



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. The Hindquarter Corporation has held a Dispenser Class A (DA) license in the trade name CASA LA BAMBBA, 58 SW Second Avenue, Portland, Oregon 97204 since 1977. The premises has also been known as Luis La Bamba and the Medieval Inn.

2. Licensee has been charged with violation of OAR 845-06-010(6) (permitted person or persons to obtain an interest in the business without approval from July 1, 1977 through December 6, 1982), and ORS 472.180(2) (made false representation on renewal applications for the years 1977, 1978, 1979, 1980, 1981, 1982).

3. In approximately July or August 1977, Licensee Hindquarter Corporation transferred the assets of the business known as Luis La Bamba to Mountain King Restaurants, Inc., a wholly owned subsidiary of Hindquarter Corporation.

4. Mountain King Restaurants, Inc. continued to hold the assets of the business and to be in possession of the premises from 1977 through 1982.

5. In January 1982, Mountain King Restaurants, Inc. petitioned for relief under chapter 11 of the Bankruptcy Act. Following the petition, the business continued to operate under the control of Lloyd DuBois, corporate officer of Hindquarter Corporation and Mountain King Restaurants, Inc.

6. In February 1982, Hindquarter Corporation also filed under chapter 11.

7. Both proceedings under the Bankruptcy Act are pending.

8. In approximately September or October 1982, Mr. DuBois transferred the bank account of the premises and also transferred other assets.

9. In November 1982, James E. Moran was appointed trustee for Mountain King Restaurants, Inc. He thus took over the assets of the business. Mr. DuBois exercised no control over the business after this time.

10. In October or November 1982, James Davenport, Attorney for the trustee and for the Creditors Committee, discussed with OLCC personnel the fact that Mountain King Restaurants, Inc. appeared to be operating the business which was licensed to Hindquarter Corporation.

11. On December 6, 1982, the OLCC authorized James Moran to operate the premises. Mr. Moran operated the premises thereafter until May 1983.

12. In May 1983, Joe Van Haverbeke proposed to purchase the business. The creditors gave their authorization to trustee James Moran to sell the business to Mr. Van Haverbeke.

13. In May 1983, the lease for the premises was terminated and the premises closed.

14. Mr. Van Haverbeke and the owner of the building have a "letter agreement" for a lease for the premises in the same place that it was located before closing in May 1983.

15. The building involved is undergoing extensive remodeling. It will be ready for occupancy no earlier than December 1983.

16. Mr. Van Haverbeke has not filed a change of ownership application.

17. The Hindquarter Corporation at no time requested of the OLCC that Mountain King Restaurants, Inc. be added to the license nor otherwise sought approval from the OLCC for Mountain King's interest in the business.

18. Licensee Hindquarter Corporation completed renewal applications in 1977 through 1982 on which it answered "no" to the question "will anyone share in the profits of this business who has not signed the application?"

19. Trustee James E. Moran did not incur any citations from the OLCC during the time that he was in control of the premises.

#### DISCUSSION

Licensee Hindquarter Corporation did not appear at the hearing. However, legal counsel to the corporation, Mark Peterman, has agreed on behalf of the corporation to waive notice and appearance.

#### ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. During the term of the license, no person shall obtain an interest in the business covered by the license without prior approval of the Commission. This applies to any significant interest in the business whether or not such interest is specifically

described in other sections of this rule.  
OAR 845-06-010(6).

This is the rule that was in effect at the time of the incidents in this matter and at the time of the Commission's charge letter. The rule has since been amended.

During the period from approximately January 1, 1977, through December 6, 1982, Mountain King Restaurants, Inc. held an interest in the business covered by the license. The Commission had not given approval for such interest. The Licensee was thus in violation of the rule.

Counsel for trustee James Moran and for the Creditors Committee asks that the license not be cancelled. Counsel points out that such cancellation would affect primarily the creditors of the "hidden owner," Mountain King Restaurants, Inc. The actual malefactors in this matter, Hindquarter Corporation and Mountain King Restaurants, Inc., appear to be out of the picture. There is thus considerable equity in the request of trustee that the license not be cancelled. However, factors exist which make any other conclusion to the matter questionable. Hindquarter Corporation is still on the license. The corporation still exists. Although its practical ability to use the liquor license may be very limited because of the appointment of the trustee and because of the pending bankruptcy proceeding, nevertheless it could legally use the license.

The Commission makes the decision below in an attempt to deal with the factors noted here.

2. The Commission may cancel or suspend any license if it finds that the licensee has made any false representation or statement to the Commission in order to induce or prevent action by the Commission. ORS 472.180(2).

Licensee made a false representation on the renewal application for each of the years 1977 through 1982 in that it falsely stated that no one other than itself would share in the profits of the business. It is concluded that these false representations were made to prevent the Commission from taking action against Licensee for having an undisclosed owner.

#### 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 845-06-010(6) (hidden ownership) and ORS 472.180(2) (false representation).

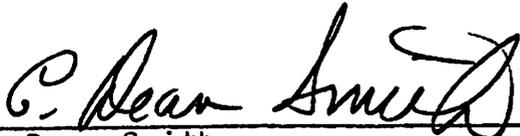
#### FINAL ORDER

It is hereby ordered that the Dispenser Class A (DA) license held by Hindquarter Corporation in the trade name Casa La Bamba, 58 SW Second Avenue, Portland, Oregon 97204 be CANCELLED with the cancellation to become effective sixty (60) days after the Commission's Final Order in this matter. However, the Commission will consider any change of ownership application made within that period and, if such application is granted, set the cancellation aside.

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

Dated this 18th day of January, 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 183.