BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the Application for a Service Permit by: ARTURO GONZALEZ 4436 Jade Street NE Salem, Oregon 97305 - - - - - - - - - - - - Marion County	)	FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

A hearing in the above matter was held on the 12th day of January, 1984, in Salem, Oregon, before Hearings Examiner Allen R. Scott. The record remained open until January 19, 1984, for submission of further evidence by the Applicant. The Applicant appeared in person and was not represented by legal counsel. The Commission was not represented by legal counsel.

On April 23, 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 is applying for a Service Permit.

2. The Commission's Staff has recommended that the application be denied based upon ORS 471.380(2) (false statements in the application) and ORS 471.380(4) (applicant convicted of violating alcoholic liquor laws and convicted of a felony).

3. On April 5, 1983, ARTURO GONZALEZ signed an application for a service permit.

4 Question No. 5a of the application asks the following question:

> "Have you been convicted of, or sentenced, put on probation, or forfeited bail for, any crime, violation, or infraction of any law? (Include traffic violations with a fine or bail of $50.00 or more.)"

Mr. Gonzalez answered "yes"and "no" to the question. He then listed in the space provided a conviction for driving while suspended.

5. The driving while suspended conviction was a felony conviction.

6. In addition to the conviction for driving while suspended, Applicant was convicted of driving while under the influence of intoxicants in October, 1980 and July, 1981. He did not list these convictions.

7. Question No. 5b of the service permit application asks:

> "Are there presently pending against you any criminal charges, violations or infractions of the law? Include traffic violations with fine or bail of $50.00 or more."

Applicant answered "no" to this question.

8. In fact, Applicant had been arrested on January 7, 1983, and charged with assault in the third degree and criminal mischief in the first degree. These charges were pending at the time he completed the service permit application. The

charges were eventually dropped, however. Applicant had been advised by his attorney prior to completing the service permit application that the charges would be dropped.

9. Applicant works part time as a waiter at Enciso's Restaurant in Salem. He has not been able to serve alcoholic beverages since his service permit application was denied. The lack of a service permit has thus interfered significantly with his employment.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The evidence establishes that Applicant made false statements in two particulars in his service permit application. First, with respect to question No. 5a, he listed only the driving while suspended conviction and did not list the two DUII convictions in 1980 and 1981. Applicant offered no excuse for his failure to list these, but did note that he listed the felony conviction. He also argued that his answer was not false, but only incomplete.

Second, Applicant answered "no" to question No. 5b, regarding pending charges, although there were two criminal charges pending against him. Applicant's explanation for this false statement was that he believed, correctly as it turns out, that the charges would be dropped.

The Commission concludes that Applicant made false statements in the application. However, the fact that Applicant listed the felony conviction reduces the importance of the false statements somewhat.

> 2. The Commission may refuse to grant a service permit if it has reasonable grounds to believe that the applicant has been convicted of violating any of the alcoholic liquor laws of this state, general or local, or has been convicted at any time of a felony. ORS 471.380(4).

The evidence establishes that Applicant has been convicted of a felony and has been convicted on two occasions of driving under the influence of intoxicants, a violation of the alcoholic liquor laws of Oregon.

ULTIMATE CONCLUSIONS OF LAW

Applicant made false statements on his application and has been convicted of a felony and of violations of the alcoholic liquor laws of Oregon. However, the Commission has discretion to grant a Service Permit despite these convictions and false statements. The Commission concludes that the Service Permit should be granted in this case with the condition stated below. ORS 471.380(2) and (4).

FINAL ORDER

It is hereby ordered that the application for a service permit by Arturo Gonzalez, 4436 Jade Street NE, Salem, Oregon 97305, be GRANTED with the following condition:

1. That if Applicant is found to be in violation of any alcholic liquor law within five (5) years following the issuance of the Permit, Applicant must immediately surrender the Service Permit.

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 April, 1984.

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.