

license at CALICO CAT, 2444 NE Sandy Boulevard, Portland, Oregon, and Thomas Webb was sole owner of Licensee's.

2. The Staff has charged Licensee with violation of OAR 845-08-015(2)(a) or (3)(a) (regular or minimum food service) and ORS 471.360(1)(b) (employee lacked service permit).

3. On September 4, 1984 Inspectors Bainbridge and Wilkerson entered the premises at about 9:30 p.m. They ordered two beers at the bar and sat at a table. When the bartender, Teresa DiSimone, served the beer Wilkerson asked whether any food was available. She told him the kitchen was closed.

4. Shortly thereafter another employee, Tom Teri Hendrickson, took over behind the bar. Bainbridge went to the bar and asked for some nuts, which Hendrickson sold him. He then asked whether he could get any food, and Hendrickson told him none was available. He next asked whether he could get a ham sandwich, and Hendrickson told him the kitchen was closed.

5. Bainbridge and Wilkerson subsequently identified themselves and asked DiSimone and Hendrickson for their service permits. Hendrickson had no permit or application on file at the OLCC; DiSimone had submitted an application.

6. Licensee's practice was to keep sandwiches prepared by its cook in a food locker by the bar after the kitchen closed. On September 4, 1984 Licensee's owner was without a permanent night shift cook and was using a cook from his mother's restaurant. This cook either forgot to put any food in the locker, or Webb forgot to tell her to do so. There was no food in the locker.

17. DiSimone told the inspectors that she had been given no food service instructions. Hendrickson told them she had been told to serve the sandwiches in the locker, and that she hadn't thought to check the kitchen for food when she saw the locker was empty.

18. DiSimone had been working for Licensee about two weeks on September 4, 1984. Hendrickson had previously worked at a tavern which was destroyed in a fire. When she came to work for Licensee, she told Webb her service permit had been destroyed in a fire. He instructed her to get a duplicate but did not later check to see if she had.

19. Webb's policy in the past has been to leave the responsibility of mailing a completed service permit application to the employee immediately upon being hired.

20. Webb instructed all service employees to provide food from the locker by the bar. When the inspectors checked the kitchen after identifying themselves they found it was well-stocked with sandwich ingredients. They did not check the food locker by the bar.

21. Licensee has hired a new head cook. After the dining room closes it offers sandwiches, soup and complete Mexican dinners.

DISCUSSION

There is conflicting evidence as to what instructions regarding food service Licensee passed on to its employees. Hendrickson told the inspectors she was told to provide food

from the locker after the dining room closed; DiSimone told them she had been given no instructions about food service. Webb testified he instructed all his service employees to provide food from the locker. Neither DiSimone nor Hendrickson appeared at the hearing. The Commission finds Webb's testimony more credible than DiSimone's statement to the inspectors. It would make no sense for Webb to communicate food service instructions to some but not all service employees, and by telling the inspectors she had been given no directions about food service DiSimone avoided potential sanctions. Further, the food locker was kept behind the bar, and it is unlikely DiSimone was unaware of its purpose.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all other times when commercial establishments are open, the minimum requirements shall consist of two different types of fresh and palatable sandwiches, one of which can be served hot if requested by the patron, and a hot dish such as soup, chili, or casserole. These foods must be readily available to patrons. "Pre-prepared" sandwiches which were not prepared on the licensed premises are not sufficient to meet the sandwich requirement. Any licensee who offers a variety of hot foods prepared to order during the breakfast meal hours will not be required to comply with the above minimum requirements during such breakfast hours. OAR 845-08-015(3)(a).

On September 4, 1984 Licensee did not have available the minimum food requirements described in the above rule. The fact that there were sandwich ingredients in the kitchen is irrelevant to the fact that neither sandwiches nor a hot dish were made available to patrons requesting food.

There would ordinarily be some mitigating circumstances in the fact that Licensee ordinarily made provision for sandwich service, and that its failure on September 4 was due to an oversight. However, the evidence shows that its service employees were given insufficient direction to provide the food service required by the rule. Webb testified that food service after the dining room closed was to be provided from a food locker by the bar which contained sandwiches. There was apparently no instruction as to what Licensee's employees were to do when the locker was empty, or when a patron wished a hot dish (soup, chili, etc.). Thus, mitigation of the penalty for this charge is inappropriate.

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 Teri Hendrickson to sell and serve alcoholic liquor without first requiring a service permit or submitting an application to the OLCC. There are some slight mitigating circumstances in the fact that Webb knew Hendrickson had previously worked at a tavern and thought all she needed was a duplicate of a permit she had already been issued.

ULTIMATE CONCLUSIONS OF LAW

Licensee violated OAR 845-08-015(3)(a) (minimum food service) and ORS 471.360(1)(b) (employee lacked service permit).

Mitigating circumstances are present with respect to the latter violation.

FINAL ORDER

It is hereby ordered that the Dispenser Class A (DA) license held by Calico Cat Enterprises, Inc., at Calico Cat, 2444 NE Sandy Boulevard, Portland, Oregon be SUSPENDED for seven (7) days or that Licensee pay a \$455 fine in lieu of suspension.

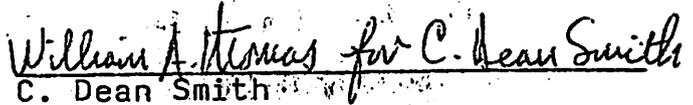
It is further ordered that due notice of such action, stating the reasons therefor, be given as provided by law.

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 25th day of January, 1985.



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.