

ADMINISTRATIVE POLICY & PROCESS DIVISION

November 19, 2020

STIPULATED SETTLEMENT AGREEMENTS FOR LIQUOR VIOLATION CASES

1. Hwy 42, LLC

Drake Nelson, Managing Member

Kimberly Nelson, Member

dba **COOS BAY**

SPEEDWAY ENTERPRISES (L)

94320 Highway 42

Coos Bay, OR 97420

Immediate Suspension –

OAR 845-006-0345(17)(a) – On August 14, 2020, Licensee and/or Licensee’s employees, agents, or representatives engaged in activity that violated the Oregon Health Authority’s (OHA) Statewide Mask, Face Shield, Face Covering Guidance issued on July 24, 2020, when it failed to require its patrons to wear appropriate face masks, face shields, or face coverings at the premises, and/or when its employees, contractors, or volunteers were not wearing appropriate face masks, face shields, or face coverings where at least six feet of distance between individuals could not be maintained and/or when those employees, contractors, or volunteers interacted with the public.

(1st Level Category II)

Violation Charges –

OAR 845-006-0345(17)(a) - On August 14, 2020, Licensee and/or Licensee’s employees, agents, or representatives engaged in activity that violated the Oregon Health Authority’s (OHA) Statewide Mask, Face Shield, Face Covering Guidance issued on July 24, 2020, when it failed to require its patrons to wear appropriate face masks, face shields, or face coverings at the premises, and/or when its employees, contractors, or volunteers were not wearing appropriate face masks, face shields, or face coverings where at least six feet of distance between individuals could not be maintained and/or when those employees, contractors, or volunteers interacted with the public.

(1st Level Category II)

Note: Licensee was charged with these violations by Order of Immediate Suspension and Notice of Opportunity for Hearing, dated August 20, 2020, and a Notice of Proposed License Suspension/Civil Penalty, dated September 9, 2020. Licensee requested a hearing and now wishes to enter into this settlement agreement.

Violation Charges -

OAR 845-006-0347(3)(a) - On August 14, 2020, Licensee and/or Licensee's employees, agents, or representatives permitted unlawful activity on the licensed premises by engaging in activity that violated Executive Order No. 20-27, issued on June 5, 2020, when it failed to comply with OHA Guidance as required in Section 4(a), Section 20(b)(1), and/or Section 20(b)(3) by allowing more than the 250 individuals on the premises, in excess of the maximum allowed in the OHA Guidance for Venue and Event Operators, OHA Guidance for Restaurants/Bars/Breweries/Tasting Rooms/Distilleries (incorporated by reference in the OHA Guidance for Venue and Event Operators), and/or OHA Guidance for Operators of Indoor and Outdoor Entertainment Facilities; by failing to ensure that physical distancing of at least six feet between people of different parties was maintained as required by OHA Guidance for Venue & Event Operators and/or OHA Guidance for Operators of Indoor and Outdoor Entertainment Facilities; and/or by failing to ensure that patrons remained six feet apart while ordering as required by OHA Guidance for Restaurants/Bars/Breweries/Tasting Rooms/Distilleries.

(1st Level Category III)

SYNOPSIS: Based on information received in an anonymous complaint, inspectors attended an event at the licensed premises, which is an outdoor racing facility. While there, the inspectors observed crowds that exceeded the maximum allowed under the relevant Oregon Health Authority guidelines for operation during the state of emergency declared because of the COVID pandemic, and a failure of staff and guests to wear masks or other face coverings. Licensee was served with an immediate suspension as well as a notice of proposed license suspension based on two violations. Licensee provided information on how they would come into compliance for the few events left in their season, which ended at the end of October.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violations as set out in the Immediate Suspension and Notice. This was Licensee's first Category II violation and first Category III violation within two years. Any subsequent Category II or Category III violations within the same two years will be charged at the second level. These violations will become a permanent part of each licensee's Commission file and may be considered in any future application for any license or permit by that licensee.
2. The standard sanction for Violation Number One is a 30-day suspension. The standard sanction for Violation Number Two is a 10-day suspension or a \$1,650.00 civil penalty. Commission staff added eight days of aggravation because Violations Number One and Two involved more than one patron and were intentional.
3. The Commission will reduce the sanction and impose a \$2,475.00 civil penalty and a 33-day suspension.
4. Licensee will pay the \$2,475.00 civil penalty before 5:00 PM on December 15, 2020. Licensee will then serve the 33-day suspension beginning at 7:00 AM on December 22, 2020 and ending at 7:00 AM on January 24, 2021.

(continue **COOS BAY SPEEDWAY ENTERPRISES**)

5. The Commission will withdraw the Immediate Suspension, effective immediately upon Licensee's execution of this agreement.
6. If a licensee's interest in the license expires or is transferred before the Commission issues a final order on the allegations, the licensee agrees to accept a Letter of Reprimand for the violations. This reprimand will become a permanent part of the licensee's Commission file and may be considered in any future application for any license by the licensee.
7. This agreement is conditional upon final approval of the Oregon Liquor Control Commission and will be reviewed by the Commissioners at their November 2020 Commission Meeting. If the agreement is not accepted and approved in its entirety by the Commission it is deemed null and void and Licensees' hearing rights, if any, will be restored. If the agreement is accepted and approved in its entirety by the Commission, Licensees waive any and all rights to a contested case hearing under the Administrative Procedures Act (ORS Chapter 183) and to judicial review, or to otherwise challenge this agreement and the final order.

2. Top of the Bowl
Jamie Hennricks, Managing Member
dba **TOP OF THE BOWL (F-COM)**
335 West C Ave
Drain, OR 97435

Immediate Suspension –
OAR 845-006-0345(17)(a) – On or about August 7, 2020, August 14, 2020, August 28, 2020, August 29, 2020, and/or September 19, 2020, Licensee and/or Licensee’s employees, agents or representatives engaged in or permitted activity that violated the Oregon Health Authority’s (OHA) Statewide Mask, Face Shield, Face Covering Guidance issued on July 24, 2020 (Mask Guidance), when they failed to require employees, contractors, volunteers, customers and/or visitors to wear a mask, face shield, or face covering at the licensed premises in indoor spaces open to the public, at times and under circumstances in which the exceptions to the Mask Guidance did not apply.

(1st Level Category II)

Immediate Suspension –
OAR 845-006-0345(17)(b) - On or about August 4, 2020, August 28, 2020, August 29, 2020, and/or September 19, 2020, Licensee and/or Licensee’s employees, agents or representatives engaged in or permitted activity that violated OHA’s Phase Two Reopening Guidance for Restaurants and Bars, issued on July 24, 2020 (Phase Two Guidance), when patrons and/or parties of patrons were not required to maintain at least six (6) feet distance between one another; employees failed to maintain at least six (6) feet distance from patrons while taking orders or providing services, both in the dance area and at the bar area; and/or frequent disinfecting of touch points was not implemented.

(1st Level Category II)

Note: Licensee was charged with these violations by Order of Immediate Suspension dated September 29, 2020 (Immediate Suspension), and a Notice of Proposed License Suspension, dated October 13, 2020. Licensee requested a hearing and now wishes to enter into this settlement agreement.

AGGRAVATION

Staff added eight days of aggravation because Violations Number One and Number Two involved more than one employee or patron and were repeated.

(continue **TOP OF THE BOWL**)

Immediate Suspension –

OAR 845-006-0345(16), (17)(b) - On or about August 7, 2020, Licensee and/or Licensee's employees, agents or representatives engaged in or permitted activity that violated the Phase Two Guidance, when on-premises consumption of food and drinks, including alcoholic beverages, was not stopped as of 10:00pm.

(1st Level Category II)

Violation Charges –

OAR 845-006-0345(17)(a) - On or about August 7, 2020, August 14, 2020, August 28, 2020, August 29, 2020, and/or September 19, 2020, Licensee and/or Licensee's employees, agents or representatives engaged in or permitted activity that violated the Oregon Health Authority's (OHA) Statewide Mask, Face Shield, Face Covering Guidance issued on July 24, 2020 (Mask Guidance), when they failed to require employees, contractors, volunteers, customers and/or visitors to wear a mask, face shield, or face covering at the licensed premises in indoor spaces open to the public, at times and under circumstances in which the exceptions to the Mask Guidance did not apply.

(1st Level Category II)

Violation Charges -

OAR 845-006-0345(17)(b) - On or about August 14, 2020, August 28, 2020, August 29, 2020, and/or September 19, 2020, Licensee and/or Licensee's employees, agents or representatives engaged in or permitted activity that violated OHA's Phase Two Reopening Guidance for Restaurants and Bars, issued on July 24, 2020 (Phase Two Guidance), when patrons and/or parties of patrons were not required to maintain at least

(continue **TOP OF THE BOWL**)

six (6) feet distance between one another; employees failed to maintain at least six (6) feet distance from patrons while taking orders or providing services, both in the dance area and at the bar area; and/or frequent disinfecting of touch points was not implemented.

(1st Level Category II)

Violations Charges -

OAR 845-006-0345(16), (17)(b) - On or about August 7, 2020, Licensee and/or Licensee's employees, agents or representatives engaged in or permitted activity that violated the Phase Two Guidance, when on-premises consumption of food and drinks, including alcoholic beverages, was not stopped as of 10:00pm.

SYNOPSIS: These charges were the product of a two-month investigation by regional public safety staff that included a combination of regular compliance checks and undercover operations. Multiple incidents of failure to abide by Oregon Health Authority guidance for face coverings and social distancing were observed, involving both patrons and employees / license representatives. One instance of operating after 10:00 pm was also charged, but Staff has determined that it is appropriate to withdraw this charge and issue a warning instead. To protect public health and safety, an order of Immediate Suspension was served on September 29, 2020, and the On-Premises alcohol sales privileges have been suspended since that time. Licensee requested an expedited hearing on both the Immediate Suspension and the Violations.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for Violations Number One and Number Two as set out in the Immediate Suspension and the Violation Notice (total of two violations). These were Licensee's first and second Category II violations within two years, charged at the first level. Any subsequent Category II violation within the same two years will be charged at the second level. These violations will become a permanent part of each licensee's Commission file and may be considered in any future application for any license or permit by that licensee.
2. The Commission will withdraw Violation Number Three, and issue a Notice of Warning for violation of OAR 845-006-0345(16), (17)(b) in its place.¹
3. The standard sanction for Violations Number One and Number Two is a 30-day suspension each. Commission staff added eight days of aggravation because Violations Number One and Number Two involved more than one employee or patron and were repeated.

¹ This has already been done.

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4. The Commission will reduce the sanction and impose a 50-day license suspension.
5. Licensee will serve a 50-day suspension beginning immediately upon ratification of this agreement by the Commission on November 19, 2020, and ending at 7:00am on January 8, 2021. Licensee agrees that the Immediate Suspension was proper and that it will continue in force until this 50-day penalty suspension begins, so that there is no gap in license suspension.
6. Licensee withdraws its requests for hearing on the Immediate Suspension and the Notice.
7. If a licensee's interest in the license expires or is transferred before the Commission issues a final order on the allegations, the licensee agrees to accept a Letter of Reprimand for Violations Number One and Number Two. This reprimand will become a permanent part of the licensee's Commission file and may be considered in any future application for any license by the licensee.
8. This agreement is conditioned upon final approval of the Oregon Liquor Control Commission and will be reviewed by the Commissioners at their November 2020 Commission Meeting. If the agreement is not accepted and approved in its entirety by the Commission it is deemed null and void and Licensee's hearing rights, if any, will be restored. If the agreement is accepted and approved in its entirety by the Commission, Licensees waive any and all rights to a contested case hearing under the Administrative Procedures Act (ORS Chapter 183) and to judicial review, or to otherwise challenge this agreement and the final order.