

EVIDENTIARY RULINGS

Exhibits A1 through A13, offered by the OLCC, and Exhibits P1 through P11, offered by Ms. Moustachetti, were admitted into the record without objection.

FINDINGS OF FACT

1. On or about June 25, 2004, Ragen M. Moustachetti committed the crime of Delivery of a Controlled Substance II (methamphetamine), a class B felony. She was convicted of the charge in the Marion County Circuit Court, Marion County, Oregon, on December 1, 2004. (Ex. A2, A3.)

2. On or about October 29, 2007, Ms. Moustachetti committed the crime of Delivery of a Controlled Substance II (methamphetamine), and was convicted of the charge in the Marion County Circuit Court on November 16, 2007. (Ex. A4, A5.)

3. Ms. Moustachetti committed the crime of Possession of a Controlled Substance II (methamphetamine), a class C felony, on or about May 14, 2010. She was convicted of the charge in Marion County Circuit Court on December 2, 2010. (Ex. A6, A7.)

4. On or about November 11, 2010, Ms. Moustachetti committed the crime of Delivery of Marijuana, a class C felony. On or about February 14, 2011, Ms. Moustachetti committed the crime of Possession of a Controlled Substance II (methamphetamine). On or about April 22, 2011, Ms. Moustachetti committed the crime of Delivery of a Controlled Substance II (methamphetamine). She was convicted of all three charges in the Marion County Circuit court on October 3, 2011. (Ex. A8 - A13.)

5. As a result of the October 3, 2011 convictions, Ms. Moustachetti was sentenced to 25 months incarceration and 36 months post-prison supervision. (Ex. A12.)

6. Ms. Moustachetti was diagnosed as drug addicted in 2004. Subsequent to her October 2011 convictions, she entered a state certified substance abuse treatment program through Pathfinders of Oregon. She completed the six-month residential component of the treatment program in April 2013 and completed the after-care component in August 2013. Her last use of controlled substances occurred on April 11, 2011. (Test. of Moustachetti.)

7. Ms. Moustachetti is scheduled to complete parole in May 2015. However, if she has paid all her fines and is otherwise in compliance, she may apply for early release from parole in May 2014. Ms. Moustachetti is in compliance with her parole. She continues to be actively involved in her church and in substance abuse support groups. (Test. of Moustachetti.)

8. The OLCC received Ms. Moustachetti's application for a service permit on May 16, 2013. (Ex. A1; test. of McNeal.)

CONCLUSIONS OF LAW

1. Ms. Moustachetti's application for a service permit should be denied because she has three or more controlled substance felony convictions, at least one of which was within six years of the date the OLCC received the application. ORS 471.380(1)(d), OAR 845-009-0020(4)(a)(D).

2. Ms. Moustachetti has not shown good cause to overcome the denial basis.

OPINION

1. Whether Ms. Moustachetti's application for a service permit should be denied:

ORS 471.380(1)(d) provides that the OLCC may refuse to issue a service permit if an applicant has been convicted of a felony. The OLCC has adopted administrative rules to apply this statute. In this case, the OLCC seeks to deny Ms. Moustachetti's service permit application under the provisions of OAR 845-009-0020(4)(a)(D), which provides that the OLCC will deny a service permit application if an applicant has had three or more controlled substance felony convictions, any one of which was within six years.¹

The phrase "within six years" as used in the administrative rule means within six years of the date the OLCC received the application. OAR 845-009-0020(2). Where the conviction of a crime is the basis for agency action, ORS 670.280 applies and the OLCC must show the relationship between the conviction and the applicant's fitness to sell or serve alcoholic liquor.² The OLCC has previously concluded that convictions involving controlled substances are relevant to an individual's fitness to serve and sell alcoholic liquor. *Michelle Haynes* (OLCC Final Order, OLCC-06-SPR-022, December 2006).

Between December 1, 2004 and October 3, 2011, Ms. Moustachetti was convicted of six controlled substance felonies. Five of those convictions occurred within six years of the date the

¹ OAR 845-009-0020(4)(a)(D) provides:

(4) Felony Drug Conviction:

(a) The Commission will deny a service permit if the applicant has had:

(D) Three or more controlled substance felony convictions, any one of which was within six years.

² ORS 670.280(2) provides:

Except as provided in ORS 342.143 (3) or 342.175 (3), a licensing board, commission or agency may not deny, suspend or revoke an occupational or professional license solely for the reason that the applicant or licensee has been convicted of a crime, but it may consider the relationship of the facts which support the conviction and all intervening circumstances to the specific occupational or professional standards in determining the fitness of the person to receive or hold the license.

OLCC received Ms. Moustachetti's service permit application, May 16, 2013. Thus, the OLCC has shown that it may deny Ms. Moustachetti's service permit under the provisions of OAR 845-009-0020(4)(a)(D).

2. Whether Ms. Moustachetti has good cause to overcome the denial:

OAR 845-009-0020(3) and (4)(b) provide that an applicant may show good cause to overcome a proposed service permit denial. OAR 845-009-0020(3) provides that to be qualified to show good cause, an applicant must have had a drug addiction disability or an alcohol addiction disability at the time of the felony drug conviction, or as a result of the conviction. OAR 845-009-0020(4)(b) provides that in order to show good cause to overcome a denial, an applicant must provide a sworn statement that the applicant has not used or consumed controlled substances within 24 months, has successfully completed a state certified drug treatment program, and has completed all parole or probation requirements.³

Ms. Moustachetti has made many positive changes in her life, and meets most of the criteria set forth in OAR 845-009-0020(3) and OAR 845-009-0020(4)(b). She established that she was diagnosed with a drug addiction disability at the time of her convictions. Ms. Moustachetti has successfully completed a state certified residential drug treatment program and aftercare program, and continues to participate in community support groups as part of her ongoing recovery. When she applied for a service permit, Ms. Moustachetti had not used or consumed controlled substances in more than 24 months. She had been abstinent for 30 months by the time the hearing on the proposed denial took place.

Despite Ms. Moustachetti's excellent progress, she has not met all the criteria required to establish good cause. Although Ms. Moustachetti is complying with the terms of her parole and is doing well, her parole will not be complete until May 2014, assuming she qualifies for early release. Because Ms. Moustachetti's remains on parole, she has not met all the criteria set forth

³³ OAR 845-009-0020(3) and (4)(b) provide, in relevant part:

(3) To be qualified for good cause under this rule:

(a) An applicant must have had a drug addiction disability or alcohol addiction disability at the time of:

(A) Felony drug conviction(s) (OAR 845-009-0020(4)); [or]

* * * * *

(b) The applicant was diagnosed as drug or alcohol addicted at the time of or as a result of the incidents described above.

* * * * *

(4)(b) The only good cause to overcome the criteria in this section is the applicant's sworn statement on a Commission-supplied form that:

(A) He/she has not used or consumed controlled substances within 24 months; and

(B) He/she has successfully completed a state certified drug treatment program or is actively involved in a state certified drug treatment or recovery program, and is following treatment recommendations. If a completion certificate or other proof that the applicant successfully completed a treatment program is available, the applicant will provide a copy to the Commission; and

(C) He/she has completed all parole or probation requirements.

in OAR 845-009-0020(4)(b) and cannot show good cause to overcome the denial. Ms. Moustachetti's service permit application must be denied.

FINAL ORDER

The Commission orders that the application for a service permit filed by Applicant Ragen M. Moustachetti and received by the OLCC on May 16, 2013 be DENIED.

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

Dated this 31st day of January 2014

_____/s/ Steve Marks
Steve Marks
Executive Director
OREGON LIQUOR CONTROL COMMISSION

Mailed this 31st day of January 2014

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.