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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)
Application for)
Renewal of the)
Retail Malt Beverage (RMB))
License by:)
)
Richard D. Harris)
ACE HI TAVERN)
607 SE Morrison)
Portland, OR 97214)
- - - - -)
Multnomah County)

FINAL
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

A hearing in the above matter was held on the 6th day of October, 1983, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Applicant appeared in person and was not represented by legal counsel. The Commission was not 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 has held a Retail Malt Beverage (RMB) license at the ACE HI TAVERN at all times relevant to these Findings of Fact. The license expired June 30, 1983.

2. The Commission's Staff has recommended that the license not be renewed based upon OAR 845-05-025(1) (negative recommendation by the City of Portland), OAR 845-05-025(10) (illegal activities or recent history of altercations, noisy conduct, or other disturbances in or around the premises), and

OAR 845-05-035 (public opinion weighs against the issuance of the license).

3. On June 16, 1983, the Portland City Council voted to recommend to the OLCC that the application be denied. The vote followed a lengthy discussion of the matter. The Council heard testimony from representatives of the Bureau of Police and the Bureau of Licenses. The Council also heard from a representative of the Central Eastside Industrial Council. Applicant Richard D. Harris was present with legal counsel at the City Council meeting and had the opportunity to present testimony.

4. The testimony of police officers at the City Council meeting related to disturbances and sales of narcotics in and around the premises.

5. The specific incidents mentioned by the police officers included the following: September 5, 1982, a patron was shot to death in the tavern; November 15, 1982, bartender in the tavern was assaulted; December 5, 1982, assault in the tavern; December 10, 1982, assault in the tavern; January 22, 1983, patron threatened another with a pistol in the tavern and then cut him with a knife outside the premises; February 18, 1983, a man with a gun was arrested outside the premises; April 20, 1983, a purchase of purported narcotics occurred in the premises; May 2, 1983, an undercover police officer purchased cocaine in the premises; May 5, 1983, an undercover police officer outside the premises was kicked by a prostitute who had come out of the tavern.

6. The police officer also told the City Council that licensees have always been cooperative with the police. He stated further that the employees of the premises have often not been cooperative, however.

7. The Central Eastside Industrial Council, which was represented both at the City Council hearing on the Ace Hi Tavern and at the OLCC hearing on this matter, is an association of approximately 200 businesses and many individuals who work or live in the general area in which the Ace Hi Tavern is located. The Council expressed opposition to the renewal of the license based upon violence associated with the tavern, narcotic activity in and around the tavern, and upon the "violent or criminal element" which is attracted to the tavern.

8. The Ace Hi Tavern is located approximately one block from the Clifford Hotel. The Clifford has been used for at least two years as a facility for convicts about to be released on parole. Many of the convicts who stay at the Clifford Hotel have patronized Ace Hi Tavern, some of them in search of prostitutes or narcotics. Applicant attributes most of the problems to these people.

9. Applicant also attributes many of the problems to the fact that police crackdowns on prostitution and other illegal activities on NE Union Avenue have driven many of the people involved south to his location. He also believes that residents of skid road have been driven from their Burnside area locale and have tended to come across the river to the area in which the Ace Hi Tavern is located.

10. Applicant has taken steps to correct some of the problems. He has barred approximately 20 people from the premises recently. He has also begun to work on the premises during the last several months in an attempt to prevent problems. He has had some success in doing so.

11. Applicant has been licensed at the Ace Hi Tavern since 1977. He has had one OLCC violation ticket from that time, for allowing criminal activity on the premises, specifically the sale of stolen merchandise in 1978. He has operated the Side Show Tavern on East Burnside in Portland since 1980 and has received one ticket there for service to a visibly intoxicated person. He also operated a tavern in Rainier, Oregon for a few months in 1982.

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 involved is shown by the applicant:

An adverse recommendation by the governing body of the appropriate city or county, after due consideration. The recommendation may be disregarded by the Commission if the body has failed to give to the applicant and to interested members of the public both reasonable notice of the proceedings at which the application was considered and reasonable opportunity to be heard. OAR 845-05-025(1).

The evidence establishes that the appropriate local governing body, the Portland City Council, recommended to the Commission that the application be denied. The evidence also establishes that the City considered the matter at considerable

length and that Applicant had notice of the proceeding and opportunity to be heard at it. The Commission concludes that this criterion provides a basis for denying the application.

Applicant presented credible testimony that he has made some successful attempts to overcome the problems that led the City Council to make a negative recommendation. However, the Commission concludes that the evidence is not sufficient to constitute "good cause" for overcoming the negative recommendation.

2. 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 licensing of the premises would not be in the best interest of the community because of illegal activities or a recent history of altercations, noisy conduct or other disturbances in or around the premises under the applicant's or others ownership or control. OAR 845-05-025(10).

During 1982 and 1983, police reports establish approximately eight incidents in which disturbances, altercations or other illegal activities occurred inside the premises, and two other incidents in which such activities occurred nearby. The Commission concludes that these incidents establish a "recent history" of such activities and that this criterion is therefore a basis for denying the application.

3. The Commission may refuse to issue or renew a license if it determines that public opinion weighs against the issuance of a license. Interested persons may express their support for or opposition to the issuance of a particular license by petition or letter timely received at the Commission

offices, or by personal appearance and testimony at a Commission hearing, if any. Such public opinion will be evaluated in light of the reasons expressed and the extent to which the persons expressing it are likely to be affected by the issuance of the license. Greater weight will be given to the opinion of persons residing, working or owning a business within a one-mile radius of the proposed premise. The number of persons expressing support or opposition will not, in and of itself, be controlling. OAR 845-05-035.

The evidence establishes that the Central Eastside Industrial Council expressed opposition to the granting of the license. This Council, although not purporting to represent everybody in the immediate area, does represent a substantial number of businesses in the area. Applicant provided no counterbalancing evidence of public support for the application. The Commission concludes that this criterion also provides a basis for denying the license.

ULTIMATE CONCLUSIONS OF LAW

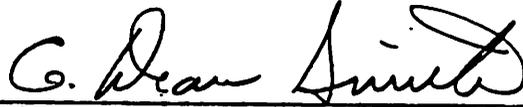
The application for renewal of the RMB license should be denied because the local governing body has recommended denial, because there is a recent history of altercations and disturbances in or around the premises, and because public opinion weighs against the granting of the license. OAR 845-05-025(1), (10), OAR 845-05-035.

FINAL ORDER

It is hereby ordered that the application for renewal of a Retail Malt Beverage (RMB) license for Richard D. Harris in the trade name Ace Hi Tavern, 607 SE Morrison, Portland, Oregon 97214 be DENIED.

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

Dated this 27th day of February, 1984.



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.