rule or the license of the licensee upon whose premises the violation occurred, or both the permit and the license. ORS 471.385(3).

The Commission may cancel or suspend the Licensees' license for the violation of OAR 845-06-065(1) (issued NSF checks to WMBW licensee in payment for beer or wine).

This violation is not mitigated with respect to the Letter of Reprimand proposed by the Enforcement Division. The Commission notes, however, that this violation appears to be connected with Sunya Porter's newness to the duty of issuing checks to purchase beer and wine for the Porterhouse because of the

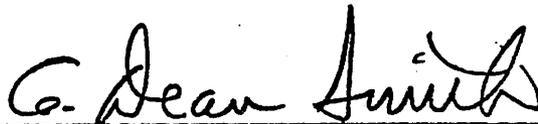
entry of her husband into prison on March 8, 1982. During the period in question a number of NSF checks were written on the Licensees' account to payees other than wholesale licensees of the Commission. Thus, the issuance of the NSF checks in this case does not appear to have been motivated by an intent to gain financial assistance.

FINAL ORDER

It is hereby ordered that Richard and Sunya Porter, doing business as the Porterhouse, 331 Fifth Street, Madras, Oregon, be issued a LETTER OF REPRIMAND for the violation of OAR 845-06-065(1) on April 19 and 20, 1982.

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

Dated this 24th day of October, 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.