



## FINDINGS OF FACT

1. Lowell's Lounge, Inc. held a Dispenser Class A (DA) license at LOWELL'S at all times relevant to the facts herein.

2. The Commission has charged Licensee with violation of OAR 845-08-015(2) (failure to provide regular meals), ORS 471.360(1)(b) (employee lacked service permit) and ORS 471.375(1) (failed to immediately transmit service permit).

3. Licensee is owned by Lowell Jackson. In May 1983, Jackson agreed to sell the premises to Kenneth Smith. In anticipation of the sale, Licensee signed a management agreement with Smith about the end of May. The agreement obliged Smith to comply with all local, state and federal rules and statutes.

4. A revised management contract was signed by Jackson and Smith on June 29, 1983. That agreement specifically required Smith to conform to OLCC rules, to have the kitchen in operation for a two-and-one-half-hour lunch period and a six-hour dinner period, and to maintain food service pursuant to OLCC rules.

5. Jackson had little contact with the premises during Smith's management. He stated at the hearing he did not want to undermine Smith's authority with the staff.

6. The OLCC License Division was notified of Licensee's agreement with Smith on August 3, 1983. The staff did not take any action on Smith's appointment.

7. Jackson's sale of the premises to Smith did not materialize. Smith could not raise the money, and had not managed Lowell's satisfactorily. Jackson terminated the agreement with Smith on August 19, 1983 and ejected him from the premises.

8. On August 24, 1983, one of Licensee's creditors, Raymond Gassner, forced the business into receivership and took control of the premises. License staff was notified of the receivership but took no action on it.

9. Jackson satisfied his debt to Gassner at about the end of August. He and Gassner co-managed the premises through the first week of September, when Gassner left. The receivership order was withdrawn about mid-September.

10. On September 1, 1983, Inspector Wilkerson went to Lowell's about 6:15 p.m. He sat in the bar, ordered a drink and then asked what was available for dinner. He was told all the dinner entrees were gone, and that only hamburgers were available. Before asking about dinner he had seen one patron eating a full meal.

11. Jackson had been at the premises on September 1, and left before Wilkerson arrived. He stated that there had been sufficient ingredients in the kitchen to serve Wilkerson a full meal, but his employees simply had not served it. He also stated he had instructed his employees after Smith left on August 19, 1983, that food was to be available during meal hours.

12. On September 6, 1983, Inspector Peck went to Lowell's about 6:10 p.m. He sat in the dining area and requested a menu

from an employee and was told there were no dinner entrees left, and that only hamburgers were available. There were no patrons eating in the dining area.

13. On September 6, 1983, Gwendolyn Hooper worked for Licensee as a bartender, serving and selling alcoholic liquor on the premises. On July 21, 1983, Freddie Sutton worked as a bartender, serving and selling alcoholic liquor on the premises. Both had been hired July 19, 1983. Neither had a service permit as of September 6, 1983. Both had been hired by Kenneth Smith. Sutton was not aware of Jackson's interest in the premises until early September 1983.

14. There was a great deal of confusion in the premises during late August and early September because of Smith's abrupt departure and the period of Gassner's receivership.

15. Freddie Sutton filled out a service permit application two days after she was hired, and gave the application to Smith. Smith never did send it to the OLCC; Sutton retrieved it and mailed it herself in early October 1983.

16. Jackson was told by his employees on about September 1, that they all had service permits. He did not ask to see their permits or otherwise check to see if permits had been issued.

#### ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Commercial establishments licensed under ORS Chapter 472 which are open after 5:00 p.m. must cook and serve a variety of regular meals for a minimum period of two hours during normal dinner hours. Any commercial establishment which is not open after 5:00 p.m. must cook and serve a variety of

regular meals for a minimum period of two hours during normal lunch hours. Tables must be provided for use by diners. OAR 845-08-015(2).

On September 1 and 6, 1983, Licensee did not have regular meals available at 6:15 p.m. and 6:10 p.m., respectively. Licensee did not argue that those times cannot be considered normal dinner hours. The Commission finds that Jackson's testimony that his employees simply failed to serve food that was available is not credible. Wilkerson testified that a patron was eating a full meal when he entered the premises; there is no evidence, nor is it logical, that Jackson's employee would agree to serve one patron but not another.

2. Except as otherwise provided in ORS 471.375:

. . . .

(b) No licensee of the commission shall permit any person to mix, sell or serve any alcoholic liquor for consumption on licensed premises unless such person has a valid service permit issued by the commission. ORS 471.360(1)(b).

Licensee permitted Freddie Sutton and Gwendolyn Hooper to sell and serve alcoholic beverages on the licensed premises without having a valid service permit. Licensee argued that both these employees were hired by Kenneth Smith, over whom he did not exercise full control. This may be true but it is not exculpatory; licensees are fully responsible for management practices in their premises. Nor does it assist Licensee that Jackson asked his employees on September 1 whether they had permits; ORS 471.360(1)(b) obliges licensees to either be absolutely sure or suffer the penalty.

3. Any person who has not had a permit refused or revoked or whose permit is not under suspension may mix, sell or serve alcoholic liquor for consumption on the licensed premises if the person prepares in duplicate an application for a service permit prior to mixing, selling or serving any alcoholic liquor for consumption on the licensed premises. The licensee shall endorse and immediately transmit the application to the Commission with the required fee. ORS 471.375(1).

Licensee's employees, Freddie Sutton and Gwendolyn Hooper, served and sold alcoholic liquor in Licensee's premises without having service permit applications transmitted by the Licensee. Although there is evidence that Sutton filled out an application, there is none that Hooper did so; Licensee did not immediately transmit Sutton's application.

#### ULTIMATE CONCLUSIONS OF LAW

Licensee violated OAR 845-08-015(2) (failed to provide regular meal service), ORS 471.360(1)(b) (employees lacked service permits) and ORS 471.375(1) (failed to immediately transmit service permit application). Licensee's obligation to conform to OLCC statutes and rules did not cease during the time Smith was managing the premises, or during the first week in September when Jackson was co-managing the premises regardless of the receivership order; however, the chaotic state of affairs at the premises provides some basis for mitigation.

#### FINAL ORDER

It is hereby ordered that the Dispenser Class A (DA) license held by Lowell's Lounge, Inc. at Lowell's, 5144 NE Union

Avenue, Portland, Oregon, be SUSPENDED for fifteen (15) days or that Licensee pay a fine of \$975 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 17th day of October, 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.