

BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the	)	
Application for a	)	
Dispenser Class A (DA)	)	
License by:	)	FINAL
	)	FINDINGS OF FACT,
The Newell Family Corporation, Inc.	)	CONCLUSIONS OF LAW,
WES'S PRIME RIB	)	AND ORDER
128 NW Third	)	
Corvallis, Oregon 97330	)	
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Benton County	)	

A hearing in the above matter was held on the 8th day of March, 1983, in Corvallis, Oregon, before Hearings Examiner Douglas Crumme'. The Applicant appeared in person and was represented by James K. Neill, Jr., Attorney at Law, Portland, Oregon. The Commission was not represented by legal counsel. The Commission having considered the record of the hearing, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and the entirety of the Criteria for the Issuance and Maintenance of Licenses and applicable statutes and regulations, enters the following:

FINDINGS OF FACT

1. The Newell Family Corporation, Inc. has applied for a Dispenser Class A (DA) license at WES'S PRIME RIB, 128 NW Third Street, Corvallis, Oregon.

2. The Commission's License Division has recommended that the Applicant's application be refused, citing the following: ORS 472.160(1) (not demanded by public interest or convenience); ORS 471.295(4)(g) (applicant did not have good

record when previously licensed); and OAR 845-05-025(10) (illegal activities or a recent history of altercations, noisy conduct or other disturbances in or around the premises under the applicant's or others ownership or control).

3. Wes's is located at 128 NW Third Street in downtown Corvallis.

4. The Newell Family Corporation previously held a license at Wes's between September, 1976 and December, 1980.

5. In December, 1980, the Applicant sold its interest in the business to CTS Enterprises, Inc., which operated the premises under the name Crazy Horse Saloon.

6. The Commission staff did not cite any violations by CTS Enterprises, Inc. in its recommendation to refuse the license application.

7. In May, 1982, the Applicant repossessed the business from CTS Enterprises, Inc. and began to operate the premises in June, 1982 under the name Wes's.

8. During the four-year period from 1976 to 1980 when the Applicant owned and operated the premises, they were cited for ten violations of the liquor laws and rules, as follows:

<u>DATE</u>	<u>VIOLATION</u>	<u>DISPOSITION</u>
5-5-77	NSF Check	Verbal Warning
6-19-77	NSF Checks	Verbal Warning
6-23-77 & 5-10-77	Sale to a VIP; allowing VIP to enter and remain	Verbal Warning
4-30-78	Allowed minors to consume, enter and remain; failed to take S-146	Letter of Warning

<u>DATE</u>	<u>VIOLATION</u>	<u>DISPOSITION</u>
5-18-78 thru 5-30-78	Failed to provide regular meals during regular meal hours; licensee responsible for acts of employees	Paid \$200 Fine
5-7-78	NSF Check	Verbal Warning
8-6-78	Licensee convicted of a felony	Verbal Warning
7-18-79	Failed to maintain records on premises	Verbal Warning
5-5-79	Failed to notify OLCC of partial change in ownership	\$300 Fine
1-4-80 and 2-16-80	Employee consuming on duty/licensee allowed prohibited advertising	\$700 Fine

9. Between 1976 and September of 1979, the primary stockholder, corporate president, and operator of the business was Wesley Newell, son of Applicants Joe C. and Seretha Evelyn Newell. Wesley Newell owned 700 shares of stock; Joe and Seretha Newell owned 150 each. Joe Newell was vice president and Seretha was secretary/treasurer. Joe and Seretha Newell did not take part in the day-to-day operation of the business.

10. Applicants Joe and Seretha Newell were not personally involved in any of the violations listed in Findings of Fact No. 7 above except for the ones in 1980.

11. In September of 1979, Wesley Newell sold his interest to Joe and Seretha Newell and resigned as corporate president after he was convicted of a felony, Theft in the First Degree.

12. Between September, 1979 and December, 1980, Applicants Joe and Seretha Newell acted as corporate officers and

operated the business, employing their son Wesley to tend bar and book bands.

13. During the period September, 1979 to December, 1980, when Joe and Seretha Newell took over management from their son Wesley, the Applicant made a profit and cleared up most of the business debts, except for a debt of \$4,500.00 owed to the IRS.

14. CTS Enterprises, Inc., which owned and operated the business from December, 1980 to May, 1982, did unauthorized remodeling and allowed the premises to fall into a state of general disrepair.

15. After the Newell Family Corporation, Inc. repossessed the premises in May of 1982, numerous repairs and improvements were made, costing approximately \$30,000.

16. The Newell Family Corporation leased the building, which is fairly large, for \$3,000 per month. The lease, which commenced in January, 1979, was reassigned to the Applicant in May, 1982 following foreclosure on CTS Enterprises, and is renewable on a yearly basis.

17. Since the Applicant repossessed the business and began operating in June, 1982; it has not been cited for any violations of the liquor laws or rules of the Commission.

18. Applicants Joe and Seretha Newell operate the business, working approximately 60 to 70 hours each per week. Ms. Newell supervises the employees, does all the hiring except for bands, cooks, operates the restaurant, does the daily bookkeeping, and does all ordering and purchasing.

19. Wesley Newell is employed by the Applicant and works about 48 hours per week. His duties include backup bartender, roving bouncer, booking bands, changing kegs, and checking I.D.

20. Wes's caters to a college-age crowd, features live rock and roll and blues music from Wednesday to Saturday in the evenings, and employs doorcheckers during all evening hours. Between 400 and 600 patrons may be present during busy evenings.

21. Joe and Seretha Newell are well respected in Corvallis and since they again began operating in June, 1982 the community has responded by increased patronage. Approximately 400 persons signed petitions of support for the license application, and 11 letters from the Corvallis community were submitted documenting support for the application.

#### DISCUSSION

A License Division Inspector at the hearing testified that he was unaware that nine of the ten violations which occurred from 1976 to 1980 took place when Applicants Joe and Seretha Newell owned only a minor interest in the corporation and did not operate the business. He stated that the decision to deny the application was based primarily on the past record of violations.

He stated that the history of violations was obtained through a routine records check and that he did not discuss the violations with the Applicants. The Investigator stated that no violations had occurred in connection with the Applicants since they reopened the premises in June, 1982. The Commission concludes that the violations which occurred between 1976 and

1980 occurred primarily when Joe and Seretha Newell owned only a minor interest in the corporation and that they were not personally involved with the violations. After Joe and Seretha Newell purchased the majority of the stock of the corporation and began operating the business in September of 1979, they had only one violation until the time they sold the business in December of 1980. Since they repurchased the business and reopened in June, 1982, there have been no violations.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission may refuse to license any applicant if it has reasonable grounds to believe that the applicant did not have a good record of compliance with the alcoholic liquor laws of this state and rules of the Commission when previously licensed. ORS 471.295(4)(g).

Although there were ten violations at the licensed premises between 1976 and 1980, all but one of them occurred when Wesley Newell, who is not an applicant for the license, owned the majority of the stock and operated the business. When Joe and Seretha Newell purchased their son Wesley's stock and took over operation of the business from Wesley in September of 1979, they experienced only one violation until they sold the business in December of 1980. Since they repossessed the business in June of 1982, they have had no violations.

2. The following criteria will be given sufficient consideration so that a license will not be issued unless good cause which outweighs the criteria involved is shown by the applicant:

The licensing of the premises would not be in the best interests of the community because of illegal activities or a recent history of altercations, noisy conduct or other

disturbances in or around the premises under the applicant's or other's ownership or control. OAR 845-05-025(10).

The evidence failed to show the presence of illegal activities or a recent history of disturbances. Although there was some testimony that the prior corporate owner, CTS Enterprises, Inc., had problems at the premises, there were no details or specific instances given. The Applicant's efforts in tightening its control over the premises and its apparent success and lack of violations outweigh any evidence of illegal activities or disturbances and is good cause for issuance of the license.

#### ULTIMATE CONCLUSIONS OF LAW

The application for a DA license should be granted because the grounds for refusal were not established by the evidence and testimony. Applicants Joe and Seretha Newell's past history of violations is minimal although their son, Wesley Newell's past record of violations is not as good. The application is demanded by public interest and convenience as demonstrated by testimony of the popularity of Wes's with the Corvallis community and the numerous letters and petitions of support received on behalf of Joe and Seretha Newell's application. ORS 472.160(1).

#### FINAL ORDER

It is hereby ordered that the application for a Dispenser Class A (DA) license by the Newell Family Corporation, Inc. at Wes's Prime Rib, 128 NW Third Street, Corvallis, Oregon, be GRANTED subject to the following condition:

1. That Wesley Newell, son of Joe C. and Seretha Evelyn Newell, not own an interest in the business, hold any corporate office, operate the business or sell or serve alcoholic beverages at Wes' during the term of the license unless specifically approved by the Commission.

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

Dated this 26th day of September, 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.