

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

In the Matter of the Off-Premises Sales)	FINAL FINDINGS OF FACT
Licenses of:)	CONCLUSIONS OF LAW
)	AND ORDER
)	
MT. ANGEL MARKET & DELI, LLC)	OLCC-13-V-034
LAL SIDHU, MANAGING MEMBER)	OLCC-13-V-034A
CHARANJIT SINGH, MEMBER)	OLCC-13-V-034b
d.b.a. MT. ANGEL MARKET & DELI)	
395 N MAIN STREET)	
MT. ANGEL, OR 97362)	

HISTORY OF THE CASE

On February 22, 2013, the Oregon Liquor Control Commission (OLCC or Commission) issued a Notice of Proposed License Cancellation, Removal from the Responsible Vendor Program, and Proposed Refusal to Renew License to Mt. Angel Market & Deli, LLC, Lal Sidhu, Managing Member, and Charanjit Singh, Member, d.b.a. Mt. Angel Market & Deli (Licensee). In the notice, the Commission alleged violations of OAR 845-005-0355(5) and OAR 845-006-0335(1)(a), (b), and (c). Licensee timely requested an administrative hearing.

On April 26, 2013, the OLCC referred the matter to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Richard Barber to preside over the matter.

On September 19, 2013, the OLCC issued an Amended Notice of Proposed License Cancellation, Removal from the Responsible Vendor Program, and Proposed Refusal to Renew License to Licensee. The amended notice proposed a letter of reprimand, in lieu of license cancellation and removal from the Responsible Vendor Program, in the event that Licensee's license is canceled, pursuant to a Commission Final Order dated July 2, 2013.¹

On September 25, 2013, the OAH reassigned the matter to Senior ALJ Alison Greene Webster. By letter dated September 25, 2013, and pursuant to OAR 471-060-0005,² the

¹ Licensee sought judicial review and a stay of enforcement of the July 2, 2013 Final Order. On September 5, 2013, the Oregon Court of Appeals granted the stay request. (Ex. P19.) The stay was still in effect as of the December 11, 2013 hearing, and it presumably remains in effect as of the issuance date of this Proposed Order, as neither party has reported otherwise.

² OAR 471-060-0005(3) provides, in part: "Every party and agency in a contested case is entitled to request a change of administrative law judge. The first request of that party or agency shall be automatically granted."

Commission requested that the OAH assign another ALJ to the matter. The OAH subsequently assigned Senior ALJ Jennifer H. Rackstraw.

On December 11, 2013, ALJ Rackstraw convened a contested case hearing in Salem, Oregon. Attorney Michael Mills represented Licensee. OLCC Case Presenter Anna Davis represented the Commission. The following persons testified: Zachary Reinhardt; Turner Police Sergeant Aaron Bales; OLCC Inspector Matthew Cobos; and Charanjit Singh. Navneet Kaur, a qualified Punjabi interpreter, interpreted for Mr. Singh during his testimony.

OLCC Case Presenter Jamie Dickinson observed the hearing, but she did not participate.

Following the hearing, the record remained open for the receipt of written closing arguments. The record subsequently closed on January 31, 2014, after the receipt of Commission staff's closing statement, Licensee's closing statement, and Commission staff's written rebuttal.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed March 25, 2014.

Licensee filed Exceptions to the Proposed Order on April 18, 2014. Staff filed Comments on the Proposed Order on April 18, 2015. The Administrative Law Judge responded to Licensee's Exceptions and Staff's Comments on May 16, 2014.

On August 21, 2014, 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:

ISSUES

1. Whether, on June 29, 2012, Licensee's employee, Ruben Galindo Garcia, failed to verify the age of Zachary Reinhart before allowing him to buy or be served an alcoholic beverage when he reasonably appeared to be under 26 years of age, thereby violating OAR 845-006-0335(1)(a), (b), and/or (c).

2. Whether Licensee failed to comply with a license restriction, on or before June 29, 2012, by failing to require employee Ruben Galindo Garcia to use age verification equipment, thereby violating OAR 845-005-0355(5).

3. Whether, if the violation of OAR 845-005-0355(5) is proven, cancelation of Licensee's license is appropriate.

4. Whether, if one or both violations are proven, the Commission is required to remove Licensee from the Responsible Vendor Program.

5. If the violation of OAR 845-006-0335(1)(a), (b), and/or (c) is proven, what is the appropriate sanction?

6. Whether the Commission should refuse to renew Licensee's license.

EVIDENTIARY RULINGS

Commission staff offered Exhibits A1 through A18 and P3 through P7 (page 2 only).³ Exhibits A1, A9, A10, A14 through A18, and P7 (page 2 only) were admitted into the record without objection. Exhibits A2 through A8, A11, A13, and P4 through P6 were admitted into the record over Licensee's objections. Exhibit P3 was excluded, pursuant to Licensee's relevancy objection.

Licensee offered Exhibits P1, P7 (page 1 only), P9, P11, P12, P16, P17, P19, and P20. All of those exhibits were admitted into the record over Commission staff's objections.

FINDINGS OF FACT

License history for Mt. Angel Market & Deli

1. From March 21, 2000 to July 10, 2002, M & S Market, Inc., comprised of Lal Sidhu and Mahesh Mungra, was the licensee for the Mt. Angel Market & Deli (the premises), located at 395 N. Main Street in Mt. Angel, Oregon. From July 10, 2002 to June 3, 2003, Mr. Sidhu and Charanjit Singh were licensees for the premises. From June 12, 2003 to September 18, 2007, Mr. Singh operated as a sole proprietor, and he was the sole licensee for the premises. (Ex. A3; test. of Cobos.)

2. On September 18, 2007, Mr. Singh and Mr. Sidhu formed Mt. Angel Market & Deli, LLC. (Ex. A5 at 3.) Since that date, Mt. Angel Market & Deli, LLC, Lal Sidhu, Managing Member, and Charanjit Singh, Member, d.b.a. Mt. Angel Market & Deli, (Licensee) have held an off-premises sales license for the premises. (Exs. A1, A3, A4 at 2; test. of Cobos.)

3. Licensee's license was set to expire on March 31, 2013. (Ex. A10 at 1.) On or about February 10, 2013, Licensee submitted a License Renewal Application to the OLCC. (Ex. A9 at 1-2; test. of Cobos.)

4. On March 12, 2013, the OLCC issued a Conditional Letter of Authority to Operate, allowing Licensee to continue operations at the Mt. Angel Market & Deli, pending a Commission decision regarding the license renewal application. The letter notified Licensee that the authority to continue operations was effective as of April 1, 2013, and would continue until March 31, 2014, or whenever the Commission took final action on the renewal application, if earlier than March 31, 2014. The letter also notified Licensee that all conditions and restrictions on the license continued to apply. (Ex. A10; test. of Cobos.)

³ Prior to the hearing, Licensee submitted Exhibits P1 through P18. At the hearing, however, Licensee offered only Exhibits P1, P7 (page 1), P9, P11, P12, P16, P17, P19, and P20 for inclusion in the record. Commission staff consequently moved to admit Exhibits P3 through P7 (page 2) as well.

2007 incident at Mt. Angel Market & Deli and Settlement Agreement

5. On June 15, 2007, while working at the premises, employee Santiago Jimenez-Juarez failed to verify the age of a person attempting to purchase alcohol who appeared to be under the age of 26 years. On July 5, 2007, the OLCC issued a Notice of Violation to Mr. Singh (the sole licensee at the time). In lieu of a sanction for the violation, Mr. Singh elected to exercise an Age Verification Equipment (AVE) option, pursuant to OAR 845-009-0140.⁴ By letter dated July 9, 2007, OLCC District Inspector Steve Berrios notified Mr. Singh that the violation involving the June 15, 2007 incident was resolved because of Mr. Singh's installation of AVE machines at the premises. (Ex. A2 at 1-4.)

6. On March 19, 2008, Licensee agreed to a Final Order Incorporating a Settlement Agreement.⁵ (Ex. A11.) Pursuant to OAR 845-005-0355(1)(c) and (2)(b), the Commission placed the following two restrictions on the off-premises sales license for Mt. Angel Market & Deli:

Licensee will install age verification equipment, as defined in OAR 845-009-0140(1)(b), and will utilize the equipment to verify the age of every person who reasonably appears to be under 26 years of age and who attempts to purchase alcohol.

Licensee will join and maintain eligibility in the Responsible Vendor Program.

⁴ The current version of OAR 845-009-0140 provides, in part:

(3) For the first or second violation of ORS 471.410(2) or 845-006-0335(1) in a two-year period, the licensee may choose to purchase age verification equipment in lieu of the standard first level Category III sanction, not to exceed 10 days of the suspension or \$1650 of the civil penalty[.]

(5) A licensee may choose this option only one time per license. If the licensee previously purchased equipment, the Commission may allow the licensee to use the purchase of the equipment in lieu of paying up to \$1650 of the civil penalty or serving up to 10 days of the suspension, if the licensee has not previously received this option.

* * * * *

(7) A licensee who has received a credit under this rule for age verification equipment is expected to maintain the equipment in working order and to use the equipment to verify age as OAR 845-006-0335 requires.

⁵ The settlement involved different licenses held by Mr. Singh and Mr. Sidhu, as well as other individuals, for 12 licensed premises. (See Ex. A11 at 1-3.) An attorney for the various licensees signed the settlement agreement on February 15, 2008. (*Id.* at 9.)

(*Id.* At 7-8.) Licensee agreed to the following specific terms:

Licensee will comply with the program standards for the Responsible Vendor Program as set forth in OAR 845-009-0135(4).

Licensee has Age Verification Equipment, as defined in OAR 845-009-0140(1)(b), installed at all of its locations and will install Age Verification Equipment at any new locations at the time of licensure. Licensee will require that all individual employees or licensees use Age Verification Equipment to verify the age of any patron who reasonably appears under the age of 26 who attempts to purchase alcoholic beverages.

(*Id.* at 8.) A licensee is responsible for informing its employees of any license restrictions. (Test. of Cobos.)

7. On March 20, 2008, the OLCC approved Licensee for the Responsible Vendor Program. (*See* Ex. A13 at 2.)
2011 incident at Mt. Angel Market & Deli

8. On or about February 9, 2010, Ruben Galindo Garcia began working at the premises. (Ex. A4 at 4; test. of Singh.)

9. On October 28, 2011, while working at the premises, Mr. Galindo Garcia sold alcohol to a minor decoy without asking for identification and without using the AVE to verify the age of the minor decoy. (Ex. A4 at 1-4.) Based on that incident, on January 11, 2012, the Commission issued a Notice of Proposed License Cancellation and Removal from the Responsible Vendor Program to Licensee. On March 7, 2012 and January 29, 2013, the OLCC issued amended notices to Licensee. On January 3, 2013, ALJ Barber conducted an administrative hearing. On March 22, 2013, ALJ Barber issued a Proposed Order. (Ex. A5 at 1-2.)

10. On July 2, 2013, the Commission issued a Final Order, concluding that Licensee violated OAR 845-006-0335(1)(a), (b), and (c) when its employee, Mr. Galindo Garcia, failed to verify the age of a minor decoy who appeared to be under 26 years of age and that Licensee violated OAR 845-005-0355(5) by failing to require its employee, Mr. Galindo Garcia, to use AVE equipment in the sale of an alcoholic beverage to a minor decoy who appeared to be under 26 years of age. The Commission ordered that Licensee's license be canceled, that Licensee be removed from the Responsible Vendor Program, and that Licensee's renewal application be refused. (Ex. A5 at 1-18.)

11. On September 5, 2013, the Oregon Court of Appeals granted Licensee's motion to stay the enforcement of the July 2, 2013 Final Order, pending judicial review. (Ex. P19.)

AVE policies, training, and use at Mt. Angel Market & Deli

12. Licensee's previous identification checking policy required employees to verify the age of anyone attempting to purchase alcohol who looked to be under 26 years of age. (*See*

Exs. P4 at 2-4, P5.) By August 2011, Licensee's policy was amended to require employees to verify the age of anyone attempting to purchase alcohol who looked to be under 30 years of age. (See Ex. P6 at 1.) By February 2012, Licensee's policy was amended to require employees to verify the age of anyone attempting to purchase alcohol who looked to be under 40 years of age.⁶ (See Exs. P7 at 1-2; A8 at 1-3, 11, 13; P16; test. of Cobos.)

13. Sometime after the October 28, 2011 incident, Licensee posted a sign in the premises that states:

IF YOU APPEAR TO BE **UNDER 40 YEARS OF AGE**, YOU WILL
BE REQUIRED TO SHOW TO THE CLERK A VALID PICTURE ID
INDICATING YOUR TRUE AGE BEFORE PURCHASING ANY
ALCOHOLIC BEVERAGES.

(Ex. P16, emphasis in original; test. of Singh.)

14. AVE machines all work in substantially the same manner. After swiping an identification card into the AVE, the AVE screen typically shows the cardholder's name and age. If the cardholder is under 21 years of age, most AVE machines emit a beeping noise to draw the clerk's attention to the age information. An AVE machine may also emit a beep if the machine is unable to read a card. (Test. of Cobos.)

15. The AVE machines used at the Mt. Angel Market & Deli beep once if the identification card scanned through the machine indicates that the cardholder is age 21 or older. The machines keep beeping (*i.e.* "beep, beep, beep") and display "not approved" if, after scanning the card, the machine determines that the cardholder is under the age of 21. (Test. of Singh.)

16. Mr. Singh works six days per week at the Mt. Angel Market & Deli and he manages the day-to-day operations of the business. He is responsible for training employees. (Test. of Singh.)

17. All store clerks intending to sell alcohol in a licensed premise must read and sign an OLCC brochure titled "What Every Store Clerk Needs to Know About Selling Alcohol." (Ex. A7 at 1-12; test. of Cobos.) The brochure discusses reasons not to sell alcohol to minors or visibly intoxicated persons, the requirement to check the identification of anyone appearing under the age of 26, helpful hints for checking identification, tips for recognizing visibly intoxicated persons, and information pertaining to refusals to sell alcohol. (Ex. A7 at 1-8.) The brochure does not discuss AVEs. (Test. of Cobos; *see* Ex. A7.)

18. After a clerk is found to have sold alcohol to a minor, the OLCC requires that the clerk attend an alcohol training course if the clerk wishes to remain employed selling alcoholic beverages. (Test. of Cobos.) Following the October 28, 2011 incident, Licensee did not allow Mr. Galindo Garcia to work the cash register at the premises until he attended the training. (Test. of Singh.) Mr. Galindo Garcia subsequently attended the training. He also applied for and

⁶ The record is unclear as to precisely when Licensee enacted the new policies.

obtained an OLCC service permit. He was not required to have a service permit to continue selling alcoholic beverages at Mt. Angel Market & Deli. (Test. of Cobos.)

19. After the October 28, 2011 incident, Mr. Singh personally showed Mr. Galindo Garcia how to use the AVE machines. On numerous occasions between October 28, 2011 and June 29, 2012, Mr. Singh personally observed Mr. Galindo Garcia correctly use the AVE machines to verify the age of persons attempting to purchase alcohol. (Test. of Singh.)

20. Licensee contracts with a company called “We Card” to conduct minor decoy operations at least four times per year to test employees on age verification. Licensee’s policy is to terminate an employee’s employment if he or she fails a “We Card” test. (Exs. P12, P7 at 1-2; test. of Singh.) Among other scenarios, Licensee considers an employee to have failed a “We Card” test if the employee refuses to sell alcohol to a person who is under age, but the employee fails to use the AVE during the verification process. (Test. of Singh.) Licensee provides cash incentives to employees who pass “We Card” tests and OLCC minor decoy stings. (See Ex. P17; test. of Singh.)

21. The signatures of seven persons, none of whom are Mr. Galindo Garcia, appear on a document Licensee submitted for the December 11, 2013 hearing that states:

I UNDER[]STAND THAT EVERY TIME I CARD A PERSON OR PERSONS I WILL LOOK AT THE PICTURE. I WILL VERIFY IT IS NOT EXPIRED, AND USE THE I.D. SCANNER EVERY TIME[.] IT IS MY RESPONSIBILITY TO USE THE EQUIPMENT.

(Ex. P4 at 1; emphasis in original.) At the top of the document the following handwritten note appears: “Training Mt. Angel Market 9/09.” (*Id.*)

22. A signature for Mr. Galindo Garcia appears on each of five identical documents titled “OLCC Training,” which Licensee submitted for the December 11, 2013 hearing. (See Exs. P4 at 2-4, P5 at 1-2.) The five documents pertain to the requirement to check the identification of every person who appears to be under the age of 26 who attempts to purchase alcohol. The five documents do not mention AVE machines or the requirement that Mt. Angel Market & Deli clerks use an AVE machine when verifying age for alcohol purchases. Each of the documents has a typed date of “2-26-10” at the bottom of the page. (Exs. P4 at 2-4, P5 at 1-2.) The documents have various dates handwritten at the top of each page, ranging from July 2009 to April 2010. (Exs. P4 at 2, 4; P5 at 1-2.)

23. A document dated August 3, 2011, which Licensee provided for the December 11, 2013 hearing, states that “We Card” training was held at Mt. Angel Market on August 3, 2011. (Ex. P6 at 1.) The document states that the training included individual instruction regarding how and when to use the AVE machine. The document also states that clerks are responsible for carding anyone who looks under the age of 30 who attempts to purchase alcohol. (*Id.*) A signature sheet accompanying the document (which presumably indicates attendance at the training) shows a signature for Mr. Galindo Garcia. Mr. Galindo Garcia’s first name is

misspelled (“Rubun” instead of Ruben) on the signature sheet, and his signature looks different from his signatures in Exhibits P4 and P5. (*Id.* at 2.)

24. A signature for Mr. Galindo Garcia appears on a document titled “Training Mt. Angel,” which Licensee provided for the December 11, 2013 hearing. (Ex. P7 at 1.) The document states, in part:

**MEETING HELD ON [END OF FEB, MAR 2012] TO DISCUSS
ALCOHOL SALES AND IMPORTANCE OF USING THE
IDENTIFICATION SCANNER (ID SCANNER)**

1. **The store has a restriction on the liquor license.** Employee MUST check and **USE** ID scanner on every customer purchasing alcohol if they appear under the age of 40.
2. **IF the ID is not checked on customers under the age of 40 [the] employee can be fired!!**
3. **IF the owner or manager comes in and finds the employee NOT using the ID scanner they can be fired!!**
4. **USE the ID Scanner.** IF you pass a WE Card or OLCC sting you will collect \$50.00 cash. This means you have been checking ID and using the ID scanner.

I UNDERSTAND THE RULES ABOVE. THE OWNER AND MANAGER HAVE TRAINED ME ON HOW TO CHECK ID AND HOW TO USE THE ID SCANNER AND THAT I MUST USE THE SCANNER FOR ANY CUSTOMER APPEARING UNDER THE AGE OF 40 YEARS.

(*Id.*; emphasis in original.) Mr. Galindo Garcia’s name is spelled correctly on the document and the signature looks the same as his signatures in Exhibits P4 and P5. (*See id.*) An identical document dated 5/2012, which Licensee provided for the December 11, 2013 hearing, does not bear Mr. Galindo Garcia’s signature. (*See id.* at 2.)

June 29, 2012 incident at Mt. Angel Market & Deli

25. On June 29, 2012, Licensee had two operational AVE machines on the premises. (Test. of Singh.)

26. At approximately 8:15 p.m. on June 29, 2012, minor decoy Zachary Reinhart entered the premises. Mr. Reinhart was 18 years of age at the time, with a birth date of October 12, 1993. (Exs. A13 at 1-3, A16; test. of Reinhart.) Mr. Reinhart reasonably appeared to be under the age of 26. (Stipulation of Licensee; *see also* Ex. A15 at 1-2.)

27. Mr. Reinhart took a six-pack of Bacardi Silver malt beverage (an alcoholic beverage) from the cooler and walked to the counter. Mr. Galindo Garcia was working at the counter at the time. Mr. Galindo Garcia asked Mr. Reinhart for identification. (Exs. A13 at 3, A17; test. of Reinhart.) Mr. Reinhart provided Mr. Galindo Garcia with an Oregon Provisional License. (Exs. A16, A17; test. of Reinhart.) There was a prominent red border surrounding Mr. Reinhart's photograph on the license, and printed on the border were the words, "under 21 until 10-12-2014." (Ex. A16; test. of Reinhart.)

28. Mr. Galindo Garcia scanned the license into the AVE. The AVE beeped for approximately five seconds. Mr. Galindo Garcia gave the license back to Mr. Reinhart. A very brief delay then occurred, wherein Mr. Galindo Garcia looked at Mr. Reinhart, with neither person saying anything. Mr. Galindo Garcia then rang up the alcoholic beverage and completed the sale to Mr. Reinhart. (Exs. A13 at 3, A17; test. of Reinhart.)

29. Mr. Reinhart exited the premises with the alcoholic beverage. Officer Aaron Bales of the Turner Police Department, who was involved in the minor decoy operation, was waiting outside for Mr. Reinhart. Officer Bales took a photograph of Mr. Reinhart with the alcoholic beverage. (Exs. A14 at 1-2, A18.) Officer Bales then went inside the premises and spoke with Mr. Galindo Garcia. Officer Bales asked Mr. Galindo Garcia if Mr. Galindo Garcia remembered selling the six-pack of alcoholic beverage just moments prior. Mr. Galindo Garcia answered in the affirmative. Officer Bales informed Mr. Galindo Garcia of the undercover minor decoy operation and told him that he would be cited for Selling Alcohol to a Minor (a violation of ORS 471.410). Mr. Galindo Garcia informed Officer Bales that he asked for and looked at the decoy's identification, and that he also ran the identification through the "ID check machine." (Ex. A14 at 1-2.) When Officer Bales asked Mr. Galindo Garcia how old the machine indicated the decoy was, Mr. Galindo Garcia replied, "17 or 18." (*Id.* at 2.)

30. On February 22, 2013, the OLCC issued a Notice of Proposed License Cancellation, Removal from the Responsible Vendor Program, and Proposed Refusal to Renew License to Licensee, alleging violations of OAR 845-005-0355(5) and OAR 845-006-0335(1)(a), (b), and (c). (February 22, 2013 Notice.)

31. On September 19, 2013, the OLCC issued an Amended Notice of Proposed License Cancellation, Removal from the Responsible Vendor Program, and Proposed Refusal to Renew License to Licensee. The amended notice proposed a letter of reprimand, in lieu of license cancellation and removal from the Responsible Vendor Program, in the event that Licensee's license is canceled, pursuant to a Commission Final Order dated July 2, 2013. (September 19, 2013 Amended Notice.)

Events subsequent to June 29, 2012 incident at Mt. Angel Market & Deli

32. Immediately following the June 29, 2012 incident, Licensee terminated Mr. Galindo Garcia's employment. (Test. of Singh.)

33. Since June 29, 2012, Licensee's employees have used the AVE numerous times to verify the age of patrons attempting to purchase alcoholic beverages. (*See* Exs. P9, P11.)

34. In a letter dated June 21, 2013, the Commission congratulated Licensee for refusing to sell to a minor during an OLCC Minor Decoy Operation. (Ex. P1.)

CONCLUSIONS OF LAW

1. On June 29, 2012, Licensee's employee, Ruben Galindo Garcia, failed to verify the age of Zachary Reinhart before allowing him to buy or be served an alcoholic beverage when he reasonably appeared to be under 26 years of age, thereby violating OAR 845-006-0335(1)(a).

2. Licensee did not fail to comply with a license restriction, on or before June 29, 2012, by failing to require employee Ruben Galindo Garcia to use age verification equipment. The Commission has not established a violation of OAR 845-005-0355(5).

3. The cancelation of Licensee's license is not appropriate.

4. The Commission is not required to remove Licensee from the Responsible Vendor Program.

5. The appropriate sanction for the violation of OAR 845-006-0335(1)(a) is a civil penalty of \$4,950 or a 30-day suspension.

6. The Commission should renew Licensee's license.

OPINION

1. Alleged violation of OAR 845-006-0335(1)

OAR 845-006-0335(1) pertains to age verification, and provides:

(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.

The following facts are undisputed: Zachary Reinhart was 18 years old on June 29, 2012; Mr. Reinhart reasonably appeared to be less than 26 years of age on that date; Licensee's employee, Mr. Galindo Garcia, asked Mr. Reinhart for identification when Mr. Reinhart attempted to purchase an alcoholic beverage at the licensed premises on that date; Mr. Reinhart handed Mr. Galindo Garcia a Provisional License that showed Mr. Reinhart to be under the age of 21; Mr. Galindo Garcia ran the card through the AVE; the AVE made a beeping noise; Mr. Galindo Garcia handed the card back to Mr. Reinhart; Mr. Galindo Garcia paused momentarily and looked at Mr. Reinhart; and Mr. Galindo Garcia then allowed Mr. Reinhart to purchase the alcoholic beverage and leave the premises.

In *Texaco Star Mart* (OLCC Final Order, 97-V-051-A, April 1998), the Commission concluded that where alcoholic liquor is sold to a minor, the Commission will find a violation of OAR 845-006-0355(1)⁷ "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 6. In so concluding, the Commission explained that it interprets the language "verify the age of a person" to require that the seller must verify that a person is at least 21 years of age. *Id.*

Based on the Commission's interpretation of OAR 845-006-0335(1)(a), Mr. Galindo Garcia's conduct in requesting Mr. Reinhart's identification, running it through the AVE, and then selling an alcoholic beverage to Mr. Reinhart despite the clear indication on the card that he was under the age of 21 constitutes a failure to "verify the age" of Mr. Reinhart. The Commission has therefore established a violation of OAR 845-006-0335(1)(a). Pursuant to OAR 845-006-0362,⁸ Licensee is responsible for the violation by its employee.

2. Alleged violation of OAR 845-005-0355(5)

Commission staff asserts that Licensee violated OAR 845-005-0355(5) by failing to require Mr. Galindo Garcia to use age verification equipment to verify the age of Mr. Reinhart when he reasonably appeared to be under the age of 26 and attempted to purchase an alcoholic beverage. The OLCC must prove its allegation by a preponderance of the evidence. *See* ORS 183.450(2) ("The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position"); *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); *Metcalf v. AFSD*, 65 Or App 761, 765 (1983) (in the absence of legislation specifying a different standard, the standard of proof in an administrative hearing is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

OAR 845-005-0355(5) provides: "A licensee or permittee who has a restricted license or permit must exercise license or permit privileges only in compliance with the restriction(s).

⁷ While the Final Order actually refers to "OAR 845-06-035(1)," the rule language cited in the Final Order is the same as that contained in the current version of OAR 845-006-0335(1)(a), (b), and (c).

⁸ OAR 845-006-0362 provides: "Each licensee may be held responsible for violation of any liquor control law or administrative rule or regulation of the Commission affecting his license privileges and for any act or omission of his servant, agent, employee, or representative in violation of any law, municipal ordinance, administrative rule, or regulation affecting his license privileges."

Failure to comply with the restriction(s) is a Category I violation.”

On March 19, 2008, Licensee agreed to the following license restriction:

Licensee has Age Verification Equipment, as defined in OAR 845-009-0140(1)(b), installed at all of its locations and will install Age Verification Equipment at any new locations at the time of licensure. *Licensee will require that all individual employees or licensees use Age Verification Equipment to verify the age of any patron who reasonably appears under the age of 26 who attempts to purchase alcoholic beverages.*

Exhibit A11 at 8 (emphasis added).

As Licensee correctly asserts in its closing statement, to prove that Licensee violated the restriction at issue, the Commission must prove by a preponderance of the evidence that prior to June 29, 2012, Licensee did not require Mr. Galindo Garcia to use the AVE to verify the age of any patron attempting to purchase alcohol who reasonably appeared under the age of 26. *See* Licensee’s Closing Statement at 3.

Commission staff contends that to establish that Licensee required an individual employee to use AVE, “the equipment must be present, [it must be] functional, and the employee must have been trained to use the equipment and proficient in its use.” Agency Closing Statement at 2. Commission staff concedes that Licensee had AVE equipment on the premises and that there is no evidence that the equipment was not functioning properly during the relevant time period. Commission staff contends, however, that “[l]icensee’s assertions regarding trainings and the scant documentation of trainings that mentioned age verification equipment establish that Licensee failed to properly train Mr. Galindo Garcia, and therefore failed to require him to use age verification equipment.” *Id.* at 3.

Licensee insists that Mr. Galindo Garcia “was properly trained in the use of the AVE and required to use it” for age verification purposes prior to June 29, 2012. Licensee’s Closing Statement at 2. To support its assertion, Licensee distinguishes Mr. Galindo Garcia’s conduct on June 29, 2012 from his earlier conduct on October 28, 2011. Licensee also points to training that Mr. Galindo Garcia received between October 28, 2011 and June 29, 2012 as evidence of Licensee requiring him to use the AVE.

In the contested case matter involving the October 28, 2011 incident, the Commission relied on the fact that Galindo Garcia did not use the AVE equipment at all during the sale of alcohol to a minor decoy, and the complete lack of reliable evidence showing that Licensee had trained Mr. Galindo Garcia and required him to use the equipment, to prove that Licensee did not require Mr. Galindo Garcia to use the AVE. *See Mt. Angel Market & Deli* at 10 (OLCC Final Order, 12-V-003, -003A, -003B, July 2013).⁹ The facts of the present case are distinguishable, however. First, Mr. Galindo Garcia did use the AVE prior to selling alcohol to the minor decoy on June 29, 2012. Second, the record establishes, more likely than not, that Mr. Galindo Garcia

⁹ The July 2013 Final Order is included in the record as Exhibit A5.

attended an on-premises training on March 2, 2012, which included discussion of the mandatory use of AVE machines at Mt. Angel Market & Deli. *See* Exhibit P7 at 1.¹⁰

The fact that Mr. Galindo Garcia attended an AVE-specific training in March 2012, and the fact that he actually used the AVE on June 29, 2012, is compelling evidence that Licensee required him to use the AVE for age verification purposes. Commission staff, however, argues that because Mr. Galindo Garcia made the sale to the minor decoy on June 29, 2012 *despite using the AVE*, the evidence establishes that Licensee failed to properly train him on the use, and consequently failed to require him to use the AVE. *See* Agency Closing Statement at 3-4.¹¹

In *US Market #180, LLC v. OLCC*, 249 Or App 666 (2012), the Oregon Court of Appeals considered an alleged violation of the same AVE license restriction at issue in this case. The Court described the pivotal issue in *US Market #180* as follows:

[T]he determinative issue on judicial review is whether the license restriction, by its terms, imposes on licensee an obligation to require: (1) under licensee's proffered interpretation of the restriction, that licensee's employees *use* age-verification equipment during particular alcohol sales or (2) under the OLCC's proffered interpretation, that licensee's employees *use age-verification equipment and, in doing so, successfully verify* that the person attempting to purchase alcohol is old enough to do so.

249 Or App at 669 (emphasis added).

In *US Market #180*, the employee used the AVE to scan the identification card of a minor decoy and received contradictory messages, indicating that the decoy was only 19 years old but also that the sale was "approved." *Id.* at 668. The employee relied on the machine's erroneous "approved" designation and sold alcohol to the minor. *Id.* The Court concluded that there was no license restriction violation, contrary to the Commission's determination, because the language of the restriction only required the use of the AVE by an employee, not, in essence, the *effective* use. *Id.* at 673.

The record in the present matter does not contain enough evidence to reliably determine why Mr. Galindo Garcia made the sale to Mr. Reinhart on June 29, 2012. Commission staff's assertion that Mr. Galindo Garcia made the sale because he did not know how to properly use the AVE (with the inference that Licensee therefore failed to properly train him) is not supported by a preponderance of the evidence. It is, for example, equally as likely that Mr. Galindo Garcia

¹⁰ Exhibit P7 (page 1) contains sufficient indicia of reliability. In contrast, Exhibit P6 lacks reliability because Mr. Galindo Garcia's first name is misspelled on the document and the signature looks different than it does in multiple other documents. *See* Exhibits P4 at 2-4, P5 at 1-2.

¹¹ In its written rebuttal, Commission Staff asserts that "Galindo-Garcia's rote pantomime of age verification did not prevent the sale to a minor and establishes that Licensee failed to require this employee to use age verification equipment to verify the age of individuals who appear to be under the age of 26 and attempt to purchase alcohol." Agency Rebuttal at 2.

knew precisely how to use the AVE, and that after using the AVE on June 29, 2012, he (for reasons unknown) allowed Mr. Reinhart to purchase alcohol despite knowing he was a minor.

Upon consideration of the Court's decision in *US Market #180* and the record in the current matter, the ALJ concluded that the Commission has not proven, more likely than not, that Licensee violated a license restriction by failing to require Mr. Galindo Garcia to use the AVE equipment. Mr. Galindo Garcia used the AVE equipment on June 29, 2012, even though the use did not prevent his sale of alcohol to a minor. The Commission has not established a violation of OAR 845-005-0355(5).

3. Penalty

A. License cancellation

The Commission has proposed license cancellation for the alleged violation of OAR 845-005-0355(5). However, as set forth above, the Commission failed to prove the violation occurred. Thus, license cancellation based on such a violation is not appropriate.¹²

B. Removal from Responsible Vendor Program

In its Amended Notice, the Commission proposed that Licensee be removed from the Responsible Vendor Program, based on the alleged Category I violation of OAR 845-005-0355(5). The Commission also alleged that Licensee be removed from the program because "aggravating circumstances were involved at the time of a violation for failure to verify the age of a minor." Amended Notice at 1.

OAR 845-009-0135(7) provides, in part, that a licensee is removed from the Responsible Vendor Program in the following circumstances:

(b) For a sale to a minor or failure to properly verify identification by a licensee or employee, if aggravating circumstances (as referenced in subsection (3)(g)) are present. The licensee may reapply for the program in one year.

* * * * *

(d) For a Category I or II violation by the licensee personally. The licensee may not reapply for the program. For a Category I or II violation by an employee, the licensee is removed from the program, but may reapply for the program in one year.

As previously discussed, the Commission did not establish that a Category I violation occurred in the present matter. Moreover, the violation of OAR 845-006-0335(1)(a), which the Commission did establish, is a Category III violation. *See* OAR 845-006-0500(7)(a). Thus, subsection (d) of OAR 845-009-0135(7) is inapplicable. The remaining issue is whether the

¹² The Commission has not proposed license cancellation based on the violation of OAR 845-006-0335(1)(a).

Commission must remove Licensee from the Responsible Vendor Program pursuant to subsection (b), above, because “aggravating circumstances (as referenced in subsection (3)(g)) are present.”

OAR 845-009-0135(3)(g) provides, in relevant part:

[F]or purposes of this rule, aggravating circumstances do not include licensee’s personal involvement in the violation. Aggravating circumstances include, but are not limited to, an intentional sale to a minor; multiple employees or patrons involved in the violation; the violation results in death or personal injury; the sale was made to a person under age 18 who appeared to be under the age of 21 when the sale was made.

In the Amended Notice, the Commission contends that “[i]t is an aggravating circumstance that age verification equipment was not used to prevent this violation [of OAR 845-006-0335(1)(a)] when Licensee has previously been allowed to purchase age verification equipment as an offset to a penalty for failing to verify the age of a minor.” Amended Notice at 2. To support this contention, Commission staff relies on OAR 845-006-0500(7)(c), *Hunter’s R.V. Park* (OLCC Final Order, 06-V-068, February 2007), and *Lava Lanes of Medford* (OLCC Final Order, 10-V-018, February 2011).

OAR 845-006-0500(7)(c) provides, in relevant part:

These [standard] sanctions are guidelines. If the Commission finds aggravating or mitigating circumstances, it may assess a greater or lesser sanction. * * *. *Some of the reasons the Commission may aggravate a sanction are:* a prior warning about compliance problems; repeated failure to comply with laws; *failure to use age verification equipment which was purchased as an offset to a previous penalty*; efforts to conceal a violation; intentional violations; the violation involved more than one patron or employee; the violation involved a juvenile; and the violation resulted in injury or death. The Commission may always increase or decrease a sanction to prevent inequity or to take account of particular circumstances in the case.

(Emphasis added.)

Even if Mr. Galindo Garcia used the AVE ineffectively, incorrectly, and/or unsuccessfully on June 29, 2012, the record nonetheless establishes that he did, in fact, use it. Thus, there was no “failure to use age verification equipment” in connection with the violation of OAR 845-006-0335(1)(a) that occurred on June 29, 2012. In contrast, in both *Hunter’s R.V. Park* and *Lava Lanes*, the employees who failed to verify the age of minor decoys did not use AVE machines (which had been purchased to offset previous penalties) at all. *See Hunter’s R.V. Park* at 4; *Lava Lanes* at 4, 9. Neither the plain language of OAR 845-006-0500(7)(c) nor Commission precedent supports Commission staff’s position that aggravating circumstances are

present in connection with the June 29, 2012 violation of OAR 845-006-0335(1)(a). OAR 845-009-0135(7)(b) is, therefore, inapplicable in this matter.¹³

In conclusion, the Commission is not required to remove Licensee from the Responsible Vendor Program, pursuant to OAR 845-009-0135(7)(b) or (d).

C. Penalty for violation of OAR 845-006-0335(1)(a)

As previously noted, the violation of OAR 845-006-0335(1)(a) is a Category III violation. The standard sanction for a licensee's first Category III violation is a 10-day license suspension or a \$1,650 civil penalty. OAR 845-006-0500(7)(b). However, standard sanctions increase in severity for each subsequent violation in the same category within a two-year period. *Id.*(8). Where, as here, a licensee has two Category III violations of the same type within a two-year period, the standard sanction is a 30-day license suspension or a \$4,950 civil penalty. *Id.*(7)(b).

In its closing statement, Licensee does not argue for mitigation of the standard sanction,¹⁴ and asserts that a fine of \$4,950 or a 30-day suspension of license privileges is appropriate for the violation of OAR 845-006-0335(1)(a). Licensee's Closing Statement at 17. Aside from the aggravating factor previously discussed (and then determined to be inapplicable), Commission staff did not argue for aggravation of the standard sanction. *See* Agency Closing Statement at 7-8.

The appropriate penalty for the established violation of OAR 845-006-0335(1)(a) is a civil penalty of \$4,950 or a 30-day suspension.

D. Refusal to renew license

ORS 471.313(4)(g) allows the Commission to refuse to license an applicant if the Commission has reasonable grounds to believe that the applicant "[d]id not have a good record of compliance with the alcoholic liquor laws of this state and the rules of the commission when previously licensed."

1. Poor record of compliance

In reviewing Licensee's record of compliance in the license renewal context, only the compliance record for the premises seeking renewal (*i.e.* Mt. Angel Market & Deli) is relevant. *See US Market #260* at 7 (OLCC Final Order, 11-L-003, March 2013). The review may include violations addressed for the first time in the current proceeding, as long as Licensee had

¹³ The Commission has not alleged, and the record does not establish, that Mr. Galindo Garcia made an intentional sale of alcohol to a minor. Mr. Galindo Garcia's state of mind when making the sale to Mr. Reinhart on June 29, 2012 is unknown, and the evidence does not preponderate one way or another. Consequently, there is no aggravation warranted for an intentional violation, pursuant to either OAR 845-009-0135(3)(g) or OAR 845-006-0500(7)(c).

¹⁴ OAR 845-006-0500(7)(c) allows the Commission to mitigate a sanction if, for example, the Licensee demonstrated a good faith effort to prevent a violation or displayed "extraordinary cooperation in the violation investigation that shows the licensee or permittee accepts responsibility."

reasonable notice of the underlying charges and an opportunity to contest them. *See Riverside Restaurant & Lounge* at 40 (OLCC Final Order, 95-L-008, December 1996). Both conditions were satisfied here.

The Commission has previously found that one Category I violation is sufficient to establish a poor record of compliance. *Lotsa Luck* at 7 (OLCC Final Order, 08-V-054, April 2009). Here, Licensee had a Category I violation on October 28, 2011, as well as a Category III violation on October 28, 2011 and a Category III violation on June 29, 2012. At issue, however, is whether an additional Category III violation that occurred at Mt. Angel Market & Deli, based on a June 15, 2007 incident, can be considered a previous violation for Licensee—an LLC comprised of Mr. Singh and Mr. Sidhu.

Licensee argues that because the June 15, 2007 violation was for a previous licensee (Mr. Singh as a sole proprietor and licensee), the violation should not be considered part of Licensee's violation history. Licensee contends that it did not try to avoid any penalty or sanction by forming the LLC in September 2007, and that the LLC is not substantially similar to Mr. Singh's prior sole proprietorship because Mr. Singh only owns 50 percent of the LLC and he is not the managing member.

OAR 845-006-0550(9) states:

A licensee may not avoid the sanction for a violation or the application of the provision for successive violations 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.

A review of the ownership and licensing history for Mt. Angel Market & Deli is instructive in determining whether OAR 845-006-0550(9) applies in this matter. Except for the time period June 12, 2003 to September 18, 2007, Mr. Sidhu has been involved in the operation/ownership and licensing of the premises since March 2000. From July 2002 to June 2003, Mr. Sidhu and Mr. Singh were joint owners/licensees of the premises. When the June 15, 2007 violation occurred, Mr. Singh was the sole proprietor and licensee for the premises. On September 18, 2007, Mr. Singh resumed his partnership with Mr. Sidhu and they formed the LLC currently in existence, with Mr. Sidhu as the managing member and Mr. Singh as a member. Since the formation of that LLC, Mr. Singh has continued his responsibility of managing the day-to-day operations of the premises. Given Mr. Sidhu's longstanding association and involvement with Mt. Angel Market & Deli, and the fact that Mr. Singh has, since at least 2003, functioned as a licensee and operator of the business, the ALJ concluded that the current LLC is substantially similar to the partnership between Mr. Sidhu and Mr. Singh from 2002 to 2003 and it is also substantially similar to Mr. Singh's sole proprietorship from 2003 to September 18, 2007. Thus, pursuant to OAR 845-006-0550(9), the June 15, 2007 violation can be considered as part of the violation history for this Licensee.

The record establishes a poor record of compliance, based on the Category I violation on October 28, 2011, as well as the three separate Category III violations. The Commission therefore has grounds to refuse to renew Licensee's license under ORS 471.313(4)(g).

2. Good cause to overcome the refusal to renew

A licensee with a poor record of compliance may show good cause to overcome a license refusal under ORS 471.313(4)(g). The licensee bears the burden of proving that it is a good candidate for future compliance with the liquor laws. *See, e.g., Dad's Restaurant & Lounge* at 23 (OLCC Final Order, 06-V-029, December 2007). In determining whether good cause exists, the Commission considers the following factors:

- (a) Lengthy period(s) of time without violations as a licensee;
- (b) The nature/seriousness of the violation;
- (c) Personal involvement by the licensee;
- (d) Whether the licensee took immediate corrective steps following the violation;
- (e) Time passage since latest violation;
- (f) Whether the incident was isolated;
- (g) Whether the violation is aggravated or mitigated;
- (h) Willingness to have a permanent restriction; and
- (i) Acceptance of responsibility versus evasion of responsibility for the violation.

US Market #145 at 16 (OLCC Final Order, 11-V-009, February 2012). Each factor is discussed below.

(a) *Period of time without violations.* Commission staff contends that Licensee has not operated for a significant period of time without a violation. Violations attributed to this Licensee occurred on June 15, 2007, October 28, 2011, and June 29, 2012. A relatively short time period lapsed between the 2011 and 2012 violations, and (as of the date of the hearing) Licensee has operated for only approximately 18 months since the most recent violation. Because there has not been a significant period of time without a violation since October 2011, this factor weighs against Licensee.

(b) *Seriousness of the violation.* The Commission failed to establish that a Category I violation (the most serious of OLCC violations) occurred in the present matter. Nonetheless the proven Category III violation carries with it risk of harm to the public, in that it resulted in the sale of alcohol to a minor. It also represents Licensee's third Category III violation since June 15, 2007. In *Center Market*, OLCC-08-V-106, October 2009, the Commission considered the licensee's four prior violations in addition to the Category I violation at issue when determining the seriousness of the violations for renewal purposes. In following this precedent and factoring in licensee's previous Category I violation in 2013, this factor-weighs against licensee.

(c) *Licensee's personal involvement.* Licensee was not personally involved in the violation of OAR 845-006-0335(1)(a) on June 29, 2012, so this factor does not weigh against good cause. However, the Commission has determined that lack of personal involvement does

not weigh in favor of good cause, but is merely a neutral factor. *US Market #260* at 10 (OLCC Final Order, 11-L-003, March 2013).

(d) *Immediate corrective steps.* Licensee contends that this factor weighs in its favor because Licensee immediately terminated Mr. Galindo Garcia's employment after the June 29, 2012 violation, because Licensee had previously changed its policies to require age verification for anyone appearing under the age of 40, and because Licensee strengthened its policies and began keeping better training and policy records after June 29, 2012. Licensee's Closing Statement at 14. Licensee's termination of Mr. Galindo Garcia's employment after the June 29, 2012 violation does constitute an immediate corrective step, albeit a minor one. Licensee's "age 40" policy change occurred *before* the violation at issue, so it cannot serve as evidence that Licensee took immediate corrective steps after the June 29, 2012 violation. Licensee's contention that it strengthened its age verification policies and started keeping better training and policy records after the June 29, 2012 violation is not supported by the record. None of the training or policy documents Licensee offered into the record indicate that the documents were drafted or revised after June 29, 2012. And, while the documents comprising Exhibit A8 include an OLCC training curriculum, daily policies for using AVE, and a notice to employees regarding the use of AVE, it is not clear when those documents were created or revised, or to whom Licensee provided them. Thus, Licensee has not proven that it took immediate corrective steps after the most recent violation, aside from terminating Mr. Galindo Garcia's employment.¹⁵ Similar employee terminations were involved in *Lava Lanes*, OLCC-10-V-018, February 2011, and *Dad's Restaurant & Lounge*, OLCC-06-V-029, December 2007, but neither case used the terminations in the good cause analysis. *US Market #145*, OLCC-11-V-009, February 2012, also addressed terminating an employee involved in a violation, and firing the employee was not found to be a factor that supported good cause. Past case precedent clearly suggests that licensee's termination of an employee involved in a violation is insufficient to qualify as an immediate corrective step that weighs in favor of finding good cause. Coupling past case precedent with the fact that Mr. Galindo Garcia is the same employee that committed the same violation at issue in *Mt. Angel Market & Deli, LLC*, OLCC-12-V-003, July 2013, as emphasized in subsection (f), makes this factor weigh against Licensee.

(e) *Time passage without violations.* Licensee's most recent violation occurred on June 29, 2012, approximately 18 months prior to the hearing in this matter. Commission staff asserts that this "short passage of time" weighs against a good cause determination. Agency Closing Statement at 11. Licensee, however, considers it a sufficiently lengthy period of time to support good cause. At best, this is a neutral factor.

(f) *Whether the incident was isolated.* Licensee points out that the June 29, 2012 incident "was isolated, occurring on a single day, with a single employee, in a single transaction." Licensee's Closing Statement at 14. However, given that the same employee—Mr. Galindo Garcia—was involved in the commission of the same violation in October 2011, the incident in June 2012 is not isolated. This factor weighs against a finding of good cause.

¹⁵ Licensee's AVE tape records showing AVE use at the premises after June 29, 2012 are not evidence of immediate corrective action. Similarly, Licensee's continued participation in the "We Card" program is not evidence of immediate corrective action.

(g) *Whether there is aggravation or mitigation.* As previously discussed, the Commission has not established aggravation with respect to the June 29, 2012 violation of OAR 845-006-0335(1)(a). Licensee asserts that the absence of aggravation weighs in its favor, but Licensee does not specifically argue that mitigating factors exist to support good cause for this factor. *See* Licensee's Closing Statement at 14-15. This factor is therefore neutral.

(h) *Willingness to have a permanent restriction.* Licensee has had permanent restrictions on its license since 2008. Licensee violated one of those restrictions in October 2011, and Licensee's employee sold alcohol to a minor in both October 2011 and June 2012. Commission staff argues that the violations "weigh against a good cause determination regarding Licensee's willingness to have restrictions." Agency Closing Statement at 11. This factor, however, is stated only in terms of a licensee's "willingness" to have a permanent license restriction. Whether, and to what extent, a licensee has complied with restrictions or to what extent the restrictions have served their intended purpose is not necessarily determinative of a licensee's *willingness* to have a permanent restriction. The record establishes that Licensee has been willing to have a permanent restriction on its license. This factor therefore supports good cause.

(i) *Acceptance/evasion of responsibility.* With regard to license renewal, Licensee admits culpability for the established violation of OAR 845-006-0335(1)(a), but argues that an additional good cause factor should be considered - that the violation involved only one employee who was acting in "voluntary, blatant and deliberate violation of OLCC laws, rules, and training." Licensee's Closing Statement at 15. Commission staff construes Licensee's argument as "an extension of denial of responsibility in this case." Agency Rebuttal at 6. The ALJ declined to conclude that Licensee's argument amounts to a denial of responsibility for the violation. This factor weighs in favor of good cause.

In sum, four factors weigh against a finding of good cause, two factors support it, and three are neutral. On this record, Licensee has not demonstrated by a preponderance of the evidence that good cause does exist to overcome its poor record of compliance. Consequently, the Commission should not renew Licensee's license.

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FINAL ORDER

The Commission orders that for the violation of OAR 845-006-0335(1)(a), the off-premises sales license held by Mt. Angel Market & Deli, LLC, Lal Sidhu, Managing Member, and Charanjit Singh, Member, d.b.a. Mt. Angel Market & Deli shall be **SUSPENDED** for 30 days or a \$4,950 **CIVIL PENALTY** shall be imposed.

The alleged violation of OAR 845-005-0355(5) is **DISMISSED**. The proposal to cancel Licensee's license is **DISMISSED**.

The proposal to remove Licensee from the Responsible Vendor Program is **DISMISSED**.

Licensee's application for license renewal is **DENIED**.

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 26 day of August 2014

Steven Marks
Executive Director
OREGON LIQUOR CONTROL COMMISSION

Mailed this 27 day of August 2014

THIS ORDER IS EFFECTIVE ON THE DATE MAILED. Any monetary fine or civil penalty set out in the order shall be due and payable 10 days after the date of mailing.

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.