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BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the	)	
Proposed Suspension of the	)	
Retail Malt Beverage (RMB)	)	
License held by:	)	FINAL
	)	FINDINGS OF FACT,
David Hanzlik	)	CONCLUSIONS OF LAW,
BEAR PAW INN	)	AND ORDER
3237 SE Milwaukie Avenue	)	
Portland, Oregon 97202	)	
- - - - -	)	
Multnomah County	)	

A hearing in the above matter was held on the 14th day of February, 1984, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Licensee 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 March 13, 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. Licensee has held a Retail Malt Beverage (RMB) license at the BEAR PAW INN at all times relevant to these Findings of Fact.

2. Licensee has been charged with violation of OAR 845-06-105(1) (closed premises without informing the Commission of the closure within two weeks).

3. During early 1983, Licensee decided to remodel the premises. He obtained financing in the amount of \$30,000 for the work involved.

4. After beginning work in the Spring of 1983, Licensee found it difficult to have the work done while the premises was open. He began to close it on occasion for one or two days a week. He was unaware at this time that he was required to notify the Commission of a closure of more than two weeks.

5. Licensee's troubles increased as the work progressed. He found he had underestimated the cost of the work and the time involved and he began to run into financial difficulties. As a result, his phone, water, and power were shut off at various times.

6. In September 1983, after becoming aware that the premises was closed on occasion, the Commission's staff attempted to contact Licensee.

7. On November 7, 1983, a Liquor Control Officer contacted Licensee and gave him verbal instructions as to the requirement that an RMB licensee notify the Commission of any closure that extends beyond two weeks.

8. In early November, Licensee brought a note to the Commission indicating that he would open as of November 9, 1983.

9. Because of continuing financial difficulties, however, Licensee did not reopen on November 9, 1983, and in fact remained closed the entire month of November. He did not notify the Commission of the continuing closure.

10. The premises is now open. Licensee is in the process of attempting to negotiate the sale of the business.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. When a licensed premises is closed for more than two weeks, the licensee shall notify the Commission in writing of the closure, the reason for the closure, and the estimated date of reopening. The notice shall be given within two weeks after the closure begins. When the closure involves a Dispenser Class A, Class B, or Class C license, the Commission may establish a reasonable time limit for reopening or relocation of the premises. OAR 845-06-105(1).

Licensee acknowledges that the premises was closed for more than two weeks and that he failed to notify the Commission of the closure.

Licensee asks for leniency. The Commission concludes that the closures were the result of unforeseen difficulties relating to the remodeling of the premises. It is also concluded that Licensee did not willfully fail to notify the Commission. It is noted that the regulation involved does not require that a licensee obtain permission from the Commission to close but only that he or she notify the Commission. Therefore, Licensee

would have no reason to intentionally fail to provide notice. Nevertheless, the Commission concludes that Licensee should have been aware of the notice requirement, particularly after his November 7 meeting with the Enforcement Division representative, who informed him of the requirement. Licensee apparently failed to understand or negligently failed to provide the notice. Thus, the circumstances provide only slight mitigation.

#### 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(1) (failed to notify the Commission of closure of the premises within two weeks). The matter is slightly mitigated by the circumstances.

#### FINAL ORDER

It is hereby ordered that the Retail Malt Beverage (RMB) license held by David L. Hanzlik in the trade name Bear Paw Inn, 3237 SE Milwaukie Avenue, Portland, Oregon 97202, be SUSPENDED for two (2) days or that Licensee pay a fine of \$130 in lieu of the 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 24th day of April 1984.

  
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Allen R. Scott  
Hearings Examiner  
Hearings Division

  
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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 133.