

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

In the Matter of the Full On-Premises Sales) **FINAL FINDINGS OF FACT**
License Held by:) **CONCLUSIONS OF LAW**
) **AND ORDER**

Juan Meza, Inc.) OLCC-12-V-077
Lucia Meza, Pres/Director/Stockholder) OLCC-12-V-077A
dba **FAJITAS MEXICAN RESTAURANT**)
14931 SE 82nd Drive)
Clackamas, OR 97015)

In the Matter of the Off-Premises Sales)
License Held by:)

JA Meza, Inc.) OLCC-12-V-079, 080 and 081
Juan Meza, Pres/Sec/Treas/Dir/Stockholder) OLCC-12-V-079A, 080A and 081A
dba **7-ELEVEN STORE #2363-14502F**)
6207 SE Milwaukie Ave.)
Portland, OR 97202)
)
dba **7-ELEVEN STORE #2363-18156F**)
4516 SE Hawthorne Blvd.)
Portland, OR 97214)
)
dba **7-ELEVEN STORE #2363-17422E**)
16725 SE McLoughlin Blvd.)
Milwaukie, OR 97222)

HISTORY OF THE CASE

On November 14, 2012, the Oregon Liquor Control Commission (OLCC or Commission) issued a Notice of Proposed License Cancellation to Juan Meza, Inc., Lucia Meza, President/Director/Stockholder dba Fajitas Mexican Restaurant, located at 14931 SE 82nd Drive, Clackamas, Oregon. The Notice proposed to cancel the license for a violation of ORS 471.315(1)(a)(J), based on former corporate principal Juan Meza’s conviction of a Class C Felony, Coercion. That same date, the Commission issued Notices of Proposed License Cancellation, Removal From The Responsible Vendor Program, and Proposed Refusal to Renew License to JA Meza, Inc., Juan Meza, President/Secretary/Treasurer/Director/Stockholder dba 7-Eleven Store No. 2363-14502F, 6207 SE Milwaukie Avenue, Portland, Oregon; 7-Eleven Store No. 2363-18156F, 4516 SE Hawthorne Blvd., Portland, Oregon; and 7-Eleven Store No. 2363-17422E, 16725 SE McLoughlin Blvd., Milwaukie, Oregon. These three Notices also proposed cancellation for a violation of ORS 471.315(1)(a)(J), based on corporate principal Juan Meza’s conviction of a Class C Felony, Coercion. The Licensees timely requested hearings.

The Commission referred the hearing requests to the Office of Administrative Hearings on December 20, 2012. The OAH assigned the cases to Senior Administrative Law Judge Alison Greene Webster. The four cases were consolidated for hearing.

On April 1, 2013, the Commission issued an Amended Notice of Proposed License Cancellation to Licensee Juan Meza, Inc., and corporate principal Lucia Meza proposing to refuse to renew the license based on former corporate principal Juan Meza's felony conviction and an alleged poor record of compliance with the liquor laws.

On April 9, 2013, the Commission issued a Second Amended Notice of Proposed License Cancellation to Licensee Juan Meza, Inc. and corporate principal Lucia Meza, alleging an additional violation. The Second Amended Notice alleged that corporate principal Lucia Meza made a false representation or statement to the Commission to induce or prevent action by the Commission in violation of ORS 471.425(1).

ALJ Webster presided over a hearing in these matters in Tualatin, Oregon, on April 16, 2013. Attorney Duke Tufty represented the Licensees. Anna Davis presented the case for the OLCC. The following witnesses testified at the hearing: OLCC Inspector Jenny Erickson and Licensee Lucia Meza. The record closed at the conclusion of the hearing on April 16, 2013.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed May 16, 2013.

Licensee filed Exceptions to the Proposed Order on June 7, 2013. Staff filed Comments on the Proposed Order on June 7, 2013. The Administrative Law Judge responded to Licensee's Exceptions and Staff's Comments on July 8, 2013.

On August 22, 2013, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Administrative Law Judge, Licensee's Exceptions to the Proposed Order, Staff's Comments on the Proposed Order and the Administrative Law Judge's Response to Licensee's Exceptions and Staff's Comments. Based on this review and the preponderance of the evidence, the Commission enters the following:

EVIDENTIARY RULINGS

OLCC Exhibits A1 through A27 were admitted at hearing without objection. Licensees' Exhibits P1 and P2 were admitted over OLCC's relevancy objection. Licensees' Exhibits P3 and P4 were admitted without objection.

ISSUES

1. Whether the Commission has grounds to cancel the licenses of Licensees Juan Meza, Inc. and Lucia Meza pursuant to ORS 471.315(1)(a)(J) based on former corporate principal Juan Meza's conviction for Coercion, a Class C Felony.

2. Whether Licensee Lucia Meza made a false representation or statement to the Commission to induce or prevent action by the Commission in violation of ORS 471.425(1).

3. If a violation of ORS 471.315(1)(a)(J) and/or ORS 471.425(1) is found, what is the proper sanction as to Licensees Juan Meza, Inc. and Lucia Meza?

4. Whether the Commission has grounds to refuse to renew the license of Licensees Juan Meza, Inc. and Lucia Meza under ORS 471.313(4)(d) (felony conviction) or ORS 471.313(4)(g) (poor record of compliance with the liquor laws of this state while licensed) and, if so, whether Licensees have shown good cause to overcome the Commission's refusal to renew the license.

5. Whether the Commission has grounds to cancel the licenses of Licensees JA Meza, Inc. and Juan Meza pursuant to ORS 471.315(1)(a)(J) based on Juan Meza's conviction for Coercion, a Class C Felony.

6. Whether the Commission has grounds to refuse to renew the licenses of JA Meza, Inc. and Juan Meza under ORS 471.313(4)(d) (felony conviction) or ORS 471.313(4)(g) (poor record of compliance with the liquor laws of this state while licensed) and, if so, whether Licensees JA Meza, Inc. and Juan Meza have shown good cause to overcome the Commission's refusal to renew the licenses.

FINDINGS OF FACT

1. At all times pertinent to this matter, JA Meza, Inc. held Off-Premises Sales licenses at three 7-Eleven store locations: Store no. 2353-14502F, located at 6207 SE Milwaukie Avenue, Portland, Oregon; Store no. 2353-18156F, located at 4516 SE Hawthorne Blvd., Portland, Oregon; and Store no. 2353-17422E, located at 16725 SE McLoughlin Blvd., Milwaukie, Oregon. Juan Meza is the president, secretary, treasurer, director and sole shareholder of JA Meza, Inc. (Ex. A2.)

2. On August 9, 2005, the Commission issued a Full On-Premises Sales license to Juan Meza, Inc., dba Fajitas Mexican Restaurant, located at 14931 SE 82nd Drive, Clackamas, Oregon. Until approximately October 25, 2012, Juan Meza was the president, director and sole shareholder of Juan Meza, Inc. (Ex. A1.) As of November 1, 2012, the Commission approved the change in membership of Juan Meza, Inc. to Lucia Meza as the company's president, secretary and sole stockholder. (Ex. A11; test. of Erickson.)

3. On or about October 11, 2011, Mr. Meza was indicted in Clackamas County, Oregon and charged with two counts of Sexual Abuse in the First Degree (ORS 163.427), a felony. The charges arose out of a July 2010 complaint by a female employee of Licensee JA Meza Inc.'s McLoughlin Blvd. 7-Eleven store accusing Mr. Meza of harassment. The complainant (Lourdes Hernandez) alleged that Mr. Meza had engaged in a pattern of sexually harassing behavior with her over the years at the licensed premises. The Clackamas County Sheriff's Office investigated Ms. Hernandez's complaint. The investigation resulted in the filing of sex abuse charges against Mr. Meza. (Ex. A6; test. of Erickson.)

4. On or about June 11, 2012, Licensees JA Meza, Inc. and Juan Meza filed License Renewal Applications with the Commission for 7-Eleven Store no. 2363-14502F (SE Milwaukie Ave.) and 7-Eleven Store no. 2363-18156F (SE Hawthorne Blvd.) (Exs. A14 and A17.) On June 28, 2012, the Commission issued a Conditional Letter of Authority to Operate for both store locations. (Exs. A15 and A18.)

5. On or about September 6, 2012, the Clackamas County District Attorney's Office filed an Information in the criminal action against Mr. Meza, accusing him of one count of Coercion (ORS 163.275). The District Attorney alleged that, on or between November 1, 2008 and December 31, 2009, in Clackamas County, Oregon, Mr. Meza:

[D]id unlawfully and knowingly induce Lourdes Lira Hernandez to engage in conduct from which Lourdes Lira Hernandez had a legal right to abstain, to wit: unwanted touching by means of instilling in Lourdes Lira Hernandez a fear that if Lourdes Lira Hernandez refrained from the conduct induced, defendant would engage in conduct constituting the crime of harassment, said act(s) contrary to statutes in such cases made and provided, against the peace and dignity of the State of Oregon.

(Ex. P2.)

6. That same date, Mr. Meza petitioned the Clackamas County Circuit Court to enter a guilty plea on the count of Coercion. (Ex. P1.)

7. On September 10, 2012, Lucia Meza, Mr. Meza's daughter, signed a promissory note, agreeing to pay Mr. Meza \$30,000 within one year from transfer approval in consideration for receiving 100 shares of Juan Meza, Inc. (Ex. A24; test. of L. Meza.)

8. Pursuant to a Judgment entered October 12, 2012, Mr. Meza was convicted of Coercion (ORS 163.275), a Class C Felony, for a crime committed on or about November 1, 2008. Mr. Meza was sentenced to 45 days in jail and supervised probation for a period of 36 months. For purposes of sentencing, the court classified the crime as a 6 (out of 11) on the Crime Seriousness Scale and an I (no prior history) on the Criminal History Scale.¹ (Ex. A3 and P3.)

9. On October 25, 2012, Mr. Meza, as the sole director of Juan Meza, Inc., consented to the sale of 100 shares of company stock (representing 100 percent of the issued and outstanding stock) to Lucia Meza. (Ex. A7.) That same date, Juan Meza, Inc., Mr. Meza and Lucia Meza entered into a Stock Purchase Agreement, in which Ms. Meza agreed to pay Mr. Meza \$30,000 for the shares, payable within one year. (Ex. A8.) The parties closed the sale and Mr. Meza resigned as the shareholder, director, president and secretary of the company effective October 25, 2012. (Exs. A9 and A10.)

¹ See OAR Chapter 213, Division 4 (the Oregon Criminal Justice Commission's Sentencing Guidelines Grid).

10. On November 1, 2012, the Commission notified Licensee Juan Meza, Inc., that it had approved the corporation's change in membership and that it had placed restrictions on the license. (Ex. A11.) On November 5, 2012, the Commission issued an Amended Grant License with Restrictions letter to Juan Meza, Inc. The Commission confirmed that it had approved the company's change in membership with the following restrictions on the license:

- (1) Licensee will not allow Juan Meza to be on the licensed premises; and
- (2) Licensee will not allow Juan Meza to take part in the operation or management of the business or to provide services to the business.

(Ex. A12.) The Commission's November 5, 2012 letter to Licensee Juan Meza, Inc. also advised:

Juan Meza is selling stock in Juan Meza, Inc. to you on contract for \$30,000. You will pay him the \$30,000 from profits from the business. Juan Meza will benefit or suffer financially based on the performance of the business; *therefore, Juan Meza has a financial interest in the licensed business.*

(*Id.*, emphasis added) In addressing the reason for the restrictions, the Commission explained that because of Mr. Meza's felony conviction, the Commission would have a basis to refuse the license if Mr. Meza was the license applicant, and because Mr. Meza still has a financial interest in the business, the Commission has a basis to refuse to approve the change in ownership. The letter concluded that placing the restrictions on the license pursuant to OAR 845-005-0355(1)(a) provides good cause to overcome the refusal basis. In the letter, the Commission also advised that Licensees that they had the right to a hearing to dispute the license restrictions. (*Id.*)

11. On December 26, 2012, Lucia Meza paid Mr. Meza \$10,000 by personal check in partial payment for the company stock. (Ex. A25.) On February 16, 2013, Juan Meza, Inc. paid Mr. Meza \$10,000 by check as the second payment on the stock purchase agreement. (Ex. A26.)

12. Licensees Juan Meza, Inc. and Lucia Meza did not contest the Commission's November 5, 2012 Amended Grant License with Restrictions letter. Accordingly, on January 28, 2013, the Commission issued a Final Order by Default affirming the application to change corporate officers, directors, stockholders and the granting of the license with restrictions. In the Final Order by Default, the Commission found that Mr. Meza retained a financial interest in the business because his \$30,000 loan to Ms. Meza put him in the same position as an investor. In addition, the Commission found as follows:

Juan Meza was convicted of Coercion, a Class B [*sic*] Felony, in October 2012. The crime involved violence or the threat of violence. The Commission has previously found that felony convictions that involve violence or threat of violence to another person are related to a person's fitness to hold a liquor license. *Swan Song Inn*, OLCC-01-L-004, November 2001. The Commission concludes that circumstances exist with regard to Juan Meza such that the Commission would have a basis to refuse to issue a license to Juan Meza if he were the license applicant.

(Ex. A13.) The Commission then confirmed that because Mr. Meza retained a financial interest in the business and his felony conviction provides a basis to refuse him a liquor license, the Commission has grounds to impose restrictions on the license with regard to Mr. Meza. (*Id.*)

13. On March 11, 2013, Licensees JA Meza, Inc. and Juan Meza filed a License Renewal Application with the Commission for 7-Eleven Store no. 2363-17422E (McLoughlin Blvd.). Mr. Meza disclosed his conviction for Coercion on the renewal application. (Ex. A20.) On March 15, 2013, the Commission issued a Conditional Letter of Authority to Operate for that store location. (Ex. A21.)

14. On or about March 12, 2013, Licensees Juan Meza, Inc. and Lucia Meza filed a License Renewal Application with the Commission for Fajitas Mexican Restaurant. Ms. Meza completed and signed the application on the corporation's behalf. On the application, Operational Question (3) states, "[p]lease list all arrests or convictions for any crime, violation, or infractions of any law during the last 18 months even if they are not liquor related for anyone who holds a financial interest in the licensed business." (Ex. A4.) In response to this question, Ms. Meza wrote "None." (*Id.*)

15. On or about April 11, 2013, the Commission accepted surrender of the Off-Premises Sales licenses at all three of JA Meza, Inc.'s 7-Eleven Stores. (Ex. P4.)

CONCLUSIONS

1. The Commission has grounds to cancel the license of Juan Meza, Inc. pursuant to ORS 471.315(1)(a)(J) based on former corporate principal Juan Meza's conviction for Coercion, a Class C Felony.
2. Licensee Lucia Meza made a false representation or statement to the Commission to induce or prevent action by the Commission in violation of ORS 471.425(1).
3. The proper sanction is cancellation of the license.
4. The Commission has grounds to refuse to renew the license of Licensee Juan Meza, Inc. and Lucia Meza under ORS 471.313(4)(d) or (g). Licensees have not shown good cause to overcome the refusal basis.
5. The Commission has grounds to cancel the licenses of Licensee JA Meza, Inc. and Juan Meza pursuant to ORS 471.315(1)(a)(J) based on Mr. Meza's conviction for Coercion, a Class C Felony. However, because the licenses have been surrendered, the proper sanction is a Letter of Reprimand.
6. The Commission also has grounds to refuse to renew the licenses of JA Meza, Inc. and Juan Meza under ORS 471.313(4)(d) or (g). Licensees have not shown good cause to overcome the refusal basis.

OPINION

A. Juan Meza's Felony Conviction.

As set out above, the Commission has proposed to cancel the licenses of Juan Meza, Inc. and JA Meza, Inc., based on ORS 471.315(1)(a)(J), which provides as follows:

(1) The Oregon Liquor Control Commission may cancel or suspend any license issued under this chapter, or impose a civil penalty in lieu of or in addition to suspension as provided by ORS 471.322, if the commission finds or has reasonable ground to believe any of the following to be true:

(a) That the licensee:

* * * * *

(J) *Since the granting of the license, has been convicted of a felony*, of violating any of the liquor laws of this state, general or local, or of any misdemeanor or violation of any municipal ordinance committed on the licensed premises.

(Emphasis added.)

Also pertinent to this case is ORS 670.280, which prohibits a licensing agency from denying an occupational or professional license solely for the reason that the applicant has been convicted of a crime, but authorizes the agency to consider the relationship of the facts which the support the conviction to the specific occupational or professional standard in determining the applicant's fitness for the license.

As the corporate principal of JA Meza, Inc. and former corporate principal of Juan Meza, Inc., Mr. Meza is considered a licensee on the licenses at issue.² Since the granting of the licenses at issue, Mr. Meza has been convicted of Coercion,³ a Class C Felony.

² "Licensee" is defined as including the principal officers and directors of a corporation, and stockholders who own or control ten percent or more of any class of stock. OAR 845-006-0301 and OAR 845-006-0475(1)(d).

³ As pertinent to this case, ORS 163.275(1) provides:

A person commits the crime of coercion when the person compels or induces another person to engage in conduct from which the other person has a legal right to abstain, or to abstain from engaging in conduct in which the other person has a legal right to engage, by means of instilling in the other person a fear that, if the other person refrains from the conduct compelled or induced or engages in conduct contrary to the compulsion or inducement, the actor or another will:

(a) Unlawfully cause physical injury to some person;

* * *

(c) Engage in conduct constituting a crime;

The Commission has previously determined that Mr. Meza's felony conviction relates to his fitness to hold a liquor license. In both the November 5, 2012 Amended Grant License with Restrictions letter issued to Licensee Juan Meza, Inc., and the January 28, 2013 Final Order by Default, the Commission implicitly found that Mr. Meza's felony conviction for Coercion rendered him unlicensable. Notwithstanding this determination, Licensees maintain that Mr. Meza's felony conviction is not sufficiently related to his fitness to hold a license and therefore does not provide a basis for cancelling the liquor licenses at issue in this matter.

The first question to be addressed is whether, under the principles of collateral estoppel/issue preclusion, Licensees Juan Meza, Inc. and Lucia Meza are precluded from challenging the Commission's determination that Mr. Meza's felony conviction is related to his fitness to hold a liquor license. Issue preclusion may be applied in administrative proceedings. *Drews v. EBI Companies*, 310 Or 134, 142 (1990); *Kaib's Roving R.Ph. Agency, Inc. v. Employment Dept.*, 161 Or App 290 (2002). Whether an administrative decision has a preclusive effect depends on:

- (1) whether the administrative forum maintains procedures that are sufficiently formal and comprehensive;
- (2) whether the proceedings are trustworthy;
- (3) whether the application of issue preclusion would facilitate prompt, orderly and fair problem resolution;
- and (4) whether the same quality of proceedings and the opportunity to litigate is present in both proceedings.

Nelson v. Emerald People's Utility Dist., 318 Or 99, 104 n.4 (1993) (citations omitted). Issue preclusion may apply to findings of fact as well as conclusions of law. *Drews*, 310 Or at 140. If the following requirements are met, a tribunal's determination on an issue may preclude re-litigation of the issue in another proceeding:

1. The issue in the two proceedings is identical. * * *
2. The issue was actually litigated and was essential to a final decision on the merits in the prior proceeding. * * *
3. The party sought to be precluded has had a full and fair opportunity to be heard on that issue. * * *
4. The party sought to be precluded was a party or was in privity with a party to the prior proceeding. * * *
5. The prior proceeding was the type of proceeding to which a court will give preclusive effect. * * *

Nelson, 318 Or at 104 (citations omitted).

In this case, the Commission's decision-making process includes the requisite characteristics for claim preclusion to apply. In addition, the requirements of *Nelson* set out above have been satisfied. The issue is identical. In the context of approving the change in corporate membership of Juan Meza, Inc., the Commission determined that Mr. Meza's felony conviction was related to his fitness as a licensee. That determination was essential to the Commission's final decision to impose restrictions on the license prohibiting Mr. Meza from being on the premises and participating in the business. As set out at the end of the OLCC's

November 5, 2012 letter, Licensees John Meza, Inc. and Ms. Meza had the right to a hearing to challenge the restrictions and the Commission's proffered reason for imposing them. Licensees did not request a hearing on the Amended Grant License with Restrictions letter, nor did they seek judicial review of the January 28, 2013 Final Order by Default. Consequently, at this juncture, Licensees Juan Meza, Inc. and Lucia Meza are precluded from relitigating the relationship between Mr. Meza's felony conviction and his fitness to hold a liquor license. *See, e.g., Gwynn v. Wilhelm*, 226 Or 606, 609 (1961) ("The doctrine of *res judicata*, including collateral estoppel, as to matters essential to the judgment, applies to judgments by default.")⁴

Licensees JA Meza, Inc. and Juan Meza are not similarly precluded, however, because they were not a party to, or in privity with, Juan Meza, Inc. and Ms. Meza on the license restrictions matter. Therefore, as to JA Meza, Inc. and Mr. Meza, it is appropriate to address the relationship between Mr. Meza's conviction and his fitness to sell or serve alcoholic liquor.

Mr. Meza asserts that because his conviction for Coercion did not involve alcohol or controlled substances and was not a Measure 11 crime or a sex offense, the conviction is not sufficiently related to his fitness to hold a license. Commission staff contends that Mr. Meza's crime involved violence or the threat of violence and, based on Commission Final Order precedent, a conviction involving violence or threat of violence to another person is related to a person's fitness to hold a liquor license.⁵ In response, Licensee asserts that pursuant to the court's sentencing guidelines, Mr. Meza's conviction did not involve violence or the threat of violence. In support of this contention, Licensee notes that the circuit court classified Mr. Meza's Coercion conviction as Crime Category 6 which, pursuant to OAR 213-017-0006, means the offense involved no threat of physical injury.

As noted above, under ORS 670.280, the agency is authorized to consider the relationship between the "facts which support the conviction" and the particular license at issue. Here, the facts which support Mr. Meza's conviction for Coercion are set out in the District Attorney's Information. In short, the facts underlying the conviction involve Mr. Meza unlawfully compelling Ms. Hernandez into unwanted physical contact by instilling in her a fear that if she did not engage in that unwanted touching, he would engage in conduct constituting the crime of

⁴ Even had there been no prior adjudication of unfitness as reflected by the January 28, 2013 Final Order by Default, there exists an alternate basis, as well, for a determination that former corporate principal Juan Meza's felony conviction renders him unfit to hold a liquor license and provides a basis for cancelling the Juan Meza, Inc. liquor license at issue in this matter. See the analysis following in this section regarding the impact of the conviction on the unfitness of Juan Meza to hold a liquor license license and the basis for cancellation of the JA Meza, Inc. liquor license. That referenced analysis is identical to that which forms the alternate basis for unfitness and cancellation of the Juan Meza, Inc. license under ORS 471.315(1)(a)(J).

In their Comments on the Proposed Order, staff requested that this alternative basis be explicitly inserted into the Final Order and, in her Response to Comments and Exceptions to the Proposed Order, the Administrative Law Judge agreed.

⁵ *See, e.g., Under the Bridge Cigarettes* (OLCC Final Order, 05-L-002, February 2006); *Swan Song Inn* (OLCC Final Order, 01-L-004, November 2001).

harassment.⁶ It is also significant that Ms. Hernandez was Mr. Meza's employee and that the felonious conduct occurred on one of Mr. Meza's licensed premises. That the court, for purposes of sentencing Mr. Meza, classified the conviction as involving no threat of physical injury does not mean that Mr. Meza's criminal conduct did not cause harm or any danger to public safety. Indeed, at a minimum, the crime involved Mr. Meza subjecting a female employee to offensive and unwanted physical contact.

Because Mr. Meza's felony occurred on a licensed premises and involved subjecting an employee to offensive and unwanted physical contact, the facts supporting the conviction are related to Mr. Meza's fitness as a liquor licensee. *See, e.g., Kingston Saloon* (OLCC Final Order 89-V-088, December 1989) (the commission of a crime on a licensed premises reflects adversely on a person's fitness to work in the alcoholic beverage industry). And, because of this link between Mr. Meza's felony conviction and his licenses, the Commission is authorized under ORS 471.315(1)(a)(J) to cancel the licenses.

B. Ms. Meza's False Statement

The Commission next alleges that corporate principal Lucia Meza made a false representation or statement to the Commission to induce or prevent action by the Commission in violation of ORS 471.425(1) when, on March 12, 2013, she submitted a license renewal application that did not disclose Mr. Meza's October 12, 2012 conviction for Coercion.

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). Those false statements which inhibit the Commission's ability to investigate a person's eligibility for a license are also material false statements. *Punjab Tavern* (OLCC Final Order, 91-L-015, April 1992).

Commission Staff contends that Ms. Meza's "None" response to Operational Question (3) was false because Mr. Meza, who had a conviction within the prior 18 months, continued to hold a financial interest in the licensed business. Licensees, in response, assert that Ms. Meza

⁶ As pertinent to this case:

- (1) A person commits the crime of harassment if the person intentionally:
 - (a) Harasses or annoys another person by:
 - (A) Subjecting such other person to offensive physical contact;

ORS 166.065(1).

did not make a false statement and that even if her statement was false, it was not made with an intention to induce or prevent action by the Commission.

Whether Ms. Meza did, in fact, make a false statement depends on whether Mr. Meza had a financial interest in the licensed business as of March 12, 2013. As noted above, the renewal application asks the applicant to list all arrests or convictions for any crime, violation or infraction during the last 18 months “for anyone who holds a financial interest in the licensed business.” Commission Staff asserts that, at the time Ms. Meza submitted the renewal application, Mr. Meza continued to hold a financial interest in the licensed business because Ms. Meza had yet to satisfy her obligations to Mr. Meza under the stock purchase agreement. Commission Staff also asserts that Licensees Juan Meza, Inc. and Ms. Meza cannot now relitigate the issue of whether Mr. Meza held a financial interest in the licensed business because they did not appeal the November 5, 2012 Amended Grant License with Restrictions letter or the January 28, 2013 Final Order by Default. Both the restrictions letter and the Final Order found that Mr. Meza retained a financial interest in the business by virtue of his sale of the company stock to Ms. Meza on contract for \$30,000.

As discussed above, Licensees Juan Meza, Inc. and Lucia Meza had the opportunity to litigate the Commission’s determination that Mr. Meza had a financial interest in the business at the time the Commission approved the change of corporate membership and granted the license with restrictions. Because Licensees did not do so then, they are precluded from doing so now. Furthermore, even if Licensees were not legally precluded from relitigating the issue, the evidence establishes that Mr. Meza continued to hold a financial interest in the licensed business when Ms. Meza submitted the renewal application on March 12, 2013.

The phrase “financial interest in the business” is addressed in OAR 845-005-0311(4). Under that rule, a person has a financial interest in the licensed business if the person “may financially benefit or suffer based on the performance of the licensed business.” As a specific example, any person who “invests or loans money or other property for the licensed business” is deemed to have a financial interest in the business. OAR 845-005-0311(4)(b).

In October 2012, Mr. Meza agreed to sell, and Ms. Meza agreed to buy for \$30,000, all of the issued and outstanding stock of Juan Meza, Inc. The parties agreed that the \$30,000 purchase price was payable within one year. Ms. Meza planned to pay, and did in part actually pay,⁷ Mr. Meza on the contract from profits from the business. Consequently, until Ms. Meza completely satisfied her payment obligations under the stock purchase agreement, Mr. Meza was in a position to financially benefit or suffer based on the performance of the licensed business. Because Ms. Meza had not completed payment on the contract as of March 12, 2013, Mr. Meza was still had an investment in the company and therefore continued to have a financial interest. Because Mr. Meza continued to have a financial interest in the business on that date, Ms. Meza made a false statement when she wrote “None” in response to Operational Question (3) and omitted mention of Mr. Meza’s conviction.

⁷ As found above, on February 16, 2013, Juan Meza, Inc. paid Mr. Meza \$10,000 as the second payment on the stock purchase agreement.

The Commission has long held that a false statement is material if the subject of the false statement is a basis for refusal, cancellation, or suspension of the license. *Trocadero Inn* (OLCC Final Order, 90-V-055, February 1991). Ms. Meza's false statement was material because the subject of the false statement, the criminal record of persons having a financial interest in the licensed business, is a basis for the Commission to refuse a license. For this reason, Ms. Meza's false response to Operational Question (3) on the renewal application constitutes a violation of ORS 471.425(1). *See, e.g., City Center Food Mart* (OLCC Final Order, 08-V-070, September 2009) (the licensee made a false representation on a license renewal application by failing to disclose his felony arrests two months prior for selling tobacco products without a license).

In addition, or as an alternate basis for materiality, the failure to disclose Mr. Meza's felony conviction could have inhibited the Commission's ability to conduct a complete investigation into Licensees' eligibility for renewal of the license.

As to this latter basis for materiality, Licensee argues that because the Commission already had notice of Mr. Meza's conviction and his continued financial interest in Fajitas, the Commission cannot find that Ms. Meza's false representation on the renewal application induced or prevented any action by the Commission, a required element of ORS 471.425(1). This argument was effectively laid to rest by the Court of Appeals in *Von Weidlein International v. Young*, 16 Or App 81 (1973). 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.*" In discussing this language, the Court in *Von Weidlein, supra* at 95, noted that the statute does not require a finding that the Commission in fact relied on the false representation to its detriment: "The evil aimed at by the statute is the possibility that the commission may be misinformed. It is not required that the commission actually believe the erroneous information, and the statute is not circumscribed by the elements of common law fraud."

That the Commission may have otherwise learned of Mr. Meza's felony conviction (through, for example, JA Meza, Inc.'s March 11, 2013 license renewal application for the McLoughlin Blvd. 7-Eleven store) does not relieve Ms. Meza of the obligation to disclose it on the renewal application, nor does it absolve her from failing to do so. Stated differently, Ms. Meza's duty of full disclosure is not reduced simply because the OLCC had knowledge of Mr. Meza's conviction from other sources. The statute focuses on the duty of disclosure and not on the Commission's actual knowledge. In responding "None" to Operational Question (3), Ms. Meza made a false statement on the license renewal application. This omission was material, and, as such, had the potential to induce or prevent action by the Commission. Omission of a material fact can inhibit the Commission's ability to conduct a complete investigation into eligibility for renewal of the license. For these reasons, Ms. Meza made a false representation in violation of ORS 471.425(1).

C. Sanction

Juan Meza, Inc. Commission Staff proposes cancellation of the restaurant's liquor license based on the violations of ORS 471.315(1)(a)(J) (felony conviction) and ORS 471.425(1) (false statement). Pursuant to the Commission's guidelines, a violation of ORS 471.315(1)(a)(J)

is a Category I violation, the standard sanction for which is cancellation of the license. OAR 845-006-0500. A violation of ORS 471.425(1) is a Category II violation, and the standard penalty for a first such violation is a 30 day suspension. *Id.* at Exhibit 1.

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). Grounds for mitigation include good faith efforts to prevent a violation and extraordinary cooperation in the Commission's violation investigation. Grounds for aggravation include, but are not limited to, prior warnings about compliance problems, repeated failure to comply with laws, and efforts to conceal the violation. *Id.*

Licensees contend that mitigating circumstances exist and for that reason, a Letter of Reprimand is an appropriate sanction. Citing prior Commission actions in cases such as *A.J.'s Homestead Restaurant* (OLCC Final Order 90-V-024, October 1990), *Tony's Tavern* (OLCC Final Order 86-L-012, January 1987), *The Frontier* (OLCC Final Order 86-V-032, December 1986) and *Kingston Saloon* (OLCC Final Order 89-V-088, November 1989), Licensees argue that because Mr. Meza has since completely divested himself from the restaurant business, the license should not be cancelled. As mitigating factors, Licensees point to the facts that the business is now owned and operated by another individual; the license is subject to restrictions preventing Mr. Meza from participating in the business; and the felony did not occur on the licensed premises.

In *The Frontier*, one of the corporate principals committed a felony (conspiracy to import heroin) on the licensed premises. Prior to his conviction, the corporate principal completely divested himself from any legal interest in the corporation and any involvement in the business enterprise. Instead of canceling the license, the Commission imposed a 30 day suspension or fine in lieu of suspension on the corporate licensee.

In *Tony's Tavern*, one of the two licensed partners was convicted of a felony. The Commission cancelled the wrongdoing partner's license based on the felony conviction, but allowed the license to continue in the name of the other partner. The Commission issued a Letter of Reprimand to the remaining partner.

In *A.J.'s Homestead*, one of the two corporate principals was convicted of a felony (possession of a controlled substance). The Commission cancelled the license of the wrongdoer but allowed the license to continue with the other principal as the corporation's sole shareholder on the condition that the wrongdoer divest himself of all shares in the licensed corporation and resign as a director and principal officer of corporation. The Commission's sanctions also included a Letter of Reprimand issued to the corporate licensee.

And, in *Kingston Saloon*, where the wrongdoer was one of four corporate principals, the Commission penalized the corporate licensee and recorded the violation on the wrongdoer's compliance record, but did not record the violation on the other principals' individual compliance records. There, the Commission imposed a penalty short of cancellation on the

corporate licensee due, in large part, to the other licensees' previous lengthy record of compliance.⁸

Commission Staff asserts that the above cases are distinguishable from the circumstances at hand because, in each of those cases, there were multiple individual licensees on the license when the violation occurred. Here, however, Mr. Meza was the sole principal of the corporation when he committed the felony. He remained the corporation's only principal until just after his October 2012 conviction, when he sold the business to Ms. Meza. Commission Staff contends that, in this situation, Licensees should not be able to avoid the sanction for Mr. Meza's violation of ORS 471.315(1)(a)(J) simply by replacing him as the sole corporate principal and abiding by the license restrictions prohibiting his involvement in the business.⁹

While the circumstances in this case are different, it is undisputed that in the past, the Commission has allowed a corporate licensee to continue after a corporate principal is convicted of a felony related to fitness to hold a liquor license on the condition that the wrongdoing principal completely divests him- or herself from the corporation and any involvement in the business enterprise. More recently, the Commission has allowed a corporate licensee to continue despite a corporate principal's felony convictions where there was a significant passage of time between the underlying criminal conduct and no negative intervening circumstances. *See, e.g., Center Market #1, #2, #9 et al* (OLCC Final Order, 08-V-104, October 2009).

Center Market #1, #2, #9, involved three corporate licensees with a common president, director and stockholder. The corporate principal was convicted of two felonies relevant to his fitness to hold a liquor license. Despite the Category I violation, the Commission found mitigating circumstances that warranted sanctions short of cancellation. For the two corporate licensees with good compliance records, the Commission reduced the penalty by two levels, and imposed a suspension of 30 days or a fine of \$4,950 in lieu of suspension. For the corporate licensee with the less than ideal compliance record, the Commission imposed the most serious sanction short of cancellation: a 30 day mandatory suspension. Final Order at 9-10.

Here, as in *Center Market #1, #2, #9*, there has been a significant passage of time (more than three years) since the underlying criminal conduct that led to Mr. Meza's conviction. As in the cases cited by Licensees, Mr. Meza has divested himself from the corporation and the business. However, unlike *Center Market #1, #2, #9* and the cases cited by Licensees, there are

⁸ The Commission no longer recognizes a lengthy record of compliance with the liquor laws as a basis for mitigation. *See Cabaret Lounge* (OLCC Final Order, 08-V-061, October 2009) at n8.

⁹ Pursuant to OAR 845-006-0500(9), "[a] licensee may not avoid the sanction for a violation * * * by merely adding or dropping a partner or converting to another form of legal entity when the individuals who own, operate, or control the business are substantially similar." Commission Staff asserts that this provision supports its position that Licensee may not avoid the sanction by virtue of the sale of the company stock to Ms. Meza. Licensee, on the other hand, asserts that may avoid the sanction for Mr. Meza's violation under this rule because the business is now owned and operated by a different person. Because Licensee did not merely add or drop a *partner* and did not convert to another form of legal entity, this rule is not directly applicable to the circumstances at issue.

adverse intervening circumstances affecting Licensees, namely Ms. Meza’s violation of ORS 471.425(1).

If Mr. Meza’s felony conviction were Licensees’ only serious violation within a two year period, perhaps Mr. Meza’s sale of the company and relinquishment of operation or control of the business would provide a basis for mitigation to a sanction short of the drastic step of cancellation. But, intervening circumstances since Mr. Meza’s crime and conviction, specifically the violation of ORS 471.425(1) offset the mitigating factors. Therefore, it is appropriate to impose the standard sanction for the Category I violation, cancellation of the license. *See City Center Food Mart* (OLCC Final Order, 88-V-070, September 2009) (holding that an intervening violation of ORS 471.425(1) offset mitigating circumstances surrounding a felony conviction violation); *Shell Food Mart* (OLCC Final Order, 08-V-060, March 2010) (same).

Because cancellation of the license is warranted due to the violation of ORS 471.315(1)(a)(J), it is not necessary to impose a separate penalty for the subsequent violation of ORS 471.425(1).

JA Meza, Inc. Commission Staff also proposes cancellation of the Off-Premises sales licenses of JA Meza Inc. based on Mr. Meza’s violation of ORS 471.315(1)(a)(J). These three licenses are no longer in existence because Licensees have since surrendered them to the Commission. Where the license is no longer in existence, the Commission has no jurisdiction to cancel or suspend the license or impose a fine. Thus, the appropriate sanction is a Letter of Reprimand to establish Licensees’ record of compliance at the three formerly licensed 7-Eleven locations. *Rod’s Old Town*, (OLCC Final Order, 92-V-073, February 1993); *300 Liberty Place* (OLCC Final Order 97-V-23, March 1998).

D. License Renewals

Juan Meza, Inc. The Commission also proposes to deny renewal of Licensees’ license pursuant to ORS 471.313(4)(d) and(g). The Commission “may refuse to license any applicant * * * if the Commission has reasonable ground to believe any of the following to be true”:

(4) That the applicant:

* * * * *

(d) 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.

* * * * *

(g) Did not have a good record of compliance with the alcoholic liquor laws of the state and the rules of the Commission when previously licensed.

For purposes of ORS 471.313, the Commission may count as evidence of a poor record of compliance charges that are proved for the first time during the license refusal contested case, as long as the Commission gives reasonable notice of the charges and provides the applicant an

opportunity to contest the charges. *Riverside Restaurant & Lounge* (OLCC Final Order, 94-L-008, December 1996).

Mr. Meza committed, and was convicted of, a felony while licensed. The felony occurred on another of Mr. Meza's licensed premises. Thus, the Commission has grounds to refuse to renew the license under ORS 471.313(4)(d). The record also establishes that Ms. Meza made a false statement to the Commission in violation of ORS 471.425(1). Based on these two serious violations, the Commission also grounds to deny renewal under ORS 471.313(4)(g).

A licensee can overcome the grounds for refusing to renew the license with a showing of good cause for the renewal. Where the license denial is based on the licensee's lack of compliance with the liquor laws, factors to be considered in determining the existence of good cause include the period of time without violations as a licensee, the nature and seriousness of the violations, whether the violations were mitigated or aggravated, and acceptance of responsibility for the violation. *See, e.g., Quincy Store* (OLCC Final Order, 02-V-008/L-001, December 2002).

When the license refusal is based on a felony conviction, OAR 845-005-0325(5)¹⁰ requires that the Commission consider any intervening circumstances since the commission of the crime in determining whether the applicant is an acceptable future compliance risk. In either case, the licensee bears the burden to prove that it is a good candidate for future compliance with the liquor laws. *See Shell Food Mart*, Final Order at 12; *Dad's Restaurant & Lounge* (OLCC Final Order, 06-V-029, December 2007).

In *City Center Market #1, #2, #9, et. al*, discussed above, the Commission found good cause to overcome the refusal basis where the licensee's compliance record since the criminal conduct, "while not ideal, is not so poor as to constitute a negative intervening circumstance suggesting the he is a poor risk for future compliance." Final Order at 8. Conversely, in *City Center Food Mart*, the Commission held that an intervening violation (omitting to mention the corporate principal's recent felony conviction on a license renewal application) demonstrated that the licensee was not a good candidate for future compliance. Final Order at 8. And, in *Shell Food Mart*, Final Order at 13, the Commission similarly found that intervening violations weighed against a finding of good cause to overcome the refusal bases.

In this case, factors favoring good cause include the following: the misconduct giving rise to Mr. Meza's criminal conviction occurred between November 2008 and December 2009, more

¹⁰ OAR 845-005-0325(5) provides that the Commission will deny a license, in the absence of a showing of good cause, where:

The applicant has been convicted of a felony when there is a relationship between the facts that support the conviction and applicant's fitness to exercise the license privileges. When there is a relationship between the applicant's fitness and the felony, the Commission considers any intervening circumstances since the commission of the crime in determining whether the applicant is an acceptable future compliance risk.

than three years ago;¹¹ Mr. Meza has accepted responsibility for his actions; and, Mr. Meza has attempted to mitigate the impact of his conviction on this license by divesting himself from ownership or participation in the licensed business. The factors weighing against good cause include the nature and seriousness of the violation and the adverse intervening circumstances, specifically Ms. Meza's recent false statement to the Commission on the renewal application.

The factors favoring good cause do not outweigh the negative factors noted above. Consequently, on this record, Licensees have not demonstrated that they are good candidates for future compliance and therefore cannot overcome the grounds for refusing to renew the license.

Licensee JA Meza, Inc. The Commission also proposed to deny renewal of Licensee JA Meza, Inc.'s three Off-Premises Sales licenses pursuant to ORS 471.313(4)(d) and(g). Because Mr. Meza has since surrendered these licenses, he remains the sole corporate principal, he committed the felony on one of the licensed premises, and he will be on probation until October 2015, the Commission is entitled to refuse to renew these licenses as well.

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¹¹ The Commission has held that the passage of time since the criminal conduct must be long enough to allow the Commission to find that the applicant or licensee has reformed and will not be a poor risk for compliance. *Swan Mart* (OLCC Final Order, 05-L-008, October 2006); *Juanita Lee Ray* (OLCC Final Order, 90-SP-189, May 1991). The more time that has passed, the greater the inference can be made that the applicant has reformed. *Gail D. Betha*' (OLCC Final Order, 92-SPR-056, September 1992). But, if other factors exist that weigh against good cause, the passage of three years is not enough time to weigh in favor of good cause. *Thomas Creek Steak and Seafood* (OLCC, Final Order, OLCC-00-L-008, April 2001).

FINAL ORDER

The Commissioners orders that the Full On-Premises Sales license issued to Juan Meza, Inc., Lucia Meza, President/Director/Stockholder dba Fajitas Mexican Restaurant, shall be CANCELLED.

It is further ordered that the application to renew the Off Premises Sales License held by Juan Meza, Inc., Lucia Meza, President/Director/Stockholder dba Fajitas Mexican Restaurant be REFUSED.

It is further ordered that JA Meza, Inc., Juan Meza, President/Secretary/ Treasurer/ Director/Stockholder dba 7-Eleven Store No. 2363-14502F, 7-Eleven Store No. 2363-18156F, and 7-Eleven Store No. 2363-17422E, shall be issued a Letter of Reprimand for the violation of ORS 471.315(1)(a)(J).

It is further ordered that the application to renew the Off Premises Sales License held by JA Meza, Inc., Juan Meza, President/Secretary/Treasurer/Director/Stockholder dba 7-Eleven Store No. 2363-14502F, 7-Eleven Store No. 2363-18156F, and 7-Eleven Store No. 2363-17422E, be REFUSED.

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

Dated this _____ day of August 2013

Merle Lindsey
Interim Executive Director
OREGON LIQUOR CONTROL COMMISSION

Mailed this _____ day of August 2013

THIS ORDER IS EFFECTIVE AT 7:00 AM ON THE _____ DAY OF _____, 2013.

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.