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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the Application for Renewal of a Dispenser Class A (DA) License by: Antoinette Toffolo TONI'S RESTAURANT 3921 Proctor Boulevard Sandy, Oregon 97055 - - - - - - - - - - - - Multnomah County	)	FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

A hearing in the above matter was held on the 27th day of April, 1983, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Applicant appeared in person and was represented by John Marandas, Attorney at Law, Portland. The Commission was not represented by legal counsel. The Commission having considered the record of the hearing, the Proposed Order of the Hearings Examiner, Exceptions to 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 has held a Dispenser Class A (DA) license at all times relevant to these Findings of Fact. The license expired on March 31, 1983.

2. The Commission's Staff has recommended that the license not be renewed based on OAR 845-05-025(4) (food sales less than 25 percent of total sales).

3. Applicant's premises is located on a side street just off Highway 26 in Sandy, Oregon.

4. Applicant has owned the premises for approximately 4-1/2 years: the first 2-1/2 to three years as a co-owner and the last 1-1/2 as sole owner.

5. Applicant's application for renewal for 1983-84 reflects the following average monthly sales during 1982: food - $2,063; liquor - $14,553. Food sales were thus 12.42 percent of total gross sales.

6. The food percentage at this premises during prior years has been as follows:

1981	8.21 %
1980	19.01 %
1979	28.50 %
1978	26.90 %

7. Monthly sales at the premises during 1982 and early 1983 have been as follows:

MONTH	FOOD	LIQUOR	TOTAL	FOOD PERCENTAGE
1982				
January	$1,022	$11,187	$12,209	8.4
February	916	10,025	10,941	8.4
March	1,363	14,965	16,328	8.3
April	1,590	14,285	15,875	10.0
May	1,857	14,445	16,302	11.4
June	2,075	14,728	16,803	12.3
July	2,820	19,655	22,475	12.5
August	2,391	13,580	15,971	15.0
September	2,984	14,423	17,407	17.1
October	2,664	17,169	19,833	13.4
November	2,303	13,367	15,670	14.7
December	2,767	16,848	19,615	14.1
1983				
January	2,990	14,904	17,894	16.7
February	3,160	13,760	16,920	18.7
March	3,928	18,920	22,848	17.2

8. Applicant's premises has food service from 8:00 a.m. to 2:30 a.m. The dining room closes at 8:00 p.m., but food service is available after that time.

9. Applicant's breakfast menu has omelets, pancakes, eggs, sausage, bacon and other typical breakfast items. Prices for full breakfasts range from about $2.50 to $3.25.

10. Applicant's lunch and dinner menu contains the following items: spaghetti, lasagne, hot roast beef, French dip, fried chicken, fish and chips, hamburger, cheeseburger, chili-burger, chicken nuggets, clam strips, and shrimp basket. In addition, the following sandwiches are offered: ham, beef, turkey, pastrami, bacon, lettuce and tomato, grilled tuna, grilled cheese, mini deli, and mini pizza. Several side dishes are also offered.

11. In addition to the above items, Applicant offers several specials on occasion, such as chef salad, top sirloin, chicken fried steak, breaded veal cutlet, and others.

12. The prices on the regular lunch and dinner menu range from about $2.00 to $4.00. Some of the special full dinners may cost as much as $7.95.

13. Applicant has taken the following steps recently in an attempt to encourage food service. She has changed the menu slightly, adding Italian dishes; she has lowered the light fixtures in the dining room to create an atmosphere more conducive to dining; she has replaced the front windows to give the premises more of a restaurant appearance; she has offered bonuses

to her waitresses for selling food; she requires the disc jockey who works several nights per week playing recorded music at the premises to make announcements advertising food service to patrons.

14. Applicant has done no advertising on radio or in newspapers recently. There are a number of interior and exterior signs at the premises advertising food, however.

15. Applicant received no citations for improper food service during 1982.

16. Applicant blames her low food sales on difficult economic conditions in Sandy and throughout the state.

17. Applicant has no means of support other than the restaurant/lounge.

18. Applicant offered petitions containing approximately 250 signatures of those supporting the renewal of the license.

19. Applicant also offered letters in support of the application. Two were from employees of the establishment. Another was from a citizen of Sandy. A fourth letter was from the owner of an insurance company.

20. Applicant also offered a letter from the Mayor of Sandy, Ruth M. Loundree. This letter does not specifically endorse the renewal, but states as follows, in pertinent part:

> "The City endorsed your dispenser's license on January 17, 1983, and I have no reason to believe that the City Council would change their position on the license endorsement.
>
> Since we have no reason to make an investigation beyond the background check for the

endorsement, the City does not get involved in disputes between the OLCC and the proprietor of an establishment.

I'm sure you will have a fair hearing before the OLCC."

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The following criterion will be given sufficient consideration so that a license will not be issued unless good cause which outweighs the criterion is shown by the applicant:

   The applicant seeks a Dispenser Class "A" license and has less than or is unable reasonably to project at least 25 percent ratio of food sales to gross sales of food and alcoholic liquor. OAR 845-05-025(4).

   Failure by a Class "A" Dispenser licensee to maintain at least a 25 percent ratio of food sales to gross sales of food and alcoholic liquor may be grounds for refusal to renew a license unless the licensee has fully complied with the requirements of this rule and adequately demonstrates that a serious and substantial effort has been made to emphasize food service. OAR 845-08-015(5).

The evidence establishes that Licensee's food sales have been less than 25 percent of total sales during the 12 months preceding the expiration of the license on March 31, 1983. The Commission concludes, nevertheless, that the rules quoted above provide a basis for renewing the license.

It is noted that there has been a significant upward trend in food percentage and in dollar volume of food sales during the past fifteen months. The rise has been slow but relatively steady. Sales of food are still significantly less than 25

percent of total sales, but the trend, if maintained, would result in the 25 percent figure being reached eventually. The fact that food sales during 1978 and 1979 were somewhat above the 25 percent figure indicates that the potential for further improvement exists. It is thus not unreasonable to project that the premises can meet the 25 percent figure in the future. It would not be realistic to assume that the figure would be reached within the next few months, however.

The evidence also establishes that Licensee has made some efforts to emphasize food service through internal advertising, payment of bonuses to waitresses for food sales, some changes in the decor of the premises, and some changes in the menu. It should be noted that the dinner menu is not extensive, but Licensee has apparently attempted to change it to meet the desires of her clientele by adding Italian dishes. The evidence also indicates that food is available at the premises at all times during which alcoholic beverages are for sale. The Commission concludes that Licensee has made serious and substantial efforts to emphasize food service. The evidence also establishes that Licensee has complied with all other aspects of the food service requirement.

Licensee's claim that some of her problems in selling food have resulted from poor economic conditions probably has some validity, although it is not something that can be specifically established by factual evidence.

It is acknowledged that there are negative aspects to the picture, also. Licensee's menu is not extensive and appears to emphasize "short order" foods. Her efforts at advertising have not been extensive. Nevertheless, on balance, the Commission concludes that these criteria provide a basis for renewing the license.

ULTIMATE CONCLUSIONS OF LAW

Although sales of food at Applicant's premises have been less that 25 percent of total food and alcoholic beverage sales, the license should nevertheless be renewed because Licensee has made serious and substantial efforts to emphasize food service, Licensee has met the other requirements of the food service regulations, and because the upward trend in food sales at the premises indicate that Licensee may eventually reach the 25 percent figure. OAR 845-05-025(4) and OAR 845-08-015(4).

FINAL ORDER

It is hereby ordered that the application for renewal of a Dispenser Class A (DA) license by Antoinette Toffolo in the trade name Toni's Restaurant, 39210 Proctor Boulevard, Sandy, Oregon 97055, be GRANTED with a cautionary letter advising the Licensee that future renewal applications will be closely reviewed by the Commission to determine if the provisions of OAR 845-05-025(4) and 845-08-015(5) have been met and/or complied with. Such compliance being required in order to assure renewal of the license.

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 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.