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BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the	)	
Proposed Suspension of the	)	
Package Store (PS)	)	
License held by:	)	FINAL
	)	FINDINGS OF FACT,
Julie Ann Smith	)	CONCLUSIONS OF LAW,
ROSE GROCERY	)	AND ORDER
201 W. Jackson	)	
Medford, Oregon 97501	)	
-----	)	
Jackson County	)	

A hearing in the above matter was held on the 5th day of January, 1984, in Medford, 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 Commission, having considered the record of the hearing, the applicable law and regulations and being fully advised, issued a Proposed Order dated May 1, 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. At all times mentioned herein Julie Ann Smith held a Package Store (PS) license at Rose Grocery, 201 W. Jackson, Medford, Oregon.

2. The Commission has charged Licensee with violation of ORS 471.130(1) (failure to check ID or take statement of age) and 471.315(1)(g) (sale to a minor).

3. On October 15, 1983 Inspector Quadros observed Jim Keffer buy a six-pack of beer at Rose Grocery. The sales clerk did not request any ID from Keffer.

4. Keffer was then 17 years old; his date of birth is September 28, 1966. At the hearing in this matter Keffer appeared to be from 16 to 18 years old.

5. The clerk, Diane Patterson, was alone in the store at the time of the sale. She had been under a great deal of stress due to financial and family problems.

6. Keffer had bought beer there once before, about two or three weeks prior to October 15, 1983. Patterson remembered seeing him, and told Quadros that Keffer had shown ID at that time.

7. On October 15, 1983 Keffer did not have any form of age identification on his person; he stated that he had not been asked for ID on the prior occasion when he bought beer there. Both he and Patterson believe Patterson was the clerk on duty when he made the earlier purchase.

8. Licensee has a policy of not selling alcoholic beverages to individuals who cannot produce Department of Motor Vehicles-issued identification.

9. Licensee was not on the premises when the alleged violation occurred.

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

1. All Licensees and permittees of the Commission, before selling or serving alcoholic

liquor to any person about whom there is any reasonable doubt of the person's having reached 21 years of age, shall require such person to produce the person's motor vehicle operator's license or if the license does not bear a photograph of the operator, then an identification card issued to the person under ORS 482.900. However, if the person has no motor vehicle operator's license or an identification card, the permittee or licensee shall require such person to make a written statement of age and furnish evidence of the person's true age and identity. ORS 471.130(1).

Licensee's employee sold alcoholic liquor to Jim Keffer, a minor, on October 15, 1983 without first asking him to produce identification. As Keffer appears to be less than 21 there was reasonable ground to doubt that he was an adult. The fact that Keffer was not carrying any ID when he made the October 15 purchase lends greater credibility to his statement that he had not previously shown proof of age to Licensee's clerk than is warranted for the clerk's statement that he showed ID that showed him to be over 21. Therefore, Keffer's testimony carries greater weight than the clerk's statement.

2. The Commission may cancel or suspend any license if it finds or has a reasonable ground to believe that the licensee, or his or its agent, employee or representative, has knowingly sold alcoholic liquor to a person(s) under the age of 21 years. ORS 471.315(1)(g). The requirement of "knowledge" is satisfied where there is a reasonable ground to believe that the seller knew the purchaser of alcoholic liquor was under the age of 21 years. Plaid Pantries, Inc. v. OLCC, 16 Or. App. 199, 203 (1974).

Licensee's employee sold alcoholic liquor on October 15, 1983 to Jim Keffer, a person under the age of 21. Keffer appeared to be no older than 18, which is reasonable ground to establish that the sale was knowing. The statement attributed

to Licensee's employee, that Keffer had been in the store previously and had produced ID showing him to be over 21, is not credible when weighed against Keffer's contradictory testimony.

Although the circumstances of the clerk's personal situation are unfortunate these circumstances do not provide a basis for mitigation.

FINAL ORDER

It is hereby ordered that the Package Store (PS) license held by Julie Ann Smith at Rose Grocery, 201 W. Jackson, Medford, Oregon, be SUSPENDED for seven (7) days or that licensee pay a \$455 fine 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 22nd day of May, 1984.

  
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Jill 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.