BEFORE THE OREGON LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF THE WINERY LICENSE HELD BY:	)	**FINAL FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER**
	)	
CHRISTOPHER DOBSON dba CAMAS CLOSE WINERY 2480 S CHURCH ROAD DALLAS, OR 97338	)	**OLCC-11-V-066**

HISTORY OF THE CASE

On September 14, 2011, the Oregon Liquor Control Commission (OLCC or Commission) issued a Notice of Proposed License Cancellation to Christopher Dobson, dba Camas Close Winery (Licensee), located at 2480 S. Church Road, Dallas, Oregon. The Notice charged Licensee with a violation of ORS 471.405(1), selling or offering for sale alcoholic beverages in a manner other than the license permits. Licensee timely requested a hearing.

The Commission referred Licensee's hearing request to the Office of Administrative Hearings on October 13, 2011.

On December 7, 2011, the Commission issued an Amended Notice of Proposed License Cancellation, alleging three violations: (1) selling or offering for sale alcoholic beverages in a manner other than the license permits in violation of 471.405(1); (2) failing to maintain liquor liability insurance or bond with a corporate surety in the amount of not less than $300,000 in violation of OAR 845-005-0400(1); and (3) making false representations or statements to the Commission to induce or prevent action by the Commission in violation of ORS 471.425(1). On February 6, 2012, the Commission issued a Second Amended Notice of Proposed License Cancellation, amending the dates on which Licensee allegedly failed to maintain liquor liability insurance and allegedly made false representations.

A contested case hearing was originally scheduled for February 22, 2012, but was postponed on Licensee's request on February 7, 2012. The hearing was rescheduled for April 17, 2012 in Salem, Oregon. On April 10, 2012, Licensee again requested that the hearing be postponed. The postponement request was denied based on a lack of good cause to postpone the hearing.

The contested case hearing was held in this matter in Salem, Oregon, on April 17, 2012, before Senior Administrative Law Judge Alison Greene Webster. Licensee appeared via telephone[1] and without counsel. Anna Davis presented the case for the OLCC.

[1] Approximately one hour into the hearing, following his testimony, Licensee elected to terminate his telephonic participation in the hearing.

The following witnesses testified at the hearing on the Commission's behalf: OLCC Inspector David Luster; OLCC License Investigator Sarah Morgan; OLCC Compliance Specialist Kat Hand; and OLCC Regional Manager Janice Kindrick. Licensee Dobson testified on his own behalf.

The record closed on April 17, 2012, at the close of the hearing.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed April 30, 2012**.**

Staff filed Comments on the Proposed Order on May 15, 2012. The Administrative Law Judge responded to Staff's Comments on May 18, 2012.

On June 7, 2012, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Administrative Law Judge, Staff's Comments on the Proposed Order and the Administrative Law Judge's Response to Staff's Comments. Based on this review and the preponderance of the evidence, the Commission enters the following:

EVIDENTIARY RULINGS

OLCC Exhibits A1 through A19 and Licensee's Exhibits L1 and L2 were admitted without objection.

ISSUES

1. Whether, on August 10, 2011, Licensee sold or offered for sale alcoholic beverages in a manner other than the license permits in violation of 471.405(1).

2. Whether, on March 25 to March 27, 2011, May 21 and 22, 2011, and June 1, 8, 15, 22 and 29, 2011, Licensee failed to maintain liquor liability insurance or bond with a corporate surety in the amount of not less than $300,000 for Camas Close Winery in violation of OAR 845-005-0400(1).

3. Whether, on March 8, 2011, May 4 and 10, 2011, July 5 and 18, 2011 and August 2, 2011, Licensee made false representations or statements to the Commission to induce or prevent action by the Commission in violation of ORS 471.425(1).

4. If one or more of the violations are established, what is the appropriate sanction?

FINDINGS OF FACT

1. Christopher Dobson, dba Camas Close Winery, located at 2480 South Church Road, Dallas, Oregon, has had a Commission-issued Oregon winery license since October 26, 2000. (Ex. A1.)

2. As part of his licensing packet, Licensee received information from the Commission on the process for obtaining a Special Event Winery (SEW) license, which is a license that allows an Oregon winery licensee to sell wine, cider and malt beverages at special events at locations other than the winery's licensed premises. Licensee also received information from the Commission on the requirement to maintain liquor liability insurance or a bond with a corporate surety if the licensed special event is open to the public and attendance at the event is anticipated to exceed 300 individuals per day. (Exs. A1 and A2; test. of Morgan.)

3. On March 10, 2011, Licensee submitted a signed SEW application for the Better Living Show at the Portland Expo Center in Portland, scheduled for March 25-27, 2011. On the application, Licensee indicated that the expected attendance per day for the event was more than 1000 persons. Licensee also represented that he had at least $300,000 of liquor liability insurance coverage through Liberty Northwest, policy no. 10-CG-2373849, expiration date July 2011. The Commission approved the application and issued the SEW license that same date. (Ex. A3.)

4. On or about May 5, 2011, Licensee submitted a signed SEW application for a special event at the Western Antique Aeroplane and Automobile Museum in Hood River, scheduled for May 21-22, 2011. On the application, Licensee indicated that the expected attendance per day for the event was 2,500 persons. Licensee also represented that he had at least $300,000 of liquor liability insurance coverage through Liberty Northwest, policy no. 10-CG-2373849, expiration date July 2011. The Commission approved the application and issued the SEW license on May 7, 2011. (Ex. A4.)

5. On or about May 10, 2011, Licensee submitted a signed SEW application for a special event/farmers' market located at 3550 N. Interstate Ave. in Portland, scheduled for June 1, 8, 15, 22 and 29, 2011. On the application, Licensee indicated that the expected attendance per day for the event was approximately 500 persons. Licensee also represented that he had at least $300,000 of liquor liability insurance coverage through Liberty Northwest, policy no. 10-CG-2373849, expiration date July 2011. The Commission approved the application and issued the license on May 11, 2011. (Ex. A5.)

6. On or about July 8, 2011, Licensee submitted a signed SEW application for a special event/farmers' market located at 3550 N. Interstate Ave. in Portland, scheduled for July 20 and 27 and August 3, 2011. On the application, Licensee indicated that the expected attendance per day for the event was 100 to 200 persons. Licensee again represented that he had at least $300,000 of liquor liability insurance coverage through Liberty Northwest, policy no. 10-CG-2373849. The Commission approved the application and issued the license for these events on July 19, 2011.[2] (Ex. A6.)

7. On or about August 4, 2011, Licensee submitted a signed SEW application for a special event/farmers' market located at 3550 N. Interstate Ave. in Portland, scheduled for August 10, 17, 24, 31 and September 7, 2011. On the application, Licensee indicated that the

[2] In their Comments on the Proposed Order, staff requested that the date for issuance of this SEW be corrected to July 19, 2011 (from May 19, 2011, as reflected in the Proposed Order). In her Response to Staff's Comments, the Administrative Law Judge concurred.

expected attendance for the listed event dates was 300 to 400 persons per day. Licensee again represented that he had at least $300,000 of liquor liability insurance coverage through Liberty Northwest, policy no. 11-CG-23734-9, expiration date July 2012.[3] Licensee identified that licensed area as "entire farmers market as delineated by the market." (Ex. 8.)

8. By letter dated August 5, 2011, OLCC Compliance Specialist Kat Hand notified Licensee that the Commission had not processed his SEW application for the events scheduled for August 10, 17, 24, 31 and September 7, 2011 because the application was incomplete. Hand advised that the application was incomplete because it did not include an endorsement from the City of Portland, and needed a better definition of the licensed area, a better plan to monitor the licensed area and prevent minors from gaining access to alcohol, and a plan to keep alcohol within the licensed area. Hand concluded the letter with the following: "The Commission recommends that you limit alcohol service to tastings at your booth and bottle sales for off premises consumption only." (Ex. A10.)

9. Although Licensee received Hand's letter prior to the August 10, 2011 farmers market,[4] he did not follow up with the Commission and provide the additional information, which would have allowed for the processing of his SEW application and, most likely, the issuance of a license for the event. (Test. of Hand; test. of Morgan.) Because the Commission did not issue Licensee a SEW license for the August 10, 2011 farmers market, Hand notified Commission compliance officers of the possibility that Licensee would be selling and serving alcohol at the event without a license.[5] (Test. of Hand.)

10. On the evening of August 10, 2011, Inspectors Luster and Paul went to the farmers market on Interstate Avenue and confirmed that Licensee had a booth displaying and selling wines from Camas Close Winery and Columbia Gorge Winery. The inspectors approached Licensee's booth and Luster purchased a glass of Gewürztraminer from server Courtney Morehouse for $4.00. Luster and Paul then identified themselves as OLCC inspectors, and asked Morehouse for her service permit and Licensee's SEW license. Morehouse produced a valid service permit, but no SEW license for the event. In response to the inspectors' questions, Morehouse confirmed that Licensee had several wine bottles open and available for tasting and

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[3] In their Comments on the Proposed Order, staff requested that the policy number be corrected to 11-CG-23734-9 (from 10-CG-2373849, as reflected in the Proposed Order). In her Response to Staff's Comments, the Administrative Law Judge concurred.

[4] Although Licensee initially asserted that he did not receive notice that his SEW application had been denied prior to the event, he later acknowledged that he received and reviewed Hand's August 5, 2011 letter on August 9, 2011, the day before the event. Licensee told Inspector Luster that because Hand's letter did not make sense to him, he believed he could attend the event and sell and serve his wine without the approved SEW license. (Exs. A11 and A13; test. of Luster; test. of Morgan.)

[5] Had Licensee contacted Hand or another Commission Compliance Specialist prior to the August 10, 2011 event, and provided additional information regarding the licensed area and Licensee's plans to monitor the area, to prevent minors from gaining access to alcohol and to keep alcohol within the licensed area, the Commission would have issued Licensee a SEW license for the event. The Commission received an endorsement from the City of Portland prior to the event. (Test. of Hand.)

for sale by the glass. She also advised that Licensee had sold 17 bottles of wine so far. (Ex. A13; test. of Luster.)

11. The inspectors advised Morehouse that Licensee was not licensed to sell and serve alcoholic beverages at the event and directed her to remove the alcohol and close down the booth immediately. The inspectors also told Morehouse to call Licensee and inform him of the situation. Morehouse called and spoke with Licensee, and then removed the wine from the table. (Ex. A13; test. of Luster.)

12. About a week later, Licensee contacted Inspector Luster to complain that the Commission had not approved his application and issued the SEW license prior to the August 10, 2011 event. (Ex. A13; test. of Luster.)

13. On or about August 19, 2011, Licensee submitted an SEW application signed on July 18, 2011, for a special event located at 2408 SE 16th Ave. in Portland, scheduled for September 10-11, 2011. On the application, Licensee indicated that the expected attendance per day for the event was 300 persons. Licensee again represented that he had at least $300,000 of liquor liability insurance coverage through Liberty Northwest, policy no. 10-CG-2373849, expiration date July 2012. The commission approved the application and issued the license for these events on August 19, 2011. (Ex. A7.)[6]

14. On or about September 1, 2011, the Commission refunded the $50 SEW application fee Licensee submitted with the August 5, 2011 application. (Ex. A12.)

15. Prior to September 5, 2011, Licensee did not have liquor liability insurance in his name, or in the name of Camas Close Winery. When Licensee submitted the SEW applications to OLCC for the special events on March 25-27, 2011, May 21-22, 2011, and June 1, 8, 15, 22 and 29, 2011, and indicated in the applications that Licensee had liquor liability insurance coverage with Liberty NW, policy no. 10-CG-2373849, Licensee was referring to Columbia Gorge Winery's liquor liability insurance policy through Liberty NW/Bisnett Insurance. Licensee believed at the time that Columbia Gorge Winery's liquor liability insurance policy would cover Camas Close Winery's sales and service at special events because Licensee was also part owner of Columbia Gorge Winery. (Test. of Dobson.)

16. On or about September 5, 2011, Licensee was added as a named insured on Columbia Gorge Winery's liquor liability insurance policy. Columbia Gorge Winery is located in Washington State, and is owned and operated by Licensee's brother, Robin Dobson. Licensee is a partner/part owner in this winery. Upon adding Camas Close Winery as an insured on Columbia Gorge Winery's liquor liability insurance policy, the annual policy premium increased from approximately $1,200 to $4,000. (Exs. A17 and A18; test. of Luster; test. of Dobson.)

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[6] In their Comments on the Proposed Order, staff requested that this additional finding of fact be included in the Final Order in order to support the legal conclusion that on July 18, 2011, Licensee made false representations or statements to the Commission to induce or prevent action by the Commission, in violation of ORS 471.425(1). In her Response to Staff's Comments, the Administrative Law Judge concurred.

17. Because Licensee does not have a tasting room and his winery not open to the public, he does not carry liquor liability insurance on the winery premises. Part of Licensee's business is importing Columbia Gorge Winery wines for sale in Oregon. Licensee also employs Columbia Gorge Winery personnel for this purpose. (Ex. A19.)

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18. Licensee's belief (prior to September 5, 2011) that Licensee's sale and service of alcohol at Oregon special events would be covered under Columbia Gorge Winery's liquor liability policy was based on his and his brother's review of the policy provisions. Neither Licensee nor his brother confirmed with the insurer that Licensee would be covered under the policy, should a claim arise out of an incident at an Oregon special event. (Test. of Dobson.) According to a Bisnett Insurance manager, it is uncertain whether Licensee would have been insured under Columbia Gorge Winery's policy prior to September 5, 2011, had a claim been made on the policy. (Test. of Luster; Ex. A17.)

19. As an out of state winery, Columbia Gorge Winery is not eligible for a SEW license in Oregon. (Test. of Kindrick.)

20. On March 31, 2012, the Winery license issued to Christopher Dobson, dba Camas Close Winery, for the premises located at 2480 S. Church Road, Oregon 97338, expired.[7]

CONCLUSIONS

1. On August 10, 2011, Licensee sold or offered for sale alcoholic beverages in a manner other than the license permits in violation of 471.405(1).

2. On March 25 to March 27, 2011, May 21 and 22, 2011, and June 1, 8, 15, 22 and 29, 2011, Licensee failed to maintain liquor liability insurance or bond with a corporate surety in the amount of not less than $300,000 for Camas Close Winery in violation of OAR 845-005-0400(1).

3. On March 8, 2011, May 4 and 10, 2011, July 5 and 18, 2011 and August 2, 2011, Licensee made false representations or statements to the Commission to induce or prevent action by the Commission in violation of ORS 471.425(1).

4. The appropriate sanction is cancellation of the license. However, since Licensee's license has expired, the sanction is a Letter of Reprimand.

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[7] Pursuant to OAR 137-003-0615(4)(a), on June 8, 2012, the Commission gave notice to (former) Licensee that it would take official notice from its licensing records of Finding of Fact 20. In its notice, the Commission recited Licensee's right under OAR 137-003-0615(4)(b) to object to and/or rebut the facts officially noticed. Licensee did not object or request the opportunity to rebut within 10 calendar days of the date of the notice. No response was received. On June 19, 2012 the Commission took official notice of the general facts within its specialized knowledge that are set forth in Finding of Fact 20.

OPINION

As set out above, the Commission asserts that Licensee violated ORS 471.405(1) by selling and serving wine at the August 10, 2011 event without a SEW license; that Licensee violated OAR 845-005-0400(1) by failing to maintain liquor liability insurance at certain special events prior to September 2011; and that Licensee violated 471.425(1) by claiming on SEW applications that he had liquor liability insurance, when he did not have such insurance in place. As the proponent of these contentions, the Commission bears the burden of proof. ORS 183.450(2); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position).

A. Violations

1. Sales in a manner other than the license permits.

ORS 471.405(1) addresses prohibited sales, purchases and possession of alcoholic liquor. It provides, as follows:

> No person shall peddle or deliver alcoholic beverages to or at any place, where, without a license, alcoholic beverages are sold or offered for sale. No licensee shall sell or offer for sale any alcoholic beverage in a manner, or to a person, other than the license permits the licensee to sell.

Oregon Winery licensees, such as Licensee in this case, are required to obtain Special Event Winery licenses to sell wine, cider, and malt beverages for drinking on special event licensed premises or in sealed containers for off premises consumption. ORS 471.223(2)(i).[8]

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[8] ORS 471.233(2) provides:

> (2) A winery license shall allow the licensee:
> (a) To import wine or cider in containers that have a capacity of more than four liters.
> (b) To import wine or cider in containers that have a capacity of four liters or less if the brand of wine or cider is under the control of the licensee.
> (c) To bottle, produce, blend, store, transport or export wines or cider.
> (d) To sell wines or cider at wholesale to the Oregon Liquor Control Commission or to licensees of the commission.
> (e) To sell wines or cider at retail directly to the consumer for consumption on or off the licensed premises.
> (f) To sell malt beverages at retail for consumption on or off the licensed premises.
> (g) To conduct any activities described in paragraphs (a) to (f) of this subsection at a second or third premises as may be designated by the commission.
> (h) To purchase from or through the commission brandy or other distilled liquors for fortifying wines.
> (i) To obtain a special events winery license that shall entitle the holder to conduct the activities allowed under paragraphs (e) and (f) of this subsection at a designated location other than the one set forth in the winery license for a period not to exceed five days.

The process for obtaining a SEW license is set out in OAR 845-005-0415(5).[9] Under the rule, the Commission may refuse to process any application that is not complete or not accompanied by documents or disclosures required by the form.

Here, the evidence establishes that the Commission received Licensee's SEW application on August 4, 2011, but refused to process it because it was incomplete. By letter dated August 5, 2011, the Commission notified Licensee that the application was incomplete and had not been processed. Although Licensee received this notice on or before August 9, 2011 and knew that he had not been issued a SEW license for the August 10, 2011 farmers market on Interstate Avenue in Portland, Camas Close Winery nevertheless offered and sold wine at that event. Consequently, as Licensee concedes, on that date, Licensee offered and sold wine at the special event without a SEW license, which is contrary to the permissions of his Winery license. Thus, the violation of ORS 471.405(1) has been proven.

2. Failure to maintain liquor liability insurance.

ORS 471.168[10] and OAR 845-005-0400(1)[11] require that a licensee maintain liquor

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[9] OAR 845-005-0415(5) provides as follows:

> Applicants must apply in writing for a Special Event Winery or Special Event Grower license, using the application form provided by the Commission. The Commission may require additional forms, documents, or information as part of the application. The Commission may refuse to process any application not complete, not accompanied by the documents or disclosures required by the form or the Commission, or that does not allow the Commission sufficient time to investigate it. Sufficient time is typically one to three weeks prior to the event date. The Commission may give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceeding under ORS 183.310 to 183.550.

[10] ORS 471.168 provides, in pertinent part:

> (1) For the purpose of providing coverage for injuries suffered by persons by reason of the conduct of intoxicated persons who were served alcoholic beverages on licensed premises while visibly intoxicated, all persons holding a license described in this section must either:
> (a) Maintain liquor liability insurance of not less than $300,000; or
> (b) Maintain a bond with a corporate surety authorized to transact business in this state in the amount of not less than $300,000.
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> (3) The requirements of this section apply to full on-premises sales licenses, limited on-premises sales licenses and brewery-public house licenses. The requirements of this section apply to temporary sales licenses, *special events winery licenses*, special events grower sales privilege licenses, special events brewery-public house licenses and special events distillery licenses *if the event that is licensed is open to the public and attendance at the event is anticipated to exceed 300 individuals per day*.

liability insurance of not less than $300,000 or a bond with an authorized corporate surety of not less than $300,000. Pursuant to ORS 471.168(3), the insurance or bond requirement extends to licensees that obtain special event winery licenses, if the licensed event is open to the public and attendance at the event is anticipated to exceed 300 individuals per day. This insurance or bond requirement for special event winery licenses stands even if the licensed winery is otherwise exempt from the requirement because the licensee does not allow alcohol consumption on the licensed winery premises.

In this case, the Commission alleges that on certain specified special event dates, instances in which attendance at the licensed special event was expected to exceed 300 persons per day (specifically, March 25-27, 2011; May 21-22, 2011; June 1, 2011; June 8, 2011; June 15, 2011; June 22, 2011; and June 29, 2011), Licensee violated OAR 845-005-0400(1) by failing to maintain liquor liability insurance or a bond with a corporate surety in the amount of at least $300,000. The record establishes that, on the specified dates, Licensee obtained a SEW license to serve alcoholic beverages at licensed special events in Oregon where the expected attendance exceeded 300 persons per day. The record further establishes that, on those dates, Licensee did not have a liquor liability insurance policy or a bond with a corporate surety in his name, or in

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> (4) The requirements of this section apply to winery licenses, brewery licenses and grower sales privilege licenses unless an applicant for issuance of the license or renewal of the license submits with the application for issuance or renewal of the license an affidavit that states that the licensee will not allow consumption of alcoholic beverages on the premises. (Emphasis added.)

[11] 845-005-0400 provides as follows:

> **Liquor Liability Insurance or Bond Requirement**
> (1) ORS 471.313(4)(i) requires applicants for a liquor license to demonstrate financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed. ORS 471.313(2) requires applicants listed in 471.168 to maintain liquor liability insurance or bond. In addition to other requirements, the Commission has determined that licensees listed in 471.168 must demonstrate financial responsibility for licensees' liability for damages to third parties caused by patrons off the licensed premises by meeting the requirements in section (1)(a) or (b) of this rule. ORS 471.168 requires certain licensees to provide coverage for injuries suffered because of the conduct of visibly intoxicated persons who were served in licensed premises by:
> (a) Maintaining liquor liability insurance of not less than $300,000; or
> (b) Maintaining a bond with a corporate surety authorized to transact business in this state in the amount of not less than $300,000.
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> (3) ORS 471.168 also requires licensees subject to the requirement to supply proof of compliance at the time the license is issued or renewed. For insurance, licensees must provide proof by naming the Commission as Certificate Holder on the policy and giving the Commission a copy of the certificate. For a bond, proof may be satisfied by identifying the name of the surety and providing the bond identification number.
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> (4) Failure to maintain insurance or a bond as required is a Category I violation and the Commission may cancel the license.

the name of Camas Close Winery. Licensee's winery was not added to Columbia Gorge Winery's liquor liability policy until September 5, 2011.

Licensee contends that although he did not carry liquor liability insurance (because Camas Close Winery does not have a tasting room and is not open to the public), he believed his activities under the SEW licenses were covered by Columbia Gorge Winery's liquor liability insurance policy because he is a part owner of Columbia Gorge Winery. Licensee's belief in this regard is not material to the violation. The question is whether Licensee had at least $300,000 of liquor liability insurance or a surety bond of like amount for these events as required by ORS 471.168. Although the Bisnett Insurance manager did not rule out the possibility that Licensee would have been covered under the Columbia Gorge Winery policy prior to September 5, 2011, the fact remains that Licensee was not listed as a named insured under the policy and therefore did not maintain insurance or a bond as required by statute on the special event dates listed above.

Indeed, the *possibility* that Licensee, an Oregon winery without its own liquor liability policy, would have been covered Columbia Gorge Winery's policy had a claim against Licensee been made during the time in question (March 25, 2011 through June 29, 2011) is insufficient to satisfy the statutory requirement. Pursuant to OAR 845-005-0400(1), a licensee is required to demonstrate financial responsibility sufficient to adequately meet the licensee's liability for damages to third parties caused by persons served in the licensed premises. Under OAR 845-005-0400(3), demonstrating proof of liquor liability insurance requires naming the Commission as a Certificate Holder on the policy, and providing the Commission with a copy of the certificate. Here, there is no evidence that the Commission was named as a Certificate Holder on Licensee's behalf on Columbia Gorge Winery's policy during the time period in issue. And, as noted above, the insurer's representative's equivocal statements regarding Licensee's status under the policy prior to September 5, 2011 fails to demonstrate Licensee's financial responsibility for potential liability for damages at the above listed licensed special events.

Finally, the fact that Columbia Gorge Winery's policy premium more than tripled (increasing from $1,200 to $4,000 per year) once Camas Close Winery was officially listed on the policy is evidence that, prior to September 5, 2011, the insurer did not consider Camas Close Winery to be covered under the policy. Thus, on this record, Licensee failed to maintain the insurance or bond required for special event winery licenses required under ORS 471.168(3). The violation of OAR 845-005-0400(1) has been proven.

3. False Statements

ORS 471.425(1) provides: "No person shall make false representations or statements to the Oregon Liquor Control Commission in order to induce or prevent action by the commission." Prior Commission cases have held that a false statement to the Commission need not be intentional, but must be material. *See Shan Creek Café* (OLCC, Final Order, 05-L-005, February 2006); *H20 Martini Bar & Restaurant* (OLCC, Final Order, 05-V-012, December 2005). A false statement is material if the subject of the false statement is a basis for the Commission to refuse, cancel or suspend a license. *Trocadero Inn* (OLCC, Final Order, 90-V-055, February 1991). Material false statements are those which inhibit the Commission's ability to investigate a

person's eligibility for a license. *Punjab Tavern* (OLCC, Final Order, 91-L-015, April 1992). The Commission has also held that a false statement is material if it was made intentionally. *AM/PM Market No. 756* (OLCC, Final Order, 95-L-031, July 1996). A false statement is intentional when the person making the statement intended to mislead the Commission. *Thomas Creek Steak and Seafood* (OLCC, Final Order, 00-L-008, April 2001).

The Commission asserts that on March 11, 2011, May 4, 2011, May 10, 2011, July 5, 2011, July 18, 2011 and August 2, 2011, Licensee made false statements or representations to the Commission to induce or prevent action by the Commission when he submitted signed SEW applications certifying that he had obtained at least $300,000 of liquor liability insurance for the special event through Liberty NW, policy no. 10-CG-2373849. The Commission asserts that Licensee's representations in this regard were false, because he did not have this insurance in his name, or that of Camas Close Winery, and that the representations were material to the evaluation and processing of the SEW applications.

Licensee argues that his representations on the SEW applications were not false, because he believed at the time that Camas Close Winery's activities at the special events were covered under Columbia Gorge Winery's liquor liability policy. Again, as above, Licensee's belief is not determinative. Even if Licensee believed he had coverage and he did not intend to mislead the Commission with his representations on the SEW applications, a violation is nevertheless established if the representations were both false and material. *See Shan Creek Café,* Final Order at 5-6.

Because Licensee was not officially listed as an insured on Columbia Gorge Winery's liquor liability policy on the dates listed above, his representation on the SEW applications that Camas Close Winery had at least $300,000 of liquor liability insurance under Liberty NW policy no. 10-CG-2373849 was false. Until Camas Close Winery was officially added to the policy in September 2011, the annual policy premium was approximately $1,200. With Camas Close Winery listed as an insured, Columbia Gorge Winery's liquor liability policy premium more than tripled to $4,000. As noted above, despite the insurer's representative's equivocal statements, the significant increase in the policy premium upon listing Licensee as an insured demonstrates, more likely than not, that prior to September 5, 2011, the insurer did not consider Camas Close Winery's business activities at licensed special events in Oregon to be covered under the policy. Thus, Licensee falsely represented that Camas Close Winery was insured under the Liberty NW policy.

Licensee's false representations were material because the subject of the statements constitutes a basis for refusal or cancellation of the license. *Trocadero Inn,* Final Order at 11. Under ORS 471.313(2), the Commission may refuse to license any applicant for a license if the applicant has not furnished an acceptable bond as required by ORS 471.311 or is not maintaining the insurance or bond required by ORS 471.168. And, as discussed above, under ORS 471.168(3), a SEW licensee is statutorily required to maintain liquor liability insurance or a bond whenever the licensed event's attendance is expected to exceed 300 people per day. A further reason Licensee's false statements are material is that the representations inhibited the license investigator's ability to investigate Licensee's eligibility for the SEW licenses. *See Punjab Tavern,* Final Order at 11. If Licensee had not falsely represented that Camas Close Winery had

the requisite liquor liability insurance, the Commission would not have approved the SEW licenses for the March 25-27, 2011, May 21-22, 2011 and June 1, 8, 15, 22 and 29, 2011 special events. Consequently, the violation of ORS 471.425(1) has also been established.

B. Sanction

The Commission has established three violations in this case: (1) that Licensee sold alcoholic beverages in a manner other than the license permits in violation of 471.405(1); (2) that Licensee failed to maintain liquor liability insurance or a bond in violation of OAR 845-005-0400(1); and (3) that Licensee made false representations or statements to the Commission in violation of ORS 471.425(1).

A violation of ORS 471.405(1) is a Category I violation. A Category I violation is one that makes the licensee ineligible for a license. OAR 845-006-0500(7)(a)(A). Under the Commission's guidelines, the standard penalty for a first Category I violation is cancellation of the license. OAR 845-006-0500(7), Exhibit 1. A violation of OAR 845-005-0400(1) is also a Category I violation. 845-005-0400(4). A violation of ORS 471.425(1) (false statement) is a Category II violation, and the standard penalty for a first such violation is a 30 day suspension.

The Commission also has the discretion to take into account the particular circumstances of each case, and increase or decrease the sanction where there are aggravating or mitigating circumstances. OAR 845-006-0500(7). As pertinent to this matter, reasons the Commission may aggravate a sanction include: repeated failure to comply with laws, efforts to conceal a violation, intentional violations, and the violation involved more than one patron or employee. OAR 845-006-0500(7)(c).

In the Second Amended Notice, Commission staff alleged aggravating circumstances. Specifically, Staff alleged that Licensee's violation of ORS 471.405(1) (sale other than license permits) was intentional and that Licensee made efforts to conceal the violation. Staff further alleged that violation two (failure to maintain liquor liability insurance) was repeated, and that violation three (false statement) was repeated and involved Licensee Dobson personally. *See P-Mart* (OLCC Final Order, 92-V-098, April 1993) (where the licensee personally committed the violation, there is basis for aggravation).

The evidence establishes that, as of August 9, 2011, Licensee knew that the Commission had not processed and approved the SEW license for the August 10, 2011 farmers' market. Despite Licensee's knowledge and the lack of a SEW license for the event, Camas Close Winery set up a booth and sold and sampled wine at the August 10, 2011 farmers' market. Thus, the evidence establishes that Licensee's violation of ORS 471.405(1) was intentional. Licensee's attempt to mitigate the violation by blaming the Commission for not approving the license in a timely manner is unavailing. There is no persuasive evidence that Licensee attempted to contact the Commission prior to the event to provide the additional information requested. As for violations two and three, the evidence establishes that both violations were repeated. Additionally, because Licensee Dobson signed the SEW applications containing the false statement, he was personally involved in violation three. Consequently, aggravating circumstances exist.

Considering the number of violations proven (three), the serious nature of the violations (two Category I and one Category II) and the existence of aggravating circumstances, the standard penalty of cancellation of Licensee's Winery license for the Category I violations is warranted. Cancellation of the license would have been imposed but for the fact that Licensee's license expired on March 31, 2012. The Commission has no jurisdiction to impose a fine or suspension or other penalty on a former licensee when the license is no longer in existence. However, the Commission retains jurisdiction to issue a Letter of Reprimand to a former licensee in order to establish the licensee's record of compliance. *Rod's Old Town* (OLCC Final Order, 92-V-073, February 1993); *300 Liberty Place* (OLCC Final Order 97-V-023, March 1998).

FINAL ORDER

The Commission orders that the Winery License held by Christopher Dobson, dba Camas Close Winery, located at 2480 South Church Road, Dallas, Oregon, be issued a LETTER OF REPRIMAND for the violations of ORS 471.405(1), OAR 845-005-0400(1) and 471.425(1).

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

Dated this 20th day of June, 2012

/s/ Steve Pharo
Stephen A. Pharo
Executive Director
OREGON LIQUOR CONTROL COMMISSION

Mailed this 20th day of June, 2012.

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for judicial review within 60 days from the service of this Order. Judicial review is pursuant to the provisions of ORS Chapter 183.