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BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the	)	
Application for a	)	
Special Retail Beer (SRB)	)	
License by:	)	FINAL
	)	FINDINGS OF FACT,
Sevellia Salazar	)	CONCLUSIONS OF LAW,
PINE STREET THEATRE	)	AND ORDER
215 SE Ninth	)	
Portland, Oregon 97214	)	
- - - - -	)	
Multnomah County	)	

A hearing in the above matter was held on the 17th and 20th days of May, 1983, in Portland, Oregon, before Hearings Examiner Jill Thompson. The Applicant appeared in person and was not represented by legal counsel. The Commission was not represented by legal counsel.

The Hearings Examiner, having considered the record of the hearing, the applicable law and regulations and being fully advised, issued a Proposed Order dated July 13, 1983.

No Exceptions were filed to the Proposed Order within the fifteen (15) day period specified in OAR 845-03-050.

Now, therefore, the Commission hereby adopts the Proposed Order of the Hearings Examiner as the Final Order of the Commission, and enters the following:

FINDINGS OF FACT

1. Sevellia Salazar applied for a Special Retail Beer (SRB) license; his application was received by the Commission February 14, 1982.
2. Applicant owns the PINE STREET THEATRE and regularly rents it for use as a function facility.

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3. Sometime prior to February 11, 1983, Applicant agreed with Mike Moran to rent his space to Mr. Moran for a party to be held at the Theatre on February 25, 1983.

4. A few days before February 14, Applicant visited Ms. Paresi, bringing with him an application form and a handbill which had been distributed by Mr. Moran to advertise the event. The handbills had been placed on utility poles, windows, and under windshield wipers. The handbill carried the following statements: "Free BEER with admission"; "Non-Stop FREE BEER"; ". . . it is my promise to you that there will be free-flowing, non-stop Draft Beer for the entire evening (No excuses) for the Price of admission!"; "I.D. required!"; "\$5.50 in advance/\$6.50 at the door"; "for ADVANCE ticket information phone the Two-Bit Saloon 238-9083"; and "free-flowing BEER!". The handbill also stated that the event was being presented by Buggs Moran Productions and Pine Street Theatre.

5. Ms. Paresi advised Applicant that handbill advertising was illegal. He then told her that he was not responsible for directing or managing the event, but had only rented his building for use by Mike Moran. Ms. Paresi then told him that if that were the case the SRB application should be in the name of Mr. Moran. She also told him it was a violation of Commission rules to permit unlimited consumption of beer or uncontrolled access to a licensed premises.

6. On February 11, Mr. Moran phoned Ms. Paresi. He would not state why he was not making the SRB application himself.

7. On February 14, Mr. Salazar brought the application, in his name, to Ms. Paresi. He also brought a revised flyer which was a photocopy of the original handbill with all reference to free or unlimited beer and Buggs Moran Productions deleted. It retained the original advance and door ticket prices and the reference to Two-Bit Saloon. Mr. Salazar composed the revised flyer.

8. On February 14, in response to Ms. Paresi's concerns that no control over the ages of the ticket users could be exercised with advance ticket sales, Mr. Salazar told her there would be no advance tickets offered. He also told her there would be a flat admission charge of \$3.00 at the door and beer would be sold for 50¢ a glass.

9. On February 15, Ms. Paresi saw an ad in the circular "Positively Entertainment" about the event. The ad stated free beer would be offered and that ticket prices were \$6.50 advance and \$5.50 at the door. Ms. Paresi twice on February 15 phoned the information number given in the circular and each time was told that ticket prices had gone up to \$6.50 advance and \$7.50 at the door, and that unlimited free beer would be available. The telephone number was that listed as belonging to the Two-Bit Saloon in the flyers previously printed to publicize the event. The person answering the phone told Ms. Paresi that advance tickets were available at Two-Bit Saloon.

10. On March 1, 1983, the Commission recommended denial of the application, citing the following:

ORS 471.030(b). The purpose of the Liquor Control Act . . . shall be liberally construed so as: . . . to promote temperance in the use and consumption of alcoholic beverages. The Staff felt that the concept of charging a flat admission fee and allowing unlimited consumption of beer by patrons violated this statute. It is understood that you communicated to the License Investigator that you would lower the admission and charge for the beer by the glass, however, subsequent investigative contacts by her showed that the originally unlimited consumption concept remained in effect.

OAR Chapter 845-05-015(3). The Commission may refuse to process or may deny an application if the applicant provides false or misleading information to the Commission. The Regulatory Staff Committee was convinced that the information which was provided to the Investigator concerning the unlimited consumption of beer and the charge for admission was false or misleading.

11. Applicant applied for the license himself because Mr. Moran told him that he (Moran) could not get one from the OLCC. Applicant assumed the responsibility for arranging and supervising many details of the event, including beer service.

12. Applicant was present at the Pine Street Theatre the night of February 25, 1983 to provide free music to individuals coming for the event originally announced, and to inform individuals who had already bought tickets that they could get refunds at the Two-Bit Saloon.

13. Applicant stated on his application form that he would receive the profits from the license. At the hearing he testified that he would receive the beer sales revenue and that Mr. Moran would receive the ticket money.



## DISCUSSION

At the hearing Applicant argued that he should not be held responsible for information printed by "Positively Entertainment," and that he was also not responsible for statements made by employees of the Two-Bit Saloon. He disclaimed any knowledge of the reason for or extent of Two-Bit Saloon's involvement in the event, and said he did not know how or why its telephone number and name got listed on the first flyer or the one he composed.

He also argued that other special licensees have advertised events using handbills and radio ads which announced unlimited beer for the price of admission and offered advance ticket sales. He offered as an exhibit a handbill publicizing such an event, tickets to which were available only as advance sales. He was evidently attempting to establish that if others are not penalized for this activity, neither should he be.

This view is not acceptable or legally valid as applied to these facts. In the first place, there was no evidence presented as to whether the sponsors of other events were or were not proceeded against by the Commission, or even that the Commission was aware of the activity. Secondly, in order to successfully claim constitutionally improper discriminatory enforcement the Applicant would have to, at a minimum, make a prima facie showing that the Commission was intentionally and invidiously discriminating against the Applicant. U.S. v. Torquato, 602 F.2d 564 (3d Cir.), cert. den. 444 U.S. 941 (1979); U.S. v. Berrios, 501 F.2d 1207 (2d Cir. 1974). Even if proven, the

mere fact that the Commission does not proceed against all violations of which it is aware does not establish a bad faith discriminatory motive toward those it does charge. See also Mary's Fine Food, Inc. v. OLCC, 30 Or App 435, 567 P2d 146 (1977).

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Liquor Control Act shall be liberally construed so as:

. . .

(b) To eliminate the evils of unlicensed and unlawful manufacture, selling and disposing of such beverages and to promote temperance in the use and consumption of alcoholic beverages. ORS 471.030(1)(b).

The event for which Applicant assumed responsibility promised, and presumably would have offered, unlimited consumption of beer. This promise was held out even after Applicant had been informed that uncontrolled consumption was impermissible. Applicant is also responsible for continuing to offer advance ticket sales after being advised to stop. Applicant's activities in these respects are inconsistent with the purpose of the Liquor Control Act.

2. The Commission may refuse to process or may deny an application if:

. . .

(3) The applicant provides false or misleading information to the Commission. OAR 845-05-015(4).

The Applicant misrepresented to the Commission facts about events which were in his control, i.e., whether advance ticket

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sales would continue and whether unlimited consumption of alcoholic liquor would be permitted at the party.

ULTIMATE CONCLUSIONS OF LAW

The application should be denied because Applicant's proposal violates the temperance and unlawful consumption provisions of the Liquor Control Act (ORS 471.030(1)(b)), and because Applicant provided false or misleading information to the Commission (OAR 845-05-015(3)).

FINAL ORDER

It is hereby ordered that the application for a Special Retail Beer (SRB) license made by Sevellia A. Salazar, dba Pine Street Theatre, 315 SE Ninth, Portland, Oregon, be DENIED.

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

Dated this 4th day of August, 1983.



Jill Thompson  
Hearings Examiner  
Hearings Division



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.