

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)
Proposed Suspension of the)
Dispenser Class A (DA))
License held by:) FINAL
) FINDINGS OF FACT,
 11 Trovatore Restaurant, Inc.) CONCLUSIONS OF LAW,
 ANNAH'S CORNER) AND ORDER
 3805 SE 52nd Avenue)
 Portland, Oregon 97206)
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 Multnomah County)

A hearing in the above matter was held on the 23rd day of January, 1984, in Portland, Oregon, before Hearings Examiner Douglas Crumme'. The Licensee appeared in person and was represented by Daryl Pulley, Attorney at Law, Portland. 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 February 9, 1984.

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

RECORD OF PREVIOUS VIOLATIONS

NONE.

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. 11 Trovatore Restaurant, Inc. has held a Dispenser Class A (DA) license at ANNAH'S CORNER, 3805 SE 52nd Avenue,

Portland, Oregon, at all dates relevant to the Findings of Fact below.

2. The Commission's Enforcement Staff has cited the Licensee with the violation of OAR 845-08-015(2) (failure to serve a variety of regular meals during normal dinner hours).

3. November 15, 1983 was taco night at Annah's Corner. On taco night patrons receive all the tacos they can eat for \$1.49.

4. The tacos served on November 15, 1983 were provided at a buffet table.

5. The taco buffet line involved the cook giving customers the taco shell filled with cooked taco meat. The patrons then filled the remainder of the shells themselves with ingredients such as lettuce, cheese, onions and possibly tomatoes.

6. In addition to tacos, the patrons going through the buffet line could also make tostadas and taco salads. All three items involved the same ingredients. The difference between the three centers on whether the taco shell is folded, open or broken.

7. Most of the Licensee's patrons eat tacos with their hands. Tostadas and taco salads, on the other hand, are generally eaten with a fork.

8. Silverware was set up in the dining room on November 15, 1983 and was available to patrons in the lounge.

9. The Licensee's employees on duty at about 6:45 p.m. on November 15, 1983 included cook Julie Elsen, cocktail waitress Joyce Baggett, and bartender Jill Myers.

10. There were about 30 people in Annah's Corner at 6:45 p.m. on November 15, 1983. Most of these patrons were seated in the lounge, except for a family seated in the dining room. Many of the lounge patrons were eating tacos.

11. Undercover OLCC Enforcement Division Inspectors Nancie Carboneau and Larry Peck entered Annah's Corner at about 6:45 p.m. on November 15, 1983. They took seats in the dining room.

12. No one came to wait on Ms. Carboneau and Mr. Peck at their table in the dining room. Therefore, Ms. Carboneau got up and approached cook Julie Elsen, who was on duty near the taco buffet table. Ms. Carboneau asked Ms. Elsen for a menu. Ms. Elsen said that there was not a menu available that night because it was taco night and only tacos were available.

13. Inspector Carboneau then walked over to cocktail waitress Joyce Baggett. Ms. Carboneau asked Ms. Baggett whether any food items besides tacos were available. Ms. Baggett responded that only tacos were available that night.

14. Annah's Corner has three nights a week when special items are offered at a reduced price. Tuesday night is taco night. There is a spaghetti night. Sunday is steak night, when a 20-oz. steak dinner is offered for \$6.24.

15. The Licensee's instructions to its employees are that on the nights when the taco, spaghetti and steak specials are offered, employees are also supposed to make the entire printed menu available to patrons until 9:00 p.m.

16. On November 15, 1983 at 6:45 p.m., the Licensee's cook Julie Elsen had the responsibility to make initial contact

and wait on patrons that took a seat in the dining room. Ms. Elsen was to provide menus and cook the patron's order if the patron wanted something from the printed menu rather than tacos. After the order was prepared, waitress Joyce Baggett was to serve the food.

17. The Licensee's corporate principal and manager, Annah, was not at Annah's Corner on the evening of November 15, 1983.

18. The Licensee's printed menu on November 15, 1983 offered a well-rounded selection of regular meals.

19. The Licensee had sufficient food ingredients in its kitchen on November 15, 1983 to fix the different items on the restaurant's printed menu.

20. During dinner hours, the Licensee sets its tables in its dining room with tablecloths, silverware and water glasses.

21. The Licensee retained a restaurant consultant in October, 1983 in an effort to improve food service and boost food sales at Annah's Corner.

Efforts the Licensee has made since October, 1983 to improve food sales at Annah's Corner have included the hanging of banners outside the premises advertising the availability of breakfast, lunch and dinner.

The Licensee has had its representatives visit neighboring businesses in the area to distribute two-for-one food coupons in an effort to draw neighborhood business persons to the restaurant for food.

The Licensee designed a new menu suggested by food consultant Timothy Zane. The new menu was begun on November 16, 1983. (Licensee's Exhibit No. 5.)

The Licensee will lease a new sign that says the premises is a restaurant and creates an attractive identity for the business in the community.

22. After the Licensee was issued a ticket for the alleged unavailability of regular meals on November 15, 1983, the Licensee prepared a written version of the food service policy at Annah's Corner. Each employee has been given a copy of the policy and asked to read and sign it. The policy requires that all employees on duty will provide food service from the full menu to patrons from 9:00 a.m. until 9:00 p.m. and specifies the different employees' responsibilities in providing food service.

23. The Licensee has continually told its employees to give preference to dining service over liquor service if the help is short-staffed or for any other reason the employees need to set a priority as to which type of service to provide first.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. (2) Commercial establishments licensed under ORS Chapter 472 which are open after 5:00 p.m. must cook and serve a variety of regular meals for a minimum period of two hours during normal dinner hours. Any commercial establishment which is not open after 5:00 p.m. must cook and serve a variety of regular meals for a minimum period of two hours during normal lunch hours. Tables must be provided for use by diners.

(3) For purposes of this rule, "regular meal" means any combination of foods, excluding sandwiches, which is generally considered to be a complete meal, and at least a part of which is cooked on the licensed premises and requires the use of dining implements for consumption. OAR 845-08-015.

The Licensee violated OAR 845-08-015(2) at 6:45 p.m. on November 15, 1983 through failing to offer and provide any food items to the Commission's undercover Inspectors other than tacos. 6:45 p.m. is a normal dinner hour. Tacos are not "regular meals" as defined in OAR 845-08-015(3). Tacos are in the nature of a sandwich rather than a complete meal. They are not generally eaten with silverware.

ULTIMATE CONCLUSIONS OF LAW

1. When there has been a violation of ORS Chapter 471 or 472, or any rule adopted thereunder, upon any premises licensed by the Commission, the Commission may revoke or suspend either the service permit of the employee who violated the law or rule or the license of the licensee upon whose premises the violation occurred, or both the permit and the license. ORS 471.385(3).

The Commission may cancel or suspend the Licensee's DA license for the violation of OAR 845-08-015(2) (failure to provide regular meals during normal meal hours) at 6:45 p.m. on November 15, 1983.

The Commission concludes these violations are mitigated by factors noted in Findings of Fact Nos. 15, 16, 18, 19, 20, 21, 22 and 23. The Licensee had given its employees instructions to make its full menu available to patrons on taco night. The Licensee's employees disregarded these instructions during the instance in question and failed to advise the undercover Inspectors about the availability of the menu. The evi-

dence shows that the Licensee had available staff and food ingredients to prepare the items on the dinner menu. It is further noted in mitigation that the Licensee had already begun a serious and extensive effort in October, 1983 to attempt to improve and increase food service at Annah's Corner.

FINAL ORDER

It is hereby ordered that the Dispenser Class A (DA) license held by Il Trovatore Restaurant, Inc. at Annah's Corner, 3805 SE 52nd Avenue, Portland, Oregon, be SUSPENDED for three (3) days or that a fine of \$195.00 be paid in lieu of said suspension.

It is further ordered that due notice of such action, stating the reasons therefor, 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, 1984.

Douglas Crumme
Douglas Crumme
Hearings Examiner
Hearings Division

C. Dean Smith
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.