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BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the	)	
Application for Change to	)	
Corporate Status by:	)	FINAL
	)	FINDINGS OF FACT,
Family Zoo, Inc.	)	CONCLUSIONS OF LAW,
THE FAMILY ZOO TAVERN	)	AND ORDER
820 SW Oak Street	)	
Portland, Oregon 97205	)	
- - - - -	)	
Multnomah County	)	

A hearing in the above matter was held on the 19th day of May, 1983, in Portland, Oregon, before Hearings Examiner Jill Thompson. The Applicant appeared in person and was represented by Donald W. Andrews, Attorney at Law, Portland. The Commission was represented by legal counsel. Post-hearing written argument on behalf of the Commission was submitted by Arnold B. Silver, Assistant Attorney General.

The Hearings Examiner, having considered the record of the hearing, the applicable law and regulations and being fully advised, issued a Proposed Order dated July 31, 1984.

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

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. Applicant has requested a Retail Malt Beverage (RMB) license at The Family Zoo Tavern, 820 SW Oak Street, Portland, Oregon. The application is being made solely to effect a

change in organization; the present Licensee at the premises is Robert Hoblit, who wishes to incorporate his business. Mr. Hoblit is sole owner of the applicant.

2. The Commission refused the application, citing the following grounds:

- a. ORS 471.295(4)(a), OAR 845-05-025(11). The owner, director and sole stockholder is in the habit of using alcoholic beverages, habit forming drugs or controlled substances to excess. The president, director and sole stockholder has a record of abuse of alcoholic liquor or controlled substances.
- b. ORS 471.295(4)(d), OAR 845-05-025(11). The president, director and sole stockholder has been convicted of a felony, driving while suspended, and also, promoting prostitution (a felony).
- c. ORS 471.295(4)(g), OAR 845-05-030(4). The president, director and sole stockholder has a poor record of compliance with the alcoholic liquor laws of this state.

3. Robert Hoblit has been licensed at the Family Zoo since 1971. His license renewals have been approved every year since then.

4. Mr. Hoblit has been convicted of the following alcohol or drug-related offenses, all in Portland, Oregon:

<u>OFFENSE</u>	<u>DATE</u>
Criminal Drug Promotion	9-18-72
Public Intoxication	1-17-73
DUIL	2-02-76
DUIL	9-13-76
Possession of Marijuana, Less than one ounce	7-18-81

None of the above was a felony.

5. Mr. Hoblit has never been convicted of a felony, nor has he been convicted of promoting prostitution.

6. Mr. Hoblit was found by the Commission to have committed the following violations of liquor laws or regulations:

<u>VIOLATION</u>	<u>DATE</u>	<u>DISPOSITION</u>
Permitted minor to enter or remain; failed to take S-146 or check I.D.	Nov 1976	\$275 Fine
Permitted minor to consume, enter or remain; failed to check I.D. or take S-146	May 1980	\$200 Fine
Failed to submit timely renewal	Aug 1980	Letter of Warning
NSF Check	Dec 1980	Letter of Warning
NSF Check	Oct 1981	\$325 Fine

7. Mr. Hoblit is the sole stockholder of Family Zoo, Inc., and was the sole owner of Family Zoo Tavern.

8. During 1977, Mr. Hoblit began medical and counseling treatment for alcohol abuse. He continued the treatment program for about two years. He has not had alcohol use problems since.

9. In 1978, Mr. Hoblit was one of a group of individuals who applied for a license change for an existing DA outlet. At that time he furnished to the Commission information about his past convictions.

#### DISCUSSION

Both parties submitted written legal argument on issues raised in the hearing. Applicant argued that because the Commission has been aware of his law violations since 1978 (Finding of Fact 9) and has nevertheless renewed his license yearly, it is now estopped from denying this application on the basis

of those violations. The Commission argued that Applicant does not meet the legal standard necessary to claim estoppel, and that estoppel will not lie against the State, at least in these circumstances.

The elements of equitable estoppel are as follows:

- (1) False representation by the party against whom the estoppel is claimed;
- (2) The representation was made with knowledge of the facts;
- (3) The party seeking redress must have been ignorant of the "truth;"
- (4) The representation must have been made with the intention that the other party would act on it; and
- (5) The other party was thereby induced to act upon it. Clackamas County v. Emmert, 14 Or App 493, 499 (1972) (citing other cases).

For equitable estoppel to operate in this case, Commission staff would have had to: 1) misrepresent to Mr. Hoblit the standards which would be applied to his request for change to corporate status; 2) when it knew his request would be treated in a different manner than that indicated to him; 3) while Mr. Hoblit was not, and could not be imputed to be, aware that new licensing criteria could be applied to his request; 4) the staff would have to have intended the misrepresentation would result in further action by Mr. Hoblit; and 5) Mr. Hoblit was induced by the misrepresentation to take steps to change his organizational structure.

The Commission cannot conclude from the evidence that continued renewal of Mr. Hoblit's license by the Commission, even

though it had been notified in 1978 of his law violations, constituted a representation that they would never be cited as the basis for application refusal. Because that action by the staff is the only behavior cited by Mr. Hoblit as a false representation, estoppel is not established; for the last four elements of estoppel to operate, the first must exist: a false representation must have been made.

The failure to not renew Mr. Hoblit's license in the years subsequent to 1978 cannot be used to restrict future licensing responsibility and authority of the Commission, even if that failure constitutes error by the Commission. Thrift v. Adult and Family Services Division, 58 Or App 13 (1982). In this general regard, Applicant argues that ORS 471.290(1) imposed a duty on the Commission to deny Applicant's renewal application when it first learned of the acts upon which it now bases its refusal. The provision of ORS 471.290(1) which Applicant argues imposed a duty to act earlier is as follows:

"No license shall be granted or renewed until the provisions of the Liquor Control Act and the rules of the Commission have been complied with."

The short answer to this contention is that there is no evidence indicating the Licensing staff was aware of Mr. Hoblit's violations in the context of his Family Zoo license. The information was presented as part of a license application for a different outlet; although it also contained an entry showing that Mr. Hoblit was the owner of the Family Zoo, it is doubtful that the Commission owed a public or private duty to cross-reference that information to the Family Zoo licensing file.

Applicant has cited no cases in support of that proposition, and the Commission is not aware of any.

The dispositive answer is that even if the license had been illegally renewed, that renewal would not preclude the Commission from implementing its statutory and regulatory powers. Thrift, supra; Clackamas County v. Emmert, 14 Or App 493 (1973). The Commission concludes that estoppel will not lie against the Commission on the facts of this case.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission may refuse to license any applicant if it has reasonable ground to believe any of the following to be true:

. . .

(4) That the applicant:

(a) Is in the habit of using alcoholic beverages, habit-forming drugs or controlled substances to excess. ORS 471.295(4)(a).

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

. . .

(11) Any officer, director, or owner of more than ten percent of the voting stock of a corporate applicant, or any general partner, or any limited partner whose investment commitment is more than ten percent of the total investment commitment of a limited partnership has a record of abuse of alcoholic liquor or controlled substances . . . OAR 845-05-025(11).

Between 1972 and 1976 Mr. Hoblit was convicted of three alcohol and one drug-related misdemeanors. Following those convictions he underwent a lengthy treatment and rehabilitation

program. In 1981 he was convicted of possession of less than an ounce of marijuana, which is a law violation.

These convictions are too remote in time to meet the statutory requirement that Applicant "[i]s in the habit" of excessive use of alcohol or drugs. ORS 471.295(4)(a), emphasis added. Although the criterion of OAR 845-05-025(11), that Applicant's owner "has a record" of abusing alcohol or drugs, is met by Mr. Hoblit's record of convictions, the remoteness in time of the offenses and the fact that he was successfully treated for alcohol abuse indicates that he has overcome his difficulties with alcohol and controlled substances. Further, denial of this application would not affect Mr. Hoblit's license to operate the premises or effect any change in its management. The Commission concludes that these circumstances provide good cause which outweighs the criterion in 845-05-025(11).

2. The Commission may refuse to license any applicant if it has reasonable ground to believe any of the following to be true:

. . . .

(4) That the applicant:

(d) Has been convicted of violating any of the alcoholic liquor laws of this state, general or local, or has been convicted at any time of a felony. ORS 471.295(4)(d).

The only contention made by the Commission justifying application of this statute was that Mr. Hoblit had been convicted of two felonies. Mr. Hoblit has never been convicted of a

felony, and therefore the Commission concludes that the Commission's contention is unfounded.

3. The Commission may refuse to license any applicant if it has reasonable ground to believe any of the following to be true:

. . .

(4) That the applicant:

(g) Did not have a good record of compliance with the alcoholic liquor laws of this state and the rules of the Commission when previously licensed. ORS 471.295(4)(g).

The following criteria will weigh against issuing a license:

. . .

(4) There is a final order of a court or administrative agency in a criminal or civil proceeding finding a failure to comply with the liquor laws of this or any other state by the applicant or by any officer, director, or owner of more than ten percent of the voting stock of a corporate applicant, or any general partner, or any limited partner whose investment commitment is more than ten percent of the total investment commitment of a limited partnership. OAR 845-05-030(4).

Between 1972 and 1981 Mr. Hoblit was found by the OLCC to have violated five of its statutes or regulations, and by state courts to have committed three separate statutory violations. However, exercise of these criteria would not deprive Mr. Hoblit of a license or affect his operation of the premises. The sole impact of refusing the request would be to deny applicant a particular organizational structure. Further, the Commission takes notice that the Commission at its July, 1984, meeting concluded that the same violations were insufficient to deny

Hoblit's license renewal. The Commission concludes that these criteria should not weigh against granting Applicant's request.

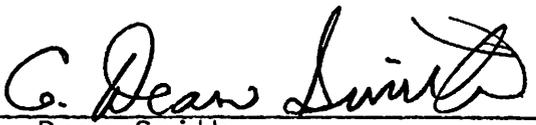
FINAL ORDER

It is hereby ordered that the application for a change to corporate status made by Family Zoo, Inc. at The Family Zoo Tavern, 820 SW Oak Street, Portland, Oregon, be GRANTED.

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 August, 1984.

  
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Jim Thompson  
Hearings Examiner  
Hearings Division

  
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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.