

**BEFORE THE OREGON LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON**

In the Matter of the Full On-Premises)	FINAL FINDINGS OF FACT
Sales License Held by:)	CONCLUSIONS OF LAW
)	AND ORDER
)	
STONE CLIFF INN, LLC)	OLCC-11-V-041
Erik Maki, Managing Member)	OLCC-11-V-041A
Michael Rosenbaum, Member)	OLCC-11-V-041B
Tom Cook, Member)	OLCC-11-V-041C
)	
dba STONE CLIFF INN)	
17900 S Clackamas River Drive)	
Oregon City, Oregon 97045)	

HISTORY OF THE CASE

On May 18, 2011, the Oregon Liquor Control Commission (OLCC or Commission) issued a Violation Notice to Stone Cliff Inn, LLC, Erik Maki (Managing Member), Michael Rosenbaum (Member), and Tom Cook (Member) (collectively Licensee), dba Stone Cliff Inn, located at 17900 S. Clackamas River Drive, Oregon City, Oregon. The OLCC alleged that Licensee’s employee failed to properly check the identification of a person who reasonably appeared 26 years of age before serving or selling that person an alcoholic beverage in violation of OAR 845-006-0335(1)(a)(b) and (c). The OLCC proposed a civil penalty of \$1,650 or a 10 (ten) day license suspension for the violation. On June 13, 2011, Member Michael Rosenbaum (a licensed attorney) filed a request for hearing as the attorney for Stone Cliff Inn, LLC.

The Commission referred the request to the Office of Administrative Hearings (OAH) on June 24, 2011. The OAH assigned the case to Senior Administrative Law Judge (ALJ) John Mann for hearing.

ALJ Mann held a contested case hearing on October 7, 2011 at the OAH offices in Tualatin, Oregon. Mr. Rosenbaum represented Licensee. Kelly Routt, OLCC Case Presenter represented the OLCC. OLCC Inspector Stephen Bainbridge, Clackamas County Sheriff’s Deputy Greg Jones, and minor decoy Matthew Brown testified for the Commission. James Keeney (Licensee’s former employee), employee Scott Storms, and employee Kevin Gordon testified for Licensee. The record closed on October 7, 2011 at the conclusion of the hearing.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed December 21, 2011. Staff filed Comments on the Proposed Order on January 5, 2012.

On February 10, 2012 and April 5, 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:¹

ISSUES

1. Whether Licensee's employee, Kevin Gordon, failed to verify minor Matthew Brown's age in violation of OAR 845-006-0335(1)(a), (b) and (c) and, if so, what is the appropriate sanction?
2. Whether the Commission is barred from imposing a sanction against Licensee because the Clackamas County Sheriff's Office previously sought to impose a criminal sanction against Kevin Gordon for the same acts alleged against Licensee. OAR 845-006-0335(2)(b).
3. Whether the Commission is barred from imposing a sanction because the violation occurred as the result of entrapment.
4. Whether the Commission is barred from imposing a sanction against Licensee because the Commission failed to comply with its uniform standards for minor decoy operations. ORS 471.346(6).

EVIDENTIARY RULING

Exhibits A1 through A9, offered by OLCC, were admitted to the record without objection. Licensee offered Exhibits R1 through R4. Exhibits R1 and R4 were admitted to the record without objection. The OLCC objected to Exhibits R2 and R3 because they were not provided to the OLCC prior to the hearing. That objection was sustained and Exhibits R2 and R3 were not admitted.

FINDINGS OF FACT

1. Stone Cliff Inn, LLC, dba Stone Cliff Inn, located at 17900 S. Clackamas River Drive in Oregon City, Oregon has held a full on-premises commercial (F-COM) sales license for the premises since July 7, 2004. Since May 12, 2010, the LLC has been owned and operated by Managing Member Erik Maki, Member Thomas Cook, and Member Michael Rosenbaum. The Commission has never charged Licensee with a violation of Oregon liquor laws. (Ex. A1; test. of Bainbridge.)

¹ In this Final Order, the Commissioners reverse the analysis, in part, a conclusion of law, and the outcome of the Proposed Order issued by the Administrative Law Judge. Specifically, the Commissioners do not find that the minor decoy lied about his age, and, therefore, the minor decoy operation herein was conducted in compliance with OLCC's minor decoy standards. Consequently, imposition of a sanction for the violation of OAR 845-006-0335(1)(a), (b) and (c) is not barred by ORS 471.346(6). A sanction is warranted.

2. On March 18, 2011, Deputy Greg Jones of the Clackamas County Sheriff's Office, organized and conducted a minor decoy operation at a number of locations in Clackamas County, including the licensed premises at issue in this case. Deputy Jones enlisted the services of two Sheriff's Office Cadets, Matthew Brown and David Sloboda, who were both under 21 years of age. OLCC Inspector Stephen Bainbridge participated in the operation on OLCC's behalf. (Test. of Jones; Test. of Bainbridge; Ex. A5.)

3. At the beginning of the minor decoy operation, Deputy Jones instructed the cadets to carry only their true Oregon driver licenses or identifications and to produce the same if requested by a server. Deputy Jones also instructed the cadets to answer truthfully if a server asked the cadet's age when making a purchase. (Ex. A5 at 3; test. of Jones.)

4. Deputy Jones, Inspector Bainbridge, and the two cadets arrived together at the licensed premises shortly before 4:00 p.m. on March 18, 2011. The deputy and inspector asked Mr. Brown, who was born on August 22, 1991, to attempt to purchase alcohol. (Test. of Brown; test. of Bainbridge; test. of Jones.) Mr. Brown appeared to be his true age on March 18, 2011. He was clean shaven, with dark and short cropped hair. He had unlined facial features and a youthful appearance. (Ex. A8.)

5. Mr. Brown entered the licensed premises first. The three remaining members of the operation followed in several seconds later. Mr. Brown walked directly to the bar and sat down. The other three gentlemen went immediately to a table near the door where they could observe, but not hear, Mr. Brown. The three men walked past a sign at the front of the restaurant that stated "Please Wait to be Seated." (Test. of Jones.) Inspector Bainbridge stood for several seconds so that he would have a better view of Mr. Brown. (Test. of Bainbridge.) Kevin Gordon (the bartender on duty and Licensee's employee), observed the three gentleman at the table and thought that their actions were unusual. Mr. Gordon thought that the men looked as though they were at the restaurant for some reason other than ordering food. Mr. Gordon thought it was particularly unusual for the men to seat themselves and that Inspector Bainbridge did not sit down immediately. (Test. of Gordon.)

6. As he sat down at the bar, Mr. Brown asked Mr. Gordon a question about a college basketball game playing on a television behind the bar. Mr. Gordon answered the question. (Test. of Brown; test. of Gordon.) Mr. Gordon asked Mr. Brown if he was with the three gentlemen who came in behind him. Mr. Brown stated that he was not. (Test. of Gordon.)

7. Mr. Brown then asked Mr. Gordon for a Budweiser beer (an alcoholic beverage). Mr. Gordon asked Mr. Brown for his identification. Mr. Brown produced his true identification, an Oregon driver license, which showed his true birth date and included the words "UNDER 21 UNTIL 08-22-2012" in yellow type on a red background square surrounding his photograph. (Test. of Brown; Ex. A7.) Mr. Gordon misread the identification and mistakenly concluded that Mr. Brown had recently turned 21 years old. Mr. Gordon said to Mr. Brown "You just made it." (Test. of Brown.) Mr. Gordon believes Mr. Brown nodded in response and verbally indicated

“Yeah” or something similar.² (*Id.*) Mr. Gordon then served a bottle of Budweiser beer to Mr. Brown. (*Id.*)

8. Within a few seconds, Deputy Jones approached Mr. Gordon, followed by Inspector Bainbridge. Deputy Jones introduced himself, and told Mr. Gordon he had just served alcohol to a minor. Mr. Gordon stated that he must have misread the identification and that he thought Mr. Brown had just turned 21 years old. After a brief conversation, Deputy Jones issued a criminal citation to Mr. Gordon for violation of ORS 471.410. (Test. of Jones.) Mr. Gordon has been a bartender for more than twenty years and this was first time he had been charged with a violation of Oregon liquor laws. (Test. of Gordon.)

9. James Keeney, Licensee’s then-general manager, came out to the bar area a short while later. Mr. Gordon told him what had occurred and also told him that Mr. Brown nodded or answered “yeah” when Mr. Gordon told him “You just made it.”³ Sometime after March 18, 2011, Mr. Keeney left his job with Licensee for reasons not related to the issues in this case. (Test. of Keeney.)

10. Licensee maintains video cameras throughout the licensed premises. Video recordings from March 18, 2011 captured the interactions between Mr. Brown and Mr. Gordon without sound. Because of the angles of the cameras, and the lack of sound, the videos do not conclusively demonstrate whether or not Mr. Brown nodded in response to any statements by Mr. Gordon. (Ex. R1.)

11. Deputy Jones later dismissed the criminal citation against Mr. Gordon because Clackamas County did not have all necessary witnesses available on the day scheduled for trial. (Test. of Jones.)

CONCLUSIONS OF LAW

1. Licensee’s employee, Kevin Gordon, failed to verify minor Matthew Brown’s age in violation of OAR 845-006-0335(1)(a), (b) and (c). A sanction of ten (10) days license suspension or a civil penalty in the amount of \$1,650, in lieu of the suspension is appropriate for this violation.

2. The Commission is not barred from imposing a sanction against Licensee because the Clackamas County Sheriff’s Office previously sought to impose a criminal sanction against Kevin Gordon for the same acts alleged against Licensee. OAR 845-006-0335(2)(b).

² A review of the record by the Commission demonstrates that Mr. Gordon’s ultimate testimony was that the minor responded to his statement by saying “uh-huh,” “yes,” or by nodding. The Commission alters this finding of fact only insofar as there is clear and convincing evidence that Mr. Gordon did not testify that the minor both commented verbally and nodded, but, instead, that he was unsure that the minor did both, but believed he did.

³ A review of the record by the Commission demonstrates that Mr. Keeney’s testimony was that Kevin Gordon told him that the minor responded to the statement, by saying “uh-huh,” “yes,” or by nodding. The Commission alters this finding of fact only insofar as there is clear and convincing evidence that Mr. Keeney did not testify that Mr. Gordon stated that the minor both commented verbally and nodded.

3. The Commission is not barred from imposing a sanction because the violation occurred as the result of entrapment.

4. The Commission is not barred from imposing a sanction against Licensee because the Commission failed to comply with its uniform standards for minor decoy operations. ORS 471.346(6).

OPINION

1. Violation of OAR 845-006-0335

The Commission asserts that Licensee's employee, Kevin Gordon, violated OAR 845-006-0335(1)(a), (b) and (c) when he failed to verify minor Matthew Brown's age before allowing Mr. Brown to buy an alcoholic beverage when he reasonably appeared to be under 26 years of age. As the proponent of this contention, the Commission bears the burden of proof. ORS 183.450(2); *Harris v SAIF*, 292 Or 683, 690 (1983) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Sobel v. Board of Pharmacy*, 130 Or App 374, 379, (1994), *rev den*, 320 Or 588 (1995) (standard of proof under the Administrative Procedures Act is preponderance of evidence absent legislation adopting a different standard). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

OAR 845-006-0335 provides, in pertinent part:

(1) Age Verification:

(a) ORS 471.130 requires a licensee or permittee to verify the age of a person who wants to buy or be served alcoholic beverages when there is any reasonable doubt that the person is at least 21 years old. The Commission requires a licensee or permittee to verify the age of anyone who wants to drink alcoholic beverages or is in an area prohibited to minors if there is reasonable doubt that the person is at least 21 years old. Reasonable doubt exists if the person appears to be under the age of 26;

(b) Whenever a licensee or permittee verifies age, he/she must verify it as ORS 471.130 requires (statement of age card or the specified items of identification) and must reject any obviously altered document or one which obviously does not identify the person offering it;

(c) Licensees must require all their employees who sell, serve, oversee or control the sale or service of alcoholic beverages to verify age as subsection (a) of this section requires.

Licensee concedes that Mr. Brown was 19 years of age on March 18, 2011 and that he provided his true identification, an Oregon Driver License, to Mr. Gordon upon request. Licensee further concedes that Mr. Gordon examined the identification and misread the birth date, mistakenly concluding that Mr. Brown was 21 years old. Licensee also concedes that, after examining the identification, Mr. Gordon served Mr. Brown a bottle of beer.

However, Licensee argued that Mr. Gordon complied with OAR 845-006-0335 by requesting identification. ORS 471.130(1) provides, in pertinent part:

All licensees and permittees of the Oregon Liquor Control Commission, before selling or serving alcoholic liquor to any person about whom there is any reasonable doubt of the person's having reached 21 years of age, shall require such person to produce one of the following pieces of identification:

* * * * *

(b) The person's motor vehicle operator's license, whether issued in this state or by any other state, so long as the license has a picture of the person.

Licensee asserts that Mr. Gordon complied with OAR 845-006-0335 by requesting and examining Mr. Brown's Oregon Driver License, an acceptable form of identification under ORS 471.130(1). Although Licensee concedes that Mr. Gordon may have unlawfully served alcohol to Mr. Brown, Licensee contends that Mr. Gordon met the requirements of OAR 845-006-0335 by examining the license.

The Commission has previously rejected that argument. In *Texaco Star Mart* (OLCC Final Order, 97-V-051, April 1998), the Commission interpreted the language "verify the age of the person" to require that the seller actually verify that the person is at least 21 years of age. It requires more than a simple ministerial act; the rule requires verification of age, not merely the act of examining identification. A seller can normally verify that a person is at least age 21 by examining identification, as specified in ORS 471.130(1), that demonstrates that the person is at least 21 years old. However, a seller cannot "verify" that a person is at least 21 years old by examining identification that demonstrates that the person is *under* age 21. In such cases, the Commission will find a violation "even if the seller requested identification before the sale, where the minor produced his valid identification showing that he is a minor." *Texaco Star Mart* at 7. Thus, as in this case, a seller's mistake in reading an identification card or in calculating a person's age does not excuse the violation where the person presents valid identification showing that he or she is not yet 21 years of age.

The record establishes that Mr. Brown reasonably appeared to be less than 26 years of age. Under the Commission's rule, reasonable doubt existed as to whether he was at least 21 years old. Because Mr. Gordon misread Mr. Brown's identification, he did not verify that Mr. Brown was at least 21 years old. The violation of OAR 845-006-0335(1)(a), (b) and (c) has been established.

2. Dual Sanctions for Same Conduct

In this case, the Commission seeks to impose a sanction against Licensee for Mr. Gordon's actions on March 18, 2011. Mr. Gordon was previously issued a criminal citation (later dismissed) for the same conduct. Licensee contends OAR 845-006-0335(2)(b) prohibits the Commission from imposing sanctions against both Mr. Gordon and Licensee for the same conduct. OAR 845-006-0335(2)(b) provides:

If the Commission sanctions a licensee or permittee for one or more of the following violations under this rule: Selling to or serving a minor; Allowing a minor to drink; or Allowing a minor in an area prohibited to minors, the Commission will not sanction the licensee or permittee separately under ORS 471.130 or 471.410 (2) for the same conduct . The Commission may charge a licensee or permittee for one or more violations under this rule and also charge violation of one or more of the statutes in the alternative.

(Emphasis added.)

Licensee's argument is incorrect for two reasons. First, the above rule expressly limits only *the Commission's* ability to impose dual sanctions. In this case, there is no evidence that the Commission ever sought to impose a sanction against Mr. Gordon. Rather, the Clackamas County Sheriff's Office, not the Commission, issued, and then later dismissed, a criminal citation to Mr. Gordon. That act did not bar the Commission from imposing a civil sanction pursuant to the Commission's regulatory authority.

Second, the above rule does not limit the authority of the Commission to impose sanctions against a licensee *and* a permittee for the same conduct. Rather, it provides that if the Commission sanctions a licensee or a permittee for one of the enumerated violations of Commission rules, it will not separately sanction "*the licensee or permittee*" for violation of ORS 471.130 or ORS 471.410(2). By use of the definite article, the rule is most reasonably interpreted to prohibit dual sanctions against the *same* licensee or permittee. The rule does not prevent the Commission from imposing sanctions against both a permittee and a separate licensee based on the permittee's conduct.

3. Entrapment

Licensee next asserts that the Commission should be barred from imposing a sanction because Mr. Gordon was entrapped into selling alcohol to Mr. Brown. The defense of entrapment, in the criminal context, is codified in ORS 161.275, which provides:

(1) The commission of acts which would otherwise constitute an offense is not criminal if the actor engaged in the proscribed conduct because the actor was induced to do so by a law enforcement official, or by a person acting in cooperation with a law enforcement official, for the purpose of obtaining evidence to be used against the actor in a criminal prosecution.

(2) As used in this section, “induced” means that the actor did not contemplate and would not otherwise have engaged in the proscribed conduct. Merely affording the actor an opportunity to commit an offense does not constitute entrapment.

In *Murrayhill Thriftway*, (OLCC, Final Order, 98-V-027, April 1999) the Commission addressed the defense of entrapment in a case involving minor decoys. The Commission noted:

Relevant defenses to the crime of selling liquor to a minor include entrapment and outrageous conduct defenses. Under Oregon law, simply using decoys does not constitute entrapment. Entrapment occurs when a person commits a crime because that person was induced to do so by a law enforcement official or by another person acting in cooperation with a law enforcement official, for the purpose of obtaining evidence to be used in a criminal prosecution. ORS 161.275(1). “Induced” means that the person did not contemplate and would not otherwise have engaged in the proscribed conduct. ORS 161.275(2). Merely affording the person an opportunity to commit an offense does not constitute entrapment.

According to *Provigo v. Alcoholic Bev. Control* App. Bd, 7 Cal. 4th 561, 867 P2d 1163 (Cal 1994), at 1167, the use of decoys is a permissible method in the enforcement of criminal law. The use of decoys becomes invalid only when badgering or importuning takes place to an extent and degree that it is likely to induce an otherwise law abiding person to commit a crime. The court concluded that no pressure or overbearing conduct occurred by the police minor decoys that might suggest entrapment.

(Emphasis added.)

Thus, Commission precedent suggests that a valid defense of entrapment can be shown if the Licensee can demonstrate that “an otherwise law abiding person” was induced to commit the offense by excessive “badgering or importuning” by a decoy. That did not occur in this case.

Licensee asserts that Mr. Gordon misread Mr. Brown’s identification primarily because he was distracted by the unusual behavior of Inspector Bainbridge, Deputy Jones, and the other minor decoy. The three gentlemen entered the restaurant and immediately sat themselves at a table, ignoring a sign that instructed them to wait. Inspector Bainbridge did not sit down immediately, but remained standing; in part to maintain a better view of Mr. Brown. Mr. Gordon thought the men were behaving oddly, and that they did not appear to be there to order food.

While it is understandable that Mr. Gordon would be distracted by such behavior, it does not rise to the level of badgering or importuning necessary to constitute entrapment. Indeed, despite the distractions, Mr. Gordon was able to speak to Mr. Brown, ask him for his identification, and actually read Mr. Brown’s driver license. Had he not misread the license, it is likely he would not have sold Mr. Brown the beer. But it is difficult to attribute that simple

mistake to the distraction caused by the three other participants in the decoy operation, nor did such a distraction rise to the level of entrapment.

4. Failure to Comply with Uniform Minor Decoy Standards

Licensee also asserts that the Commission may not impose a sanction in this case because Mr. Brown failed to comply with the Commission's uniform minor decoy standards. ORS 471.346 provides, in relevant part:

(1) The Oregon Liquor Control Commission shall by rule develop uniform standards for minor decoy operations used to investigate licensees and agents operating stores on behalf of the commission under ORS 471.750 for violations of the laws of this state prohibiting sales of alcoholic beverages to minors. Uniform standards established by the commission under this section apply to all investigations conducted by the commission that use minor decoys. The commission shall encourage all law enforcement agencies of this state to use the uniform standards established under this section for minor decoy operations conducted by the law enforcement agencies.

(6) Notwithstanding any other provision of this chapter, the commission may not consider any sale of alcoholic beverages to a minor that results from a minor decoy operation that is not conducted in compliance with the standards established under this section for the purpose of imposing any civil penalty against a licensee, making a decision on the renewal, suspension or cancellation of a license issued under this chapter or otherwise sanctioning a licensee for the sale of alcoholic beverages to a minor.

Pursuant to the above statute, the Commission adopted OAR 845-009-0200 which provides, in pertinent part:

(1) Purpose. ORS 471.346 directs the Oregon Liquor Control Commission to develop, through rulemaking, uniform standards for minor decoy operations used to investigate licensees and agents operating stores on behalf of the Commission under 471.750 for violations of the laws of this state prohibiting sales of alcoholic beverages. It is the Oregon Liquor Control Commission's intention that decoy operations are to be an impartial test of a licensee or agent's ability and willingness to obey laws on preventing sale or service of alcoholic beverages to minors.

(2) Uniform standards for minors used in minor decoy operations:

(a) The minor must be under 21 years of age; and

(b) The minor may not use false identification; and

(c) The minor must look under the age of 26 years; and

(d) The minor may not lie about their age.

* * * * *

(4) Uniform standards for coordination with law enforcement agencies. The Oregon Liquor Control Commission will coordinate with law enforcement agencies to ensure, to the greatest extent possible, that:

(a) Law enforcement agencies are informed of the Commission's uniform standards for minor decoy operations; and

(b) Law enforcement agencies provide the Commission with copies of their minor decoy policies;

(c) In order for the Commission to process violation cases in a timely manner, law enforcement agencies will be encouraged to provide the Commission with the results of their minor decoy operation(s).

(Emphasis added.)

In this case, Licensee presented credible first-hand testimony from Mr. Gordon regarding his interactions with Mr. Brown. Mr. Gordon candidly testified that he checked Mr. Brown's identification and misread it. As a result, Mr. Gordon believed that Mr. Brown had just recently turned 21. Mr. Gordon stated to Mr. Brown, "You just made it." Mr. Brown nodded and/or said, "Yes" or "Uh huh." Mr. Brown did not recall Mr. Gordon's comment and did not recall nodding or assenting to any statement by Mr. Gordon. However, Mr. Brown did not deny that such an exchange could have occurred.

It is not sufficiently clear from the remark that Mr. Gordon was commenting on Mr. Brown's age or that Mr. Brown understood the comment to be a comment on his age. Mr. Brown was born on August 22, 1991 and was 19 years of age on March 18, 2011. Because he had handed Mr. Gordon his true identification, he knew Mr. Gordon was looking at identification that indicated his birth date as August 22. He had not had a birthday recently and at his next birthday, he would be 20, not 21. It was impossible for Mr. Brown to know that Mr. Gordon read his birth date as 3/22, instead of 8/22 (particularly since the date of the sale was 3/18 -- not just after 3/22), or that Mr. Gordon was referring to just making it to 21. He could have been referring to just making it in time for the next basketball game in the tournament on the television, or for late lunch service, or something else. By nodding and/or verbally acknowledging Mr. Gordon's comment, Mr. Brown did simply that -- acknowledged the comment. Because it was unclear what the comment meant, without being in the head of Mr. Gordon, and because it was not put to him in the form of a question, much less a question about his age, Mr. Brown's acknowledgement of the comment does not equate to an affirmative representation or agreement that he had just turned 21.

The evidence therefore established, more likely than not, that Mr. Brown acknowledged Mr. Gordon's comment by nodding his head and/or by saying "Uh huh" or "Yes." As explained

above, this did not constitute a lie about his age. Because Mr. Brown did not lie about his age to Mr. Gordon, the decoy operation did not fail to comply with the Commission's uniform standards. Therefore, the Commission may impose a sanction against Licensee.

5. Sanction

OAR 845-006-0500(7)(a) sets forth categories of license violations. Under that rule, failure to verify the age of a minor before selling alcohol, in violation of OAR 845-006-0335 is a Category III violation, "[v]iolations that create a potential threat to public health or safety." Exhibit 1 of the rule lists guidelines for the applicable sanctions within each category. If OLCC finds aggravating or mitigating circumstances, it may assess a greater or lesser sanction. OAR 845-006-0500(7)(c).

OLCC's violation notice proposed to impose a civil penalty of \$1,650 or a 10-day suspension for the violation in this case, which is the standard penalty for the first Category III violation within two years. OLCC has not charged aggravating circumstances and Licensee has not established cognizable mitigating circumstances. Accordingly, the standard sanction applies to this violation.

FINAL ORDER

The Commission orders that the Full On-Premises Sales (F-COM) license held by Stone Cliff Inn, LLC, Managing Member Erik Maki, Member Michael Rosenbaum, and Member Tom Cook, doing business as Stone Cliff Inn, located at 17900 S Clackamas River Drive, Oregon City, Oregon, be suspended for ten (10) days for violation of 845-006-0335(1)(a)(b) and (c). Licensee may pay a civil penalty of \$1,650 in lieu of the suspension.

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.

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

Dated this 11th day of April 2012.

/s/ Stephen A Pharo

Stephen A. Pharo

Executive Director

OREGON LIQUOR CONTROL COMMISSION

Mailed this 11th day of April 2012.

THIS ORDER IS EFFECTIVE ON THE DATE MAILED.

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.