

BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the	)	
Application for	)	
Renewal of a Dispenser Class A	)	
License by:	)	FINAL
	)	FINDINGS OF FACT,
Merlin R. Stam	)	CONCLUSIONS OF LAW,
ROYAL 99	)	AND ORDER
796 Highway 99 North	)	
Eugene, Oregon 97402	)	OLCC-84-L-024
-----	)	
Lane County	)	

A hearing in the above matter was held on the 25th day of October, 1984, in Eugene, Oregon, before Hearings Examiner Allen R. Scott. The Applicant appeared in person and was not represented by legal counsel. The Commission was represented by legal counsel.

The Hearings Examiner, having considered the record of the hearing, the applicable law and regulations and being fully advised, issued a Proposed Order dated December 31, 1984.

No Exceptions were filed to the Proposed Order within the fifteen (15) day period specified in OAR 845-03-050.

Now, therefore, the Commission hereby adopts the Proposed Order of the Hearings Examiner as the Final Order of the Commission, and enters the following:

BACKGROUND

Applicant seeks renewal of his Dispenser Class A license, which expired on June 30, 1984.

ISSUE

I. The Commission's staff asserts that the license should not be renewed because Applicant's food sales are less

than 25 percent of total sales of food and alcoholic liquor and Applicant is not able to reasonably project that food sales will reach the 25 percent figure. OAR 845-05-025(4).

The staff also took into consideration OAR 845-08-015(5), which permits renewal of a license even if the 25 percent figure is not attained if a serious and substantial effort was made to emphasize food service.

The Commission notes that OAR 845-08-015(5) was amended effective September 1, 1984. As this case arose prior to the effective date of that amendment, however, the Commission believes that the prior version of the rule in effect at the time of the renewal application and other events involved in this matter should be applied.

#### I. FAILURE TO MEET 25 PERCENT REQUIREMENT

The following criteria will be given sufficient consideration so that a license will not be issued unless good cause which outweighs the criteria involved is shown by the applicant:

. . . .

(4) The applicant seeks a Dispenser Class "A" license under ORS 472.110(2) and has less than or is unable reasonably to project at least 25 percent ratio of food sales to gross sales of food and alcoholic liquor. OAR 845-05-025(4).

Failure by a Class "A" Dispenser licensee to maintain at least a 25 percent ratio of food sales to gross sales of food and alcoholic liquor may be grounds for refusal to renew a license unless the licensee has fully complied with the requirements of this rule and adequately demonstrates that a serious and substantial effort has been made to emphasize food service. OAR 845-08-015(5).

## Findings of Fact

1. Applicant's license expired June 30, 1984.
2. On his application for renewal for the 1984-85 year, Applicant listed his food sales percentage as 14.27 percent.
3. On his application for renewal for the prior license year, ending on June 30, 1983, Applicant had listed a food percentage of 14.53 percent.
4. Applicant's license was renewed for 1983-84 by the Commission. However, Applicant was warned at the time of this prior renewal about his low food percentage and informed that his situation would be monitored during the period from July 1, 1983, through June 30, 1984.
5. During the period July 1983 through April 1984, OLCC staff members held several discussions with Applicant regarding his attempts to improve his food sales. Applicant was requested to provide statements of his plans and verification of various steps he had taken.
6. During this nine month period, Applicant provided several lists of proposals.
7. During the nine month period, Applicant took several steps in an attempt to increase his food service. He opened the premises for breakfast. He discontinued breakfast service sometime prior to the hearing, however. He advertised in a periodical called the "Money Saver." He reduced prices of food items slightly. He moved some antiques into the premises in an attempt to improve the decor. Many of these were later removed, however. He spent approximately \$147 on radio and TV

advertising. He made a few contacts with organizations in an attempt to get banquet and meeting business. However, during this nine month period, one banquet and one meeting were held at the premises. He sold food to go but discontinued that after approximately three months. He instituted delivery of food for senior citizens but halted that service after a few months. He placed placards advertising food service in the windows. He gave discounts to senior citizens for approximately 1 1/2 months. For a short period of time, he provided food and meals in the bar after the restaurant was closed. He provided Chinese food one day a week for one or two months.

8. The only exterior changes Applicant made during this time were to replace an awning and paint the exterior. The only interior change was an extension of the bar by approximately eight feet.

9. The premises has one free standing exterior sign which merely says "Royal 99" and "Cocktails." The premises has the following permanent door or window signs: "Budweiser on Tap," "Coors Beer," "Pool, Cocktails, Live Country Music," "Hideaway Room," "No Minors." The last sign of this list is on the door to the bar area. No permanent signs visible from the exterior advertise food. Applicant did at times place placards advertising food in the windows.

10. During the period involved in this matter, Applicant had live country music at the premises at least two nights a week.

11. On two occasions in November 1983, Applicant's employees did not provide the minimum food required during non-meal hours. The employees offered an OLCC investigator stew and chili but stated that there were no sandwiches available.

12. The seating area in the restaurant portion of the premises is considerably smaller than the seating in the lounge, bar and pool area. These latter areas have a No. 2 posting, which prohibits the entry of minors.

#### Conclusions of Law

The evidence establishes that Applicant's food sales were substantially less than 25 percent of total food and alcoholic beverage sales during the period prior to expiration of the license. Applicant did not claim, and offered no evidence to suggest, that he could reasonably project that sales would reach the 25 percent figure in the future. Applicant was requested by the Commission to provide updated sales figures but did not do so.

Under OAR 845-08-015(5), Applicant might still qualify for renewal of the license if he has met the minimum food service requirements and if he shows that he has made a serious and substantial effort to emphasize food service.

However, the evidence indicates that minimum non-meal food service requirements were not met by Applicant on two occasions in November of 1983. Thus Applicant has not complied with the requirements of the food service rule.

More important, the evidence does not establish that Applicant has made a serious and substantial effort to emphasize

food service. Applicant made some attempts to advertise his services on radio and television and through placards displayed at the premises. However, the effort established by the evidence is not suggestive of a serious and substantial effort to emphasize food service. Applicant made other attempts to change his operation in various ways described above. However, for the most part, these efforts lasted only from one to three months. In any event, most of them do not give any indication of a determination by Applicant to actually emphasize food. It is noted that Applicant did not establish that any substantial attempt was made to upgrade the quality of the food, or to make the premises attractive to diners. It is also noted that the exterior advertising at the premises says nothing about food service, except for a few temporary signs in the windows. The evidence also indicates that Applicant made only a half-hearted attempt to encourage banquet and meeting business at the premises.

The Commission concludes that Applicant has not established that he made a serious and substantial effort to emphasize food service during the relevant period.

#### ULTIMATE CONCLUSIONS OF LAW

The application for renewal should be refused because Applicant's food sales are substantially less than 25 percent of total food and alcoholic beverage sales, because Applicant cannot reasonably project that food sales will reach the 25 percent level, because Applicant has not established good cause for the failure to reach that level, because Applicant has not

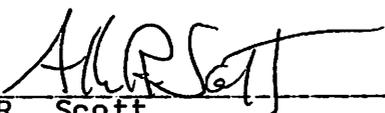
established that he made a serious and substantial effort to emphasize food service during the year and because Applicant has not always met the other requirements of OAR 845-08-015. OAR 845-05-025(4); 845-08-015.

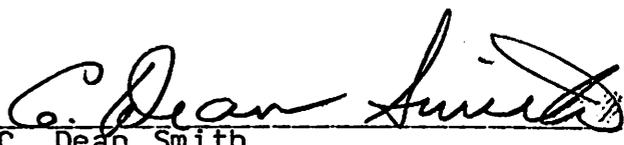
FINAL ORDER

It is hereby ordered that application for renewal of a Dispenser Class A license by Merlin R. Stam, in the trade name ROYAL 99, 769 Highway 99, Eugene, Oregon be REFUSED.

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

Dated this 15th day of February, 1985.

  
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Allen R. Scott  
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.