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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Proposed Cancellation of the)	
Dispenser Class A (DA))	
License held by:)	FINAL
)	FINDINGS OF FACT,
Love's Enterprises, Inc.)	CONCLUSIONS OF LAW,
LOVE'S)	AND ORDER
3380 SW Cedar Hills Boulevard)	
Beaverton, Oregon 97005)	
- - - - -)	
Washington County)	

A hearing in the above matter was held on the 27th day of July, 1983, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Licensee appeared in person and was represented by Susan Whitney, Attorney at Law. The Commission was not 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, and now being fully advised, makes the following:

FINDINGS OF FACT

1. Licensee has held a Dispenser Class A (DA) license at LOVE'S at all times relevant to these Findings of Fact.
2. Licensee has been charged with violation of OAR 845-06-105(3) (failed to reopen or relocate within the time limit specified by the Commission).

3. On September 24, 1982, Licensee requested permission to close the premises until January 1, 1983, for extensive re-decorating.

4. The Commission's Staff granted the request to close until January 1, 1983.

5. On December 22, 1982, Licensee requested an extension of the closure to March 1, 1983, because of "unexpected delays due to changeover in the personnel responsible for handling the subcontracting for the remodeling."

6. The Commission's Staff granted the request to remain closed until March 1, 1983.

7. On February 14, 1983, Licensee wrote to the Commission requesting a further extension of the closure. The letter states, in pertinent part:

"We are presently negotiating to sell our assets in the business. The buyer is anxious to have the liquor license transferred to him along with the assets, provided of course he is suitably qualified and is approved by the Commissioners.

Negotiations are somewhat tenuous at this point since other matters are involved and it may be two or three more months before the transaction is satisfactorily concluded. We therefore respectfully request the permission of the Commissioners to allow us to renew the liquor license at this location for another year and hold it in suspense until the buyer is in a position to make application for its transfer."

8. At the Commission's March, 1983 meeting, the Commission voted to deny Licensee's request for permission to remain

closed. On March 31, the Staff sent a letter to Licensee informing it of the Commission's decision, as follows:

"In their March, 1983 meeting, the Oregon Liquor Control Commission considered the request for closure and determined that no further extensions would be authorized past the March 1, 1983 date which was previously authorized by Staff."

9. Licensee did not reopen the premises as of March 1, nor has it since been reopened.

10. The parking lot at the premises is under different ownership from that of the premises itself. The parking lot is leased to Licensee. The lessor of the parking lot has twice since the Fall of 1982 sought to regain possession of the parking lot through "forcible entry and detainer" actions against Licensee. Licensee has prevailed, however, and still retains the right to use the parking lot under its lease.

11. Licensee has been negotiating with a prospective purchaser for some months. The uncertainty relating to the access to the parking lot has complicated the negotiations.

DISCUSSION

Licensee requested at the hearing that it be granted permission to remain closed pending completion of negotiations for the sale of the premises and business. However, that question is not within the scope of the hearing. The hearing concerns a charge of violation against Licensee and a proposed cancellation of the license. The question of the extension of the

closure was considered by the Commission in March and denied. Thus, the Licensee's request for a further extension of closure is not considered in this Proposed Order.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission may cancel the license, or otherwise penalize the licensee, for failure of the licensee to give notice of closure as required by subsection (1) or to reopen the premises or to complete construction or remodeling within the time specified by the Commission. OAR 845-06-105(3).

The evidence establishes that Licensee failed to reopen the premises at the time specified by the Commission.

The Commission therefore makes the decision below.

ULTIMATE CONCLUSIONS OF LAW

The Commission may cancel or suspend any license, or impose a monetary penalty in lieu of or in addition to suspension as provided by ORS 471.322, if it finds or has reasonable ground to believe that the licensee has violated any provision of this chapter or any rule of the Commission adopted pursuant thereto. ORS 471.315(1)(a).

The Commission concludes that Licensee violated OAR 845-06-105(3) (failed to reopen at the time specified by the Commission).

FINAL ORDER

It is hereby ordered that the Dispenser Class A (DA) license held by Love's Enterprises, Inc. in the trade name Love's, 3380 SW Cedar Hills Boulevard, Beaverton, Oregon 97005, be CANCELLED.

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

Dated this 21st day of November, 1983.



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.