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BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the )  
Proposed Suspension of the )  
Wholesale Malt Beverage )  
and Wine (WMBW) )  
License held by: )

Al C. Giusti Wine Company, Inc. )  
AL C. GIUSTI WINE COMPANY )  
66 SE Morrison Street )  
Portland, Oregon 97214 )

AND )

In the Matter of the )  
Proposed Suspension of the )  
Salesman's License held by: )

Ronald G. Bertolino )  
Carol Larson )  
Russell Swanson )  
James Rawson )  
Ursula Haskins )  
Laurence Giusti )  
Donald Capp )  
and James G. Adams )  
----- )  
Multnomah County )

FINAL  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

A hearing in the above matter was held on the 26th and 27th days of May, 1982, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Licensee appeared in person and was represented by Bruce W. Williams, Attorney at Law. The Commission was represented by legal counsel.

RECORD OF PREVIOUS VIOLATIONS

NONE.

The Commission having considered the record of the hearing, the applicable law and regulations, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the

Hearings Examiner, Rebuttal to Exceptions, and now being fully advised, makes the following:

FINDINGS OF FACT

1. The Al C. Giusti Wine Company (hereinafter Giusti Wine Company or Licensee) has held a Wholesale Malt Beverage and Wine (WMBW) license at all times relevant to these Findings of Fact. Such a license is authorized under ORS 471.235 and permits the importation, storage, and wholesale sale of beer and wine to licensees of the Commission. Sales to unlicensed individuals are permitted under certain circumstances not involved in these matters.

2. Ronald G. Bertolino, Carol Larson, Russell Swanson, James Rawson, Ursula Haskins, Laurence Giusti, Donald Capp, and James Adams have all held a Salesman's license at all times relevant to these Findings of Fact. A Salesman's license is authorized under ORS 471.287 and permits the holder to offer for sale or solicit orders for the sale of beer and wine to licensees of the Commission authorized to resell the beer or wine. Each holder of a Salesman's license was employed by the Giusti Wine Company at all times relevant to these Findings of Fact.

3. Licensee has been charged with the following violations:

Charge No. 1: Violation of ORS 471.465(1) (furnishing financial assistance to retail licensees - 11 specifications).

Charge No. 2: Violation of ORS 471.465(1) (furnishing financial assistance to retail licensees - four specifications).

Charge No. 3: Violation of OAR 845-10-170(6)(b)  
(failed to produce records requested in  
72-hour notices).

Charge No. 4: Violation of OAR 845-06-020(1) and (2)  
(failed to notify the Commission of  
change in officers and/or directors).

FINDINGS OF FACT RELATING TO CHARGE NO. 1 AGAINST LICENSEE  
(FINANCIAL ASSISTANCE TO RETAIL LICENSEES - 11 INSTANCES)  
AND CHARGES AGAINST THE FOLLOWING HOLDERS  
OF SALESMAN'S LICENSES:

RONALD G. BERTOLINO, DONALD CAPP, CAROL LARSON,  
RUSSELL SWANSON, JAMES RAWSON, AND URSULA HASKINS

4. On March 9, 1979, Ronald Bertolino gave 12 fifths of champagne and seven other bottles of wine, all belonging to the Giusti Wine Company, to Thomas Butler, who was employed as a supervisor by Prairie Markets, a retail licensee. No charge was made for the wine. The champagne was given to Mr. Butler for use in connection with the wedding of his son. The other wine was given to Mr. Butler for his personal use.

5. The wholesale value of the champagne and other wine was approximately \$68.30.

6. Mr. Butler had attempted to purchase the champagne from the Giusti Wine Company, but Mr. Bertolino had declined to accept payment.

7. Prior to his death in October, 1980, Al C. Giusti was president of Licensee corporation.

8. During 1979 and 1980, Al C. Giusti and Jeanette Giusti, his wife, owned a condominium at the Oregon Coast.

9. In September, 1979 and September, 1980, James D. Kraft, who was employed as a merchandise manager for Safeway

Stores, a retail licensee, stayed with his family and friends at the condominium owned by Mr. and Mrs. Giusti. He was not charged for the use of the condominium. Each stay was approximately three or four days. The approximate value of the use of the condominium was \$45 - \$50 per night.

10. Mr. Kraft's use of the condominium in 1979 and 1980 was arranged by Donald Capp, an employee of the Giusti Wine Company.

11. On July 11, 1980, Carol D. Larson gave two bottles of wine belonging to Licensee to George Sabin, a corporate officer of Beer & Brew, Inc., a retail licensee. The value of the wine was approximately \$3.86. Ms. Larson gave the wine to Mr. Sabin to sample in hopes that he would choose one or both for a wine list for a Beef & Brew Restaurant in Bend, Oregon.

12. On July 29, 1980, Russell Swanson gave two cases of six 1.5 liter bottles of Gallo Wine belonging to Licensee to Gregory Higashi, the store manager of an Albertson's Store in Tigard, Oregon. The Albertson's Store held a Package Store license. No payment was made for the wine. James Rawson, Russell Swanson's supervisor, knew of and approved the gift to Mr. Higashi.

13. Mr. Swanson gave the wine to Mr. Higashi at Mr. Higashi's request for use in a "Tigard Days" celebration, an event promoting Tigard. The wine was used in the Tigard Days celebration.

14. On approximately August 11, 1980, Carol Larson and Gary Moore, an employee of the Gallo Wine Company, conducted an

educational seminar for employees of the Sea Garden Restaurant, a retail licensee. Ms. Larson supplied four 750 ml. bottles of wine and two 3 liter bottles of wine, all belonging to Licensee, for the seminar. The value of the wine was approximately \$17.12. No payment for the wine was made by the Sea Garden Restaurant.

15. On September 8, 1980, Carol Larson provided four bottles of wine belonging to Licensee to Victoria Station, a retail licensee. No charge was made for the wine. The wine was intended for use as samples for tasting by employees of Victoria Station. The value of the wine was approximately \$7.82.

16. On October 9, 1980, the Giusti Wine Company delivered 13 cases of wine to the Beef & Brew East, a retail licensee in Portland, at the direction of Carol Larson. No charge was made for the wine, which had a value of approximately \$224.15.

17. The delivery of the wine noted in the preceding Finding of Fact occurred under the following circumstances: Giusti Wine Company had had a "post off," or reduced price, on four liter bottles of the particular wine involved. The Beef & Brew East had ordered a quantity of such four liter bottles; however, Giusti Wine Company had run out of such four liter bottles and thus had delivered three liter bottles at a higher per bottle price. The value of the 13 cases of wine given free to the Beef & Brew East was designed to make up the difference between the charge to the Beef & Brew for the three liter bottles and what the charge for the four liter bottles would have been.

18. On November 14, 1980, Ursula Haskins provided, without charge, four bottles of wine belonging to Licensee and having an approximate value of \$16 to Barbara Koenig, restaurant manager for the Portland Motor Hotel, a retail licensee. The wine was intended as samples for employees of the Portland Motor Hotel to use in determining whether to add the wines to the restaurant's wine list. Carol Larson, who was Ursula Haskins' supervisor, approved the gift.

19. On October 30, 1980, Ursula Haskins provided two cases of champagne belonging to Licensee to Pierre Kassab, manager of the Emerald Isle, a retail licensee, without charge. Ms. Haskins provided the champagne for use in the "grand opening" of the premises with a Dispenser Class A license. The gift was Ms. Haskins idea. The champagne was used in the grand opening.

20. On November 20, 1980, Carol Larson provided one and one-half cases of wine plus 16 bottles of wine, all belonging to Licensee, to Betty Jean Clarizio, Secretary/Treasurer of Clarizio Industries, holder of a retail license at the Arrowhead Golf Club. Some of the wine was used for a buffet involving members of the Club. The rest was used for an employee training session in which Carol Larson participated. The purpose was to train employees of the Arrowhead Golf Club in service and sale of wine. The value of the wine was approximately \$100.

FINDINGS OF FACT RELATING TO CHARGE NO. 2 AGAINST  
LICENSEE (FINANCIAL ASSISTANCE IN FOUR INSTANCES)  
AND CHARGES AGAINST THE FOLLOWING SALESMAN:  
LAURENCE GIUSTI, CAROL LARSON, AND JAMES G. ADAMS

21. On March 24, 1981, Laurence Giusti, corporate officer of Licensee and holder of a Salesman's license, provided, without charge, one case plus five bottles of wine belonging to Licensee to Cheryl Perrin, Vice President of Fred Meyer, Inc., a retail licensee. The value of the wine was approximately \$45.25.

22. Ms. Perrin was a lobbyist for and "Director of Governmental Affairs" for Fred Meyer, Inc. She did not have a role in the purchase of wine for Fred Meyer Stores. At the request of a staff member on the "Arts and Culture Subcommittee" of the Oregon Legislature, Ms. Perrin had attempted to obtain wine for the Subcommittee's use. She approached Laurence Giusti with a request for wine. Mr. Giusti understood the wine to be for an "art showing" or "art group" that Ms. Perrin had something to do with, and provided the wine. Mr. Giusti was aware that Ms. Perrin did not have a role in purchasing wine for Fred Meyer, Inc.

23. In June, 1981, someone on a "Volunteer Committee" for the Oregon Museum of Science and Industry (OMSI) contacted Laurence Giusti to ask for a donation of wine for a benefit function for OMSI at which the premiere showing of the motion picture "St. Helens" would occur. All proceeds were to go to OMSI. Mr. Giusti agreed to provide wine for the function.

24. On approximately June 18, 1981, Steven Preece, a member of the Volunteer Committee, called Laurence Giusti to arrange for delivery of the wine. Neither OMSI nor the Volunteer

Committee had obtained a Special Retail Wine license at this time. Mr. Giusti was not aware that OMSI or the Committee would obtain a license. The Giusti Wine Company delivered 16 cases of the wine to the Committee without charge on June 18. The approximate value of the wine was \$570.

25. On June 18, Mr. Preece obtained a Special Retail Wine (SRW) license. The benefit occurred on June 19, 1981. The participants paid a charge which entitled them to attend the movie and receive drinks of the wine.

26. Four other wholesale licensees offered to provide wine for the OMSI function. Mr. Preece and the Committee chose to obtain the wine from the Giusti Wine Company because Al C. Giusti and the Giusti Wine Company had long been benefactors of OMSI.

27. On July 17, 1981, Carol Larson provided a 1.5 liter bottle of champagne belonging to Licensee to Mable J. Balkovich without charge. The value of the wine was approximately \$5.95.

28. Ms. Balkovich was a member of the Board of Trustees of the Irvington Tennis Club, a retail licensee. She was also on a committee which arranged for the Oregon State Tennis Tournament to be held at the Irvington Tennis Club. Ms. Larson understood when she provided the bottle of champagne that it would be used by the Club for a "tennis benefit."

29. The bottle of champagne was used by the Irvington Tennis Club either as a door prize at the tournament or was "raffled" by the Club with the Club retaining the proceeds.

30. On August 12, 1981, James G. Adams left three bottles of wine belonging to Licensee with Gene Wizer, officer of Wizer Foods, Inc., a retail licensee. The wine was left to provide Mr. Wizer with an opportunity to examine the packaging of the wine to determine whether to carry it in the store. The understanding was that Mr. Wizer would return the wine or pay for it. The bottles remained with Mr. Wizer for several weeks unopened. They were returned to Mr. Adams after being discovered in Mr. Wizer's office by OLCC Inspectors.

FINDINGS OF FACT RELATING TO CHARGE NO. 3  
AGAINST LICENSEE (FAILING TO PRODUCE RECORDS  
WHICH WERE REQUESTED IN 72-HOUR NOTICES)

31. On September 8, 1981, the Enforcement Division of the Commission delivered to the Giusti Wine Company a letter giving "72 hour notice" to Licensee of the inspection by Sr. Inspector James G. Taylor of the following documents:

"Specifically, all records involving sales of Al Maden [sic] wines to retail licensee's for the period from July 1, 1981, through this date. Also a record of any and all depletion allowance reports or similar type documents submitted to the winery."

32. On September 11, 1981, Inspector Taylor appeared at Licensee's premises. Some of the requested documents were available at the premises. Some were not made available, however. Inspector Taylor, at the request of Licensee's attorney, agreed to wait until September 14 for the documents, and gave Licensee a second written notice to that effect.

33. On September 15, 1981, Inspector Taylor returned to Licensee's premises. Some of the records were still not available.

34. On October 8, 1981, the Enforcement Division delivered a "72 hour notice" to licensee requesting that the following documents be made available for inspection on or after October 12, 1981:

"Specifically, all records contained in invoice books with the specific invoices: 5150, 5165, 5166, 5601, 5628, 5644 and 5649. In addition we request your Depletion Allowance Reports, submitted to Al Maden Vineyards, for the months of May, July and August of 1981."

35. On October 8, 1981, the Enforcement Division also sent a letter to Bruce W. Williams, attorney representing Giusti Wine Company, notifying him of the Commission's desire to obtain the records noted in the above "72 hour notice."

36. On October 12, 1981, Inspector Taylor visited the premises. The requested records were not available.

37. On approximately October 1, 1981, Licensee provided to Inspector Taylor various computer printouts relating to depletion allowances. Inspector Taylor insisted on reviewing the actual daily "depletion reports," however. Inspector Taylor found such depletion reports in the files of Licensee in early November, 1981.

38. The invoices noted in Finding of Fact No. 35 above were never provided to Inspector Taylor. Their whereabouts is unknown.

39. On November 2, 1981, the Enforcement Division sent Licensee a "72 hour notice" relating to the following records:

"Corporate records pertaining to the Al C. Giusti Wine Company. Notification to the OLCC pertaining to any change in corporate officer's or stockholder's. A copy of any last will and testament of Al C. Giusti. Any other records that may be verbally requested by Inspector Taylor."

40. Licensee did not make the documents available to Inspector Taylor when he sought them at the premises. The "notification" to the OLCC noted in the request did not exist.

41. On November 10, 1981, and November 12, 1981, the Enforcement Division sent a "72 hour notice" to Licensee requesting that the following records be made available:

"Specifically, the record requested is that Trust made as of the 19th day of September, 1980, between Al C. Giusti as Trustor and he and the other parties as mentioned in an Amendment to Stock Purchase Agreement, dated September 24, 1980, as Trustees, along with any amendments thereto."

42. Licensee refused to provide the Trust requested at the end of the 72 hour period.

43. Corporate officer Laurence Giusti, son of corporate officer Al C. Giusti, did not have the Trust in his possession at the time the request was made. It was in possession either of Clifford Alterman, attorney for Al C. Giusti, or George Mack, accountant.

44. On December 1, 1981, Bruce Williams, attorney for Licensee, sent a copy of portions of the Trust Agreement to the Enforcement Division.

45. The Enforcement Division received a full copy of the Trust and will from Clifford Alterman, attorney for the estate of Al C. Giusti, in early December, 1981.

FINDINGS OF FACT RELATING TO CHARGE NO. 4  
AGAINST LICENSEE (FAILURE TO NOTIFY THE  
COMMISSION OF CHANGE IN OFFICERS/DIRECTORS)

46. Prior to October 3, 1980, Al C. Giusti was president of the Giusti Wine Company. The Board of Directors consisted of Al C. Giusti, Jeanette Giusti, and Laurence Giusti.

47. On October 3, 1980, Al C. Giusti died.

48. On October 8, 1980, at a special meeting of the shareholders of the corporation, Laurence F. Giusti was elected president and Laurence F. Giusti, Jeanette Giusti and George E. Mack III were elected directors.

49. Licensee did not notify the OLCC of the changes in officers or directors.

50. In November, 1981, the OLCC determined that the above changes in officers and directors may have occurred and requested pertinent documents from the Licensee.

51. By the middle or end of December, 1981, Licensee had provided the documents requested by the OLCC relating to the changes in officers and directors.

DISCUSSION

Most of the factual matters involved in these charges are not in serious dispute.

Licensee offered evidence tending to mitigate and explain the various violations or which otherwise tends to affect the possible penalties.

Licensee points out, for example, that many of the violations occurred during the lifetime of Al C. Giusti, who was the controlling force behind the corporation until his death in October, 1980. The suggestion apparently is that the present principals in the Licensee corporation should not be penalized for acts which occurred before they were in a position to control the activities of the corporation. Licensee also points out, with respect particularly to charge No. 4 (failure to notify the Commission of changes in officers or directors), that there was a "transitional period" in the management of the corporation following the death of Al C. Giusti. Licensee also asks that the past record of Licensee and the salesmen be considered. It is noted that the Commission's letters to Licensee and Salesmen stating the charges and proposed penalty indicate that Licensee and salesmen have had no prior violations.

Licensee also notes that the Commission's rules on provision of financial assistance were changed after these matters occurred and that the present rule would probably permit some of the acts involved in this hearing. For example, the Commission's present rule (OAR 845-06-070) permits the provision of samples under certain circumstances and also permits wholesale licensees to provide educational seminars and "tastings" for retail licensees. The present rule also permits a wholesale licensee to provide to retail licensees "miscellaneous gifts not exceeding \$25 fair market value per licensee per calendar year."

The evidence indicates that some of the instances of financial assistance involved in this matter, such as those described in Findings of Fact Nos. 12, 15, 16, 19, 21 and 28-29, might be permissible under the present rule. The Commission concludes that this factor may provide slight mitigation. A change in the rule by the Commission to permit certain acts that were previously prohibited would appear necessarily to be a finding by the Commission that the act made legal is not hostile to the purposes of the Liquor Control Act. Prior to the legalizing of the act, the Licensee is, of course, obliged to refrain from it. But the legalizing of the act is a basis for concluding that the act is a relatively minor violation of the law.

Licensee also argues that the evidence indicates that Licensee and Salesmen did not have any particular intent to influence the retail licensees in many of the matters involved here. In particular, Licensee points out that the gifts to OMSI and to the Fred Meyer employee (Findings of Fact Nos. 22-27) would not appear to involve a desire to influence a customer or potential customer.

The Commission notes that the statute involved does not make "intent" a factor. Lack of any specific intent is thus not a legal defense to a charge of violation of the statute. However, it may be considered a factor of possible mitigation. It is also noted, however, that many of the other financial assistance matters involved in this hearing may well have

involved an intention to influence a customer or potential customer. The Commission concludes that the absence of a specific intent to influence the retail licensees in some of these matters does not provide significant mitigation.

Licensee also presented evidence that Al C. Giusti and the Giusti Wine Company have had a history of philanthropy. Licensee asks that this be taken into account.

#### ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. No manufacturer or wholesaler of alcoholic liquor, and no officer, director, substantial stockholder, agent or employee of any such manufacturer or wholesaler, shall, directly or indirectly, give, loan, furnish, or supply, other than merchandise sold in the usual course of trade, to any licensee authorized to sell alcoholic liquors at retail: any substantial gratuities. ORS 471.465(1).

This statute is cited as the basis for charges No. 1 and 2 against Licensee.

With only two exceptions, Licensee and salesmen admitted that a gratuity was provided to a retail licensee. The first exception involves the charge against Salesman Donald Capp concerning the use by an employee of a retail licensee of a condominium owned by Al C. Giusti (Findings of Fact Nos. 9, 10 and 11). There is no doubt that the condominium was used in this manner and that it thus constitutes a provision of a gratuity by the Licensee. However, the evidence does not establish that Mr. Capp provided the gratuity. At most, the evidence indicates that Mr. Capp may have had some role in arranging the use

of the condominium by the employee of the retail licensee. There is no evidence, however, that he had the authority to make the decision to provide the use of the condominium or that he had any control whatsoever over the condominium. It is the Commission's opinion that the evidence is not sufficient to establish that Mr. Capp provided a gratuity in this matter. The Commission concludes that this charge as to Salesman Capp should be dismissed. However, this charge as to Licensee is sustained.

The other exception involves the wine provided to Gene Wizer of Wizer Foods, Inc. (Finding of Fact No. 31). The evidence indicates that the wine was provided for inspection only, not as a sample or a gift, and that it was therefore not a gratuity. The charge against Licensee is thus not sustained.

The other allegations of financial assistance in the form of gratuities are established by the evidence.

Special note must be taken of the charge relating to the gift to Fred Meyer, Inc. (Findings of Fact No. 22 and 23). A charge of violation of ORS 471.470 (retail licensee accepted financial assistance in the form of a gratuity from wholesale licensee) was brought against Fred Meyer, Inc. as a result of this incident. By Final Order of May 24, 1982, the Commission dismissed that charge following a hearing.

It is the Commission's opinion that the dismissal as to Fred Meyer, Inc. does not preclude a finding in the instant matter that the charge against the Giusti Wine Company of violation of ORS 471.465 is sustained. The evidence presented in

this hearing is significantly different from that presented in the Fred Meyer hearing. In particular, the admission by Laurence Giusti in this hearing that he gave the wine to Ms. Perrin because she needed some wine for an "art group" or "art showing" that she had something to do with establishes, in the Commission's opinion, that Mr. Giusti made a gift to Ms. Perrin, not to a legislative subcommittee.

To summarize: The evidence establishes that Licensee did provide substantial gratuities in violation of ORS 471.465(1) as alleged in all of the specifications in charges No. 1 and 2 with the exception of the fourth specification of charge No. 2 (relating to allegation of gratuity to Gene Wizer on August 12, 1982).

2. The records required by section (5) of this rule shall be kept for a period of two years and shall be available for inspection by authorized representatives of the Commission after 72 hours' notice to the licensee or his agent. OAR 845-10-170(6)(b).

Records shall be maintained of all salaries, wages, expenses, allowances, bonuses, cash disbursements, gratuities, and gifts, whether in the form of cash, pass-through money or things of value, paid to any customer, employee, agent, or salesman or any other person selling, soliciting, or otherwise inducing the purchase of any alcoholic liquor from the wholesale licensee within the State of Oregon, as well as an itemization of all advertising items charged to advertising within the State of Oregon. All such disbursements shall be supported by receipts, vouchers, or some other evidence of obligation. OAR 845-10-170(5).

The evidence establishes that Licensee failed to produce certain documents within 72 hours of receipt of a request from

the Commission. The question is, however, whether the documents involved are among those specified in the regulations quoted above, which are the basis for the third charge against Licensee. The Commission concludes that the documents involved are not among those specified in the rule and that the charge therefore cannot be sustained.

The first "72 hour notice" (Finding of Fact No. 32) requests all records involving sales of Almaden Wine and a record of "any and all depletion allowance reports or such type documents submitted to the winery." Depletion allowance reports were also requested in a "72 hour notice" dated October 8, 1981 (Finding of Fact No. 35). Subsection (5) quoted above clearly does not include "sales" reports, which are, in fact, mentioned in other subsections of this rule (subsections (1) and (6)(a)). It is also noted that the evidence at the hearing did not establish that Licensee failed to provide "sales" reports.

The "depletion allowance reports" requested also do not fit within subsection (5) of the rule quoted above. The evidence indicates that these depletion allowance reports are records of the reduction in the inventory of the wholesale licensee and are also records of certain "promotional allowances" made by the wineries. Although one of the records referred to under subsection (5) is "allowances," it is clear from the wording of (5) that that subsection deals with certain types of expenditures of the wholesale licensee and with disbursements made by the wholesale licensee to retail licensees. Nothing in

the subsection can be construed to relate to the receipt of allowances by the wholesale licensee from the manufacturer or winery. The Commission concludes that the "depletion allowance" records are not among the records that (5) and (6)(b) above require to be provided after receipt of a "72 hour notice" from the Commission.

The "72 hour notices" of November 2, November 10, and November 12, 1981 (Findings of Fact Nos. 40 and 42), request that the will of Al C. Giusti and a Trust made by Al C. Giusti and others be produced. The Commission concludes that such documents do not fit within the requirements of the subsections of the rule cited and that failure to produce them was not a violation of these particular subsections.

A few other documents were requested in the various 72 hour notices: certain invoices and a "notification to OLCC pertaining to any change in corporate officers or shareholders." Invoices do not fit within the requirements of the subsections cited. The "notification to the OLCC" also does not fit within the regulation.

The Commission concludes that the evidence does not establish a violation of the subsections of the rule cited in the charges.

3. After there has been a change in officers or directors of a corporate licensee, or principal managers of a premises licensed to a corporation, the licensee shall notify the Commission immediately in writing. OAR 845-06-020(1).

Whenever a person intends to acquire or control more than 10 percent of the voting stock in a licensed corporation, except for stock in a publicly-traded corporation, the corporate licensee shall notify and receive prior written approval from the Commission. OAR 845-06-020(2).

The fourth charge against Licensee cites both of the above subsections. However, subsection (2) is irrelevant in that the wording of the charge alleges only that a change in officers or directors was not reported to the Commission. The charge does not mention any change in ownership of stock.

The evidence establishes that Laurence Giusti became corporate president in October, 1980, and that changes in directors also occurred on that date. The Commission was not notified of the changes. Licensee thus violated subsection (1) of the above regulation.

#### ULTIMATE CONCLUSIONS OF LAW

The Commission may cancel or suspend a license if it finds or has reasonable grounds to believe that a licensee, or any of its principal officers, has violated any provision contained in ORS Chapter 471 or any rule adopted pursuant thereto. ORS 471.315(1)(a).

It is concluded that Licensee violated ORS 471.465(1) (provided gratuities to retail licensees - 14 specifications contained in charge No. 1 and charge No. 2) and OAR 845-06-020(1) (failed to notify the Commission of change in corporate officers or directors). It is further concluded that Licensee did not violate OAR 845-10-170(6)(b) (failed to provide records).

The Commission concludes that some slight basis for mitigation has been shown as to Licensee as described in the "Discussion" section above.

FINAL ORDER

It is hereby ordered that the Wholesale Malt Beverage and Wine (WMBW) license held by the Al C. Giusti Wine Company, Inc. in the trade name Al C. Giusti Wine Company, 66 SE Morrison Street, Portland, Oregon 97214, be SUSPENDED for 40 days for violation of ORS 471.465(1) (charge No. 1, involving 11 specifications) or that Licensee pay a fine of \$2,600 in lieu of the suspension.

It is further ordered that the license be SUSPENDED for 30 days for violation of ORS 471.465(1) (charge No. 2, involving 3 specifications) or that Licensee pay a fine of \$1,950 in lieu of the suspension.

It is further ordered that a Letter of Reprimand be issued to Licensee for violation of OAR 845-06-020(1) (charge No. 4, failing to notify the Commission of change in officers or directors).

It is further ordered that the charge of violation of OAR 845-10-170(6)(b) (charge No. 3, failure to produce records) be dismissed; and

Ronald G. Bertolino - 5 day suspension or \$125 fine in lieu thereof,

Carol Larson - 23 day suspension or \$575 fine in lieu thereof (7 specifications of violation),

Russell Swanson - 5 day suspension or \$125 fine in lieu thereof,

James Rawson - 5 day suspension or \$125 fine in lieu thereof,

Ursula Haskins - 8 day suspension or \$200 fine in lieu thereof (2 specifications of violation),

Laurence Giusti - 6 day suspension or \$150 fine in lieu thereof (2 specifications of violation).

It is further ordered that the charge of violation of ORS 471.465(1) against Donald Capp and James G. Adams be DISMISSED.

It is further ordered that due notice of such action, stating the reasons therefore, be given as provided by law. ..

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.

Dated this 28th day of February, 1983.



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C. Dean Smith  
Administrator  
OREGON LIQUOR CONTROL COMMISSION

NOTICE: You are entitled to Judicial Review of this Order. Judicial Review may be obtained by filing a Petition for Review within 60 days from the service of this Order. Judicial Review is pursuant to the Provisions of ORS Chapter 183.