

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)
Application for a)
Service Permit by:)
)
) FINAL
) FINDINGS OF FACT,
PENNY J. BAKER) CONCLUSIONS OF LAW,
89386 Levage Drive) AND ORDER
Florence, Oregon 97439)
- - - - -)
Lane County)

A hearing in the above matter was held on the 1st day of March, 1984, in Florence, Oregon, before Hearings Examiner Allen R. Scott. The Applicant appeared in person and was not represented by legal counsel. The Commission was not represented by legal counsel.

On May 21, 1984 the Commission considered the record of the hearing, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and applicable statutes and regulations. Pursuant to this review, the Commission enters the following:

FINDINGS OF FACT

1. Applicant seeks a service permit.
2. The Commission's Staff has recommended that the application be refused based on ORS 471.380(2) (false statements in the application) and ORS 471.380(4) (felony conviction).
3. On September 5, 1983, Applicant signed a service permit application. Question No. 5a of the application asks the following:

"Have you been convicted (including probation, sentencing, or bail forfeiture) of

any crime, violation, or infraction of any law? Include traffic violations with a fine or bail of \$50.00 or more."

Applicant answered "yes" to this question. Question 5c then states: "If you have answered 'yes' to 'a' or 'b,' list below:" Applicant listed the following offense: "driving while suspended." She listed no other conviction. After completing the application, Applicant gave it to her employer with the intention that he would send it to the Commission. The application was received by the Commission a few days later accompanied by the fee paid by the employer.

4. Applicant was in fact convicted on May 18, 1981, in the Circuit Court for Lincoln County of "Forgery in the First Degree." She was placed on probation for four years and ordered to make restitution.

5. The crime involved occurred in April, 1981, when Applicant was 18 years old. Applicant had stolen a check from her employer and cashed it in the amount of \$604.

6. Applicant desires to have a service permit so that she can work at more lucrative employment than her present employment as a motel maid.

7. Applicant has been in no further legal trouble following her felony conviction and has been meeting the requirements of her probation to the satisfaction of her probation officer.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission may refuse to grant a service permit if it has reasonable grounds to believe that the applicant has been convicted of a felony. ORS 471.380(4).

Applicant admits her conviction of the felony of Forgery in the First Degree. The Commission notes that she was 18 years of age at the time and that the crime occurred approximately three years ago. These factors tend to reduce the importance of the conviction. It is also noted that the conviction does not have any direct connection with the work of a service permittee. The evidence also indicates that Applicant has not had any further trouble with the law since this conviction.

For these reasons, the Commission concludes that the application should not be denied because of the felony conviction.

2. The Commission may refuse to grant a service permit if it has reasonable grounds to believe that the applicant has made false statements to the Commission in the permit application. ORS 471.380(2).

Applicant did not list the felony conviction on her service permit application. The Commission concludes that her failure to list this conviction is a false statement. Applicant claims, however, that she did not intentionally make the false statement because she did not intend that the application be sent to the Commission with the false statement on it. Her claim is that at the time she filled out the service permit application she asked another employee whether she should admit the felony conviction. The other employee told her she should not. Applicant claims that she then went to the owner of the premises, informed him of the felony conviction, and asked him whether she should admit it on the form. She testified that he told her not to list it on the form and that they would take

care of it in some other fashion. She understood this to mean that she would attach a letter to the application explaining the conviction. Applicant claims that she then left the application with the employer, signed and dated by her. She then was off work for two days, but came in on the second day off to buy a soft drink. At that time, the owner fired her. She claims that the application was still on the premises at that time. In summary, Applicant's claim is that she did not consider the application to have been completed and ready to be submitted when she left it on the premises, that she initially intended to attach a letter, and that, upon being fired, she concluded the application would not be sent in and therefore did not follow it up with a letter.

The Commission concludes that the story is not credible. This conclusion is based, in part, on observation of the Applicant's demeanor. Furthermore, her story involves improbabilities, such as a lack of apparent motivation on the part of the owner to give her the advice that she claims he did. There is also no explanation as to why the fact that she was going to write a letter would cause her to fail to list the conviction on the application form. Furthermore, her story requires that one believe that the owner would have sent in the application with the fee, paid from his own pocket, after having fired her. It is also noted that the OLCC Inspector involved testified that he contacted the owner and the other employee to whom Applicant supposedly talked about the felony conviction and that both denied any such discussion. Although the fact that

these statements were not made under oath and were not subject to cross examination, and the fact that both the owner and the other employee might have reason to lie to the Inspector, tend to weaken the force of this evidence, it is nevertheless given some weight by the Commission.

The Commission concludes that Applicant made a false statement to the Commission on her application and that the application should therefore be denied.

ULTIMATE CONCLUSIONS OF LAW

The application for a service permit should be denied because Applicant made a false statement on the service permit application.

FINAL ORDER

It is hereby ordered that the application for a service permit by Penny J. Baker be DENIED.

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

Dated this 24th day of May, 1984.

William A. Thomas for

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.