BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the Proposed Suspension of the Retail Malt Beverage (RMB) License Held by:	)	
Frank S. and Janet L. Hinds dba ANCHOR INN 645 Virginia Avenue North Bend, Oregon 97459 - - - - - - - - - - - - - - Coos County	)	FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OLCC-85-V-020

A hearing in this matter was held by telephone on May 30, 1985, before Hearings Examiner Allen R. Scott. The Licensees appeared and were not represented by legal counsel. The Commission was represented by legal counsel.

On August 22, 1985, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and Response to Exceptions. Based on this review, the Commission makes the following:

ISSUE

The sole issue in the hearing is whether the Commission may deny a request for hearing by Licensees on charges of violation of ORS 471.315(1)(g), OAR 845-06-035(2)(a), OAR 845-06-035(2)(b), and ORS 471.130(1).

DENIAL OF HEARING REQUEST

> (1) Except as otherwise provided in rule 845-03-025, before the Commission shall by order suspend, revoke, refuse to renew or issue a license or service permit or enter an order in any other contested case as defined in ORS 183.310(2), notice shall be

> served personally or by registered or certified mail on all parties . . . .
>
> . . . . .
>
> (2) The number of days within which the Commission must be notified that the party desires a hearing shall be as follows:
>
> (a) Within 20 days of the date of mailing of notice to suspend, revoke or refuse to renew a license. OAR 845-03-010.

Findings of Fact

1. Licensee Frank S. Hinds received a Notice of Charges and Proposed Penalty from the Commission on March 7, 1985. Accompanying this notice was a document entitled Request for Hearing. This document stated, "In order to obtain a hearing, this form must be returned to the Oregon Liquor Control Commission no later than March 20, 1985." Licensee put the documents aside attached to a clipboard in the premises. He was rather busy during this period. He was employed at two jobs and was in the process of changing bookkeepers. The operation of the premises was somewhat disorganized.

2. On March 12 or 13, 1985, Inspector Larry Peck of the OLCC Enforcement Division called Licensee Frank Hinds and asked him if he had received the Notice of Charges and Request for Hearing forms. Licensee stated that he had received them but was not sure whether he wished to request a hearing.

3. Licensee did not at that time look at the Request for Hearing forms or otherwise attempt to determine how much time he had left to request a hearing.

4 On March 21, 1985, the Commission, having received no request for a hearing from Licensee, "ratified" the proposed penalty of a 15-day suspension or a $975 fine in lieu of suspension. Ratification makes final a penalty proposed by the staff.

5. On March 22, 1985, Licensee Frank Hinds found the Notice of Charges and Request for Hearing forms in the premises and realized that the time for requesting a hearing had passed.

6. Licensee Hinds then contacted Inspector Peck. Inspector Peck suggested that he go ahead and send in the Request for Hearing.

7. Licensee sent in the request for a hearing on March 22, 1985, a Friday. The Commission received the form on March 25, 1985.

8. The Commission's staff denied a hearing to Licensee. The matter went before the Commission at its April meeting, at which time the Commission directed that a hearing be held on the question of whether Licensee should be granted a hearing on the underlying charges, which relate to sale to and consumption by minors in the premises.

9. The practice of the Enforcement Division at the time this matter occurred had been to grant hearings to those who requested a hearing after the stated deadline, provided the penalty had not been ratified. In those instances in which the hearing request was received prior to ratification, the request for a hearing was granted without any showing of the reason for the late request. If, however, the request for a hearing were

received after ratification, the practice was to deny the hearing request.

10. Sometime a few months prior to this incident, the Commission had sent a Notice of Charges to Licensees on an unrelated matter. Licensees Frank Hinds and Janet Hinds had at that time been divorced or were going through the dissolution process. Mrs. Hinds, who was then working in the local Post Office, signed for the certified letter and did not bring it to the attention of Mr. Hinds. By the time Mr. Hinds found out about the letter, the time for requesting a hearing had passed and he therefore lost the opportunity for a hearing.

Conclusions of Law

The evidence establishes that Licensee requested a hearing after the twenty-day period specified in the applicable rule had passed.

Licensee stated that he was throwing himself "on the mercy of the Commission" in this matter. He pointed to the problems that he was having in relation to working two jobs, changing bookkeepers, and going through a divorce. In effect, it appears that Licensee is asking that the circumstances be considered "good cause" for his failure to submit the hearing request in time.

Licensee has not established good cause for the late request. A Licensee's personal and business-related problems might, in some instances, be viewed as an excuse for a failure to request a hearing within the twenty-day period. However, in this particular case, they do not establish good cause. It is

noted that Licensee Frank S. Hinds personally received the Notice of Charges and Request for Hearing forms. He placed them on a clipboard in the premises, where he could have examined them at any time. Furthermore, approximately five or six days after he received the forms, Inspector Peck of the OLCC contacted him and discussed the possibility of a hearing with him. Mr. Hinds told Inspector Peck that he was still considering the possibility of requesting a hearing. This conversation clearly should have reminded Licensee, if he had forgotten, that he needed to look into the matter. However, he apparently did not attempt to find the hearing request form on the premises at this time. Furthermore, Licensee acknowledged that he was aware that there is a time limit on hearing requests. In fact, only a few months prior to this matter, he had lost the opportunity to request a hearing on another charge because of the passage of time. That incident, although not Mr. Hinds' fault, nevertheless should have put him on guard with respect to the time limit.

It is concluded that the circumstances do not establish good cause for excusing Licensees' failure to make a timely request for a hearing.

ULTIMATE CONCLUSIONS OF LAW

Licensees' request for an opportunity to contest the charges should be denied because it was made after the period specified in the rule and because Licensees have failed to establish good cause for the late request. OAR 845-03-010(2).

FINAL ORDER

The Commission orders that the request for a hearing to contest the charges contained in the Notice of Charges and Proposed Penalty dated February 28, 1985, against Frank S. and Janet L. Hinds in the trade name Anchor Inn, 645 Virginia Avenue, North Bend, Oregon, be DENIED.

Licensees have violated ORS 471.315(1)(g), OAR 845-06-035(2)(a), OAR 845-06-035(2)(b), and ORS 471.130(1) as charged. The penalty of 15 days suspension or $975 fine in lieu of suspension is adopted.

It is further ordered that due notice of this action, including the reasons for it, be given as provided by law.

If you choose to pay the fine, it must be paid within 10 days of the date of this Order, otherwise the suspension must be served.

Dated this 30th day of August, 1985.

C. Dean Smith

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.