

jt

BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the	)	
Proposed Suspension of the	)	
Dispenser Class A (DA)	)	
License held by:	)	FINAL
	)	FINDINGS OF FACT,
Emilio M. Gutierrez	)	CONCLUSIONS OF LAW,
EL CHARRO	)	AND ORDER
2790 Market Street	)	
Salem, OR 97301	)	
- - - - -	)	
Marion County	)	

A hearing in the above matter was held on the 5th day of October, 1983, in Salem, Oregon, before Hearings Examiner Jill Thompson. The Licensee appeared in person and was not represented by legal counsel. The Commission was not represented by legal counsel.

The Hearings Examiner, having considered the record of the hearing, the applicable law and regulations and being fully advised, issued a Proposed Order dated January 26, 1984.

No Exceptions were filed to the Proposed Order within the fifteen (15) day period specified in OAR 845-03-050.

RECORD OF PREVIOUS VIOLATIONS

NONE.

Now, therefore, the Commission hereby adopts the Proposed Order of the Hearings Examiner as the Final Order of the Commission, and enters the following:

FINDINGS OF FACT

1. Emilio Gutierrez held a Dispenser Class A (DA) license at EL CHARRO, 2790 Market Street, Salem, Oregon at all times relevant to the facts herein.

2. Licensee has been charged by the Commission with violation of ORS 472.180(10) (conviction of municipal ordinance violation).

3. On May 20, 1983 Licensee pled guilty to, and was convicted of, violation of a City of Salem ordinance prohibiting "loud and unnecessary noise."

4. The Licensee was cited for the above violation by officers of the Salem Police Department following their investigation of a noise complaint about the premises.

5. Licensee has live music Thursdays through Sundays between 9:00 p.m. and 2:00 a.m.

6. Salem police visited the premises on May 13 and 15, 1983. Each time they spoke with Licensee about the noise. On May 13 the Licensee told an investigating officer he would try to keep the premises' door closed and would speak to the band.

7. On May 13 at about 12:40 a.m. Licensee's door was open and the music was loud enough to disrupt normal conversation from an approximate 100-foot distance. On May 15 at about 2:00 a.m. the door was again open and the music loud enough to be disturbing from approximately 150 feet away.

8. The Salem police feel the noise level at El Charro on May 13 and 15 violated the noise ordinance whether the door was open or closed.

9. The noise complaints to the police were made by one individual who feels strong animosity toward Licensee. Another neighbor who lives closer to Licensee than the complainant has never complained about noise from El Charro.

## DISCUSSION

Licensee raised two arguments at the hearing. The first was that he entered a guilty plea to avoid the cost of legal representation, but not as an acknowledgement that he had violated the ordinance. His other contention is that the individual who filed the noise complaints with the police did so out of malicious motives based on racial prejudice.

Neither argument is persuasive in establishing mitigating factors. Even if Licensee pled guilty solely to avoid legal fees, that fact does not establish that he was not guilty of the cited conduct. And even if the individual complaining of the noise was motivated by racial bias and personal vindictiveness, Licensee was cited as a result of an independent police investigation. Licensee did not argue that the police were guided by impermissible intent.

### ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission may cancel or suspend any license granted or impose a monetary penalty in lieu of or in addition to suspension as provided by ORS 472.187, if it finds:

. . .

(10) That the licensee, since the granting of the license, has been convicted of a felony or has been convicted of violating any of the liquor laws of this state, general or local, or has been convicted of any misdemeanor or violation of any municipal ordinance where such misdemeanor or violation of municipal ordinance was committed on the licensed premises. ORS 472.180(10).

Licensee was convicted May 20, 1983 of violating a City of Salem ordinance prohibiting "loud and unnecessary noise."

ULTIMATE CONCLUSIONS OF LAW

Licensee has violated ORS 472.180(10) (convicted of municipal ordinance violation). No mitigating factors are present.

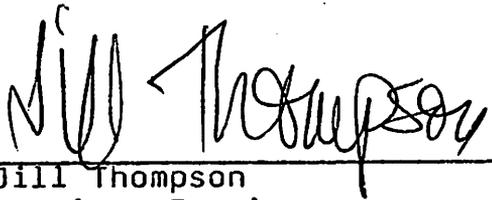
FINAL ORDER

It is hereby ordered that the Dispenser Class A (DA) license held by Emilo M. Gutierrez at El Charro, 2790 Market Street, Salem, Oregon be SUSPENDED for three (3) days or that Licensee pay a \$195 penalty in lieu of suspension.

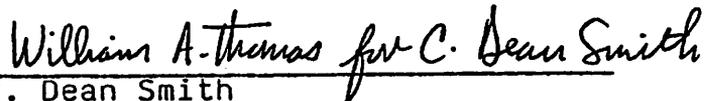
It is further ordered that due notice of such action, stating the reasons therefor, be given as provided by law.

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 13th day of February, 1984.



Jill Thompson  
Hearings Examiner  
Hearings Division



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.