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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for a)	
Service Permit by:)	
)	FINAL
)	FINDINGS OF FACT;
MARK D. NUNNENKAMP)	CONCLUSIONS OF LAW,
1955 SE Locust Avenue)	AND ORDER
Portland, Oregon 97214)	
- - - - -)	
Multnomah County)	

A hearing in the above matter was held on the 12th day of December, 1983, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The record of the hearing remained open at Applicant's request until April 9, 1984. The Applicant appeared in person and was not represented by legal counsel. The Commission was not represented by legal counsel.

On June 25, 1984 the Commission considered the record of the hearing, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and applicable statutes and regulations. Pursuant to this review, the Commission enters the following:

FINDINGS OF FACT

1. Applicant seeks a service permit.
2. The Commission's Staff has recommended that the application be denied based on ORS 471.380(1) (applicant is in the habit of using alcoholic beverages to excess), ORS 471.380(2) (applicant has made false statements in the application), and ORS 471.380(4) (applicant has been convicted of violating the alcoholic liquor laws of Oregon).

3. On December 18, 1982, Applicant completed and submitted a Service Permit Application to the Commission.

4. Question 4a on the application is as follows:

"Have you ever been convicted of, or sentenced, put on probation, or forfeited bail for, any crime, violation, or infraction of any law? (Include traffic violations with a fine or bail of \$50.00 or more)."

The form provides boxes for a "yes" or "no" answer, then states:

"If so, list all."

5. Mr. Nunnenkamp listed only a driving while suspended conviction in 1975.

6. In addition to the driving while suspended conviction, Applicant has been convicted of the following:

<u>DATE</u>	<u>CHARGE</u>	<u>DISPOSITION</u>
7/29/75	DUII	Community Service; Fine
9/20/75	Theft II	Fine; 3 months jail; 2 years probation
8/11/78	DUII	Community Service; Fine
6/26/81	DUII	Community Service; Fine
12/15/81	DUII	360 days jail; 330 suspended; 3 years probation.

7. Following the last DUII conviction, application was directed by the District Court to participate in an alcohol treatment program. He was terminated from the program for non-attendance. As a result, District Court Judge Aaron Brown, Jr., who is supervising Applicant's probation, had him arrested on a bench warrant. Judge Brown then directed him to participate in another alcohol treatment program.

8. On June 3, 1983, Judge Brown wrote a letter to the Commission. The letter states, in pertinent part:

"I would not recommend that a Service Permit be issued to Mr. Nunnenkamp until he has successfully completed an alcohol rehabilitation program recognized by Motor Vehicles Division of the State of Oregon.

I shall advise you as soon as he has completed such a program."

9. In July 1983, Applicant entered an alcohol treatment program at the direction of the court. On December 5, 1983, the counselor for the program wrote a letter to Judge Brown, stating, in pertinent part:

"Mark Nunnenkamp has attended a weekly group regularly from July through November and has been in compliance with the treatment plan for him. He has been an active member of this group, and it is my belief that he has benefited from the experience. He now has a more realistic assessment of his alcohol-related problems.

Mr. Nunnenkamp will attend one more meeting in January, 1984, for a follow-up session and will then be terminated from the program. He has responded positively to this course of treatment and I do not recommend any further alcohol treatment."

10. Judge Brown has not notified the Commission of Applicant's successful completion of the program or of any change in the Judge's view noted in Finding of Fact 8.

11. Applicant is an alcoholic.

DISCUSSION

At the request of applicant, the record of the hearing was kept open from December 12, 1983, to April 9, 1984, for submission of additional communications from Judge Brown relating to

applicant's satisfactory completion of an appropriate alcohol treatment program or for any other information relating to applicant's suitability as a Service Permittee. No further evidence was received, however.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission may refuse to grant a Service Permit if it has reasonable grounds to believe that the applicant is in the habit of using alcoholic beverages or controlled substances to excess. ORS 471.380(1).

Applicant was assessed as an alcoholic by professionals who evaluated him in 1981. This evidence and his four convictions for drunk driving are sufficient to establish a habit of using alcoholic beverages to excess. On the other hand, Applicant provided evidence that he has recently been successfully participating in an alcohol treatment program. However, the judge who has been supervising his probation has not provided any statement indicating that Applicant has satisfactorily completed the treatment program. Applicant also testified that he "basically" has not consumed alcoholic beverages since July 1983. This statement is ambiguous and not accepted as a firm statement of abstinence.

The Commission concludes that Applicant has not overcome the evidence indicating that he is in the habit of using alcoholic beverages to excess.

The Commission may refuse to grant a Service Permit if it has reasonable grounds to believe that the applicant has made false statements to the Commission in the permit application. ORS 471.380(2).

In his application, Applicant failed to list four drunk driving convictions and a conviction for theft. His explanation for this omission was that his employer gave him the application form while he was busy working on his first day on the job and told him to fill it out immediately. He thus did not take the time to fill it out completely. The Commission believes Applicant was rushed, but does not believe that that constitutes an excuse for failing to complete the application truthfully. Applicant could have completed it truthfully later or could have filled out another application or could later have written a letter of explanation when he had more time.

The Commission concludes that Applicant made false statements to the Commission in the application.

3. The Commission may refuse to grant a Service Permit if it has reasonable grounds to believe that the applicant has been convicted of violating any of the alcoholic liquor laws of this state ORS 471.380(4).

Applicant has been convicted on four occasions of drunk driving. These convictions are for violation of the alcoholic liquor laws of this state and this statute therefore provides a basis for denying the application.

ULTIMATE CONCLUSIONS OF LAW

The application for a Service Permit should be denied because Applicant is in the habit of using alcoholic beverages to excess, has made false statements to the Commission in the permit application, and has been convicted of violating the alcoholic liquor laws of Oregon. ORS 471.380(1), (2), (4).

FINAL ORDER

It is hereby ordered that the application for a Service Permit by Mark D. Nunnenkamp, 1995 SE Locust Avenue, 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 June, 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.