

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the Proposed)	
Letter of Reprimand Concerning)	
the Retail Malt Beverage (RMB))	
License held by:)	FINAL
)	FINDINGS OF FACT,
Katherine A. Wallace)	CONCLUSIONS OF LAW,
HIDDEN TAVERN)	AND ORDER
6525 SE 52nd Avenue)	
Portland, Oregon 97206)	OLCC-84-V-005
- - - - -)	
Multnomah County)	

A hearing in the above matter was held on the 1st day of July, 1984, in Portland, Oregon, before Hearings Examiner Jill Thompson. The Licensee appeared in person and was represented by George Jenks, Attorney at Law, Portland, Oregon. The Commission was not represented by legal counsel.

RECORD OF PREVIOUS VIOLATIONS

NONE.

On November 26, 1984, the Commission considered the record of the hearing, the applicable law and regulations, the Proposed Order of the Hearings Examiner, and Exceptions to the Proposed Order of the Hearings Examiner. Being fully advised, the Commission makes the following:

FINDINGS OF FACT

1. At all times relevant to the facts herein, Katherine A. Wallace held a Retail Malt Beverage (RMB) license at HIDDEN TAVERN, 6525 SE 52nd Avenue, Portland, Oregon.

2. The Commission has charged Licensee with violation of OAR 845-06-010(6) (hidden financial interest; later renumbered

845-06-010(4)), which is alleged to have occurred on or about August 1, 1983.

3. For about the last year Licensee has been too ill to actively manage the premises. Additionally, the outlet has never been profitable.

4. Licensee's landlord is her husband, Richard Wallace. Mr. Wallace is a consulting chemist and does not wish to become involved in the operation of the premises. Nevertheless, Mr. Wallace loaned Licensee a total of \$22,165 in two separate loans evidenced by written agreements; the loans were made in August 1982 and February 1984.

5. The premises' checking account is in the names of both Wallaces, and Mr. Wallace has access to the funds deposited therein.

6. Licensee made one installment payment on the August 1982 loan, but was unable to make further payments; Licensee also pays rent to Mr. Wallace. Other than those payments Mr. Wallace has not received, directly or indirectly, any profits from the premises.

7. Licensee has been attempting to sell the business. She has signed a stipulation with Enforcement Division that if this charge results in a penalty greater than the letter of reprimand assessed in the charge letter, she will accept a fine with no suspension option as the sole penalty.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. During the term of the license, no person shall obtain an interest in the business covered by the license without prior approval of the Commission. This applies

to any significant interest in the business whether or not such interest is specifically described in other sections of this rule. OAR 845-06-010(6) (later renumbered 845-06-010(4)).

The facts that Licensee's husband is the premises' landlord and creditor do not constitute violation of the above rule. OAR 845-06-010(3)(b) and (c) (later renumbered 845-06-010(3)(a)(B) and (C)). OAR 845-06-010(3) (later renumbered 845-06-010(3)(a)) defines as financially interested persons anyone "receiving or entitled to receive, directly or indirectly, from the licensed premises a percentage of its gross or net profits . . ." The fact that Licensee's husband was authorized to write checks against the premises' checking account does not constitute entitlement to the business profits. In order to be entitled to a percentage of the profits, Mr. Wallace must have an enforceable agreement, oral or written, with Licensee that he has a legal right to a predetermined share of the profits. There is no evidence of such an agreement. The only agreement between Licensee and her husband evidenced in the record was that Mr. Wallace would pay the premises' bills. Licensee was under no compulsion to deposit, or direct a deposit, of any of the business revenues in that account. Without an obligation to direct a specific amount to Mr. Wallace, other than valid loan and rent payments, Licensee has not entitled him to receive a percentage of the profits.

Nor has Mr. Wallace received a percentage of the profits. The Commission did not allege that he received any payments which were not authorized by Commission rules. Because he

never received any profits, entitlement to a profit percentage by Licensee's practice cannot be imputed. The Commission concludes that no one but Licensee was entitled to, nor did, receive a percentage of the profits.

ULTIMATE CONCLUSIONS OF LAW

Licensee did not violate OAR 845-06-010(6) (later renumbered 845-06-010(4)), and the charge should be dismissed.

FINAL ORDER

It is hereby ordered that the charge made against Katherine Wallace, Retail Malt Beverage (RMB) Licensee at the Hidden Tavern, 6525 SE 52nd Avenue, Portland, Oregon, for violation of OAR 845-06-010(6) (hidden financial interest; later renumbered OAR 845-06-010(4)), be DISMISSED.

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

Dated this 29th day of November, 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.