

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)
Application for a) FINAL
Service Permit by:) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND ORDER
)
Robert T. Samulevich) OLCC-85-SP-008

A hearing in this matter was held on April 23, 1985, in Springfield, Oregon, before Hearings Examiner Jill Thompson. The Applicant did not appear and was not represented by legal counsel. The Commission was not represented by legal counsel.

The Hearings Examiner considered the record of the hearing and the applicable law, and issued a Proposed Order dated May 30, 1985.

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

The Commission adopts the Proposed Order of the Hearings Examiner as the Final Order of the Commission, and enters the following:

ISSUES

The following issues are raised by the application:

1. Whether the application should be denied because the Applicant made false statements in the application. ORS 471.380(2).
2. Whether the application should be denied because Applicant has been convicted of violating Oregon's alcoholic liquor laws or of a felony. ORS 471.380(4).

I. FALSE STATEMENTS

The commission may refuse to grant a service permit if it has reasonable grounds to believe any of the following to be true:

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(2) That the applicant has made false statements to the commission in the permit application. ORS 471.380(2).

Findings of Fact

1. Question 4a of the application form completed by Applicant reads as follows:

4a. 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.) LIST ALL. Yes No

<u>Offense</u>	<u>Date</u>	<u>City and State</u>	<u>Result</u>
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2. Applicant responded to question 4a by listing a conviction for furnishing cocaine in 1975 and for DUII in Eugene in 1975.

3. Applicant has been convicted of the following violations:

<u>Date</u>	<u>Place</u>	<u>Offense</u>	<u>Disposition</u>
1975	Eugene	Reckless Driving	\$150 fine.
1977	Eugene	Criminal Activity in Drugs	5 years incarceration, suspended; probation.
1977	Eugene	DUII	\$250 fine.

4. In 1981 Applicant was found to have violated the terms of his probation for furnishing marijuana, and was sentenced to 120 days in jail. However, probation violation is not an independent crime. State v. Baxley, 27 Or App 73, 555 P2d 782 (1976). There is no evidence that he was separately prosecuted for the marijuana activity.

5. Applicant's 1975 conviction was based on an original citation for DUII which was later reduced to Reckless Driving.

6. Applicant was given written and oral notice of the hearing on this matter but failed to appear or otherwise present any explanation for failing to list all his convictions.

Conclusions of Law

Applicant failed to list one of his convictions on his service permit application. He was not convicted in 1975 of DUII, as he stated on the application, but was convicted that year of Reckless Driving. The fact that he was originally arrested for DUII may have led to some confusion when he was completing the application. Additionally, he described his 1977 Criminal Activity in Drugs conviction as having occurred in 1975. Even though Applicant may have been genuinely confused about either the dates or descriptions of his convictions, he still failed to list either his 1975 Reckless Driving conviction or his 1977 DUII conviction. The Commission concludes that ORS 471.380(2) provides a basis for denying the application.

II. LIQUOR LAWS/FELONY CONVICTIONS

The commission may refuse to grant a service permit if it has reasonable grounds to believe any of the following to be true:

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(4) That the applicant has been convicted of violating any of the alcoholic liquor laws of this state, general or local, or has been convicted at any time of a felony. ORS 471.380(4).

Findings of Fact

7. Applicant was convicted of Criminal Activity in Drugs in 1977, which was a Class B felony (former ORS 167.207(2)). He was convicted in Oregon of DUII, an alcoholic liquor law violation, in 1977.

Conclusions of Law

Applicant has been convicted of a felony and of an Oregon liquor law violation. The Commission concludes that ORS 471.380(4) provides a basis for denial of the application.

ULTIMATE CONCLUSIONS OF LAW

The Commission concludes that the Applicant should be denied for making false statements on the application (ORS 471.380(2)) and because he has been convicted of a felony and of an Oregon liquor law violation (ORS 471.380(4)).

FINAL ORDER

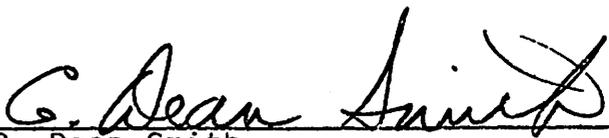
The Commission orders that the application for a service permit by Robert T. Samulevich be DENIED.

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

Dated this 26th day of June, 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.