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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for a)	
Dispenser Class C (DC))	
License by:)	FINAL
)	FINDINGS OF FACT,
Raymond J. and Sharon Arias)	CONCLUSIONS OF LAW,
LA CASA CHICA)	AND ORDER
342 NE Burnside)	
Bend, Oregon 97701)	
- - - - -)	
Deschutes County)	

A hearing in the above matter was held on the 14th day of March, 1984, in Bend, Oregon, before Hearings Examiner Jill Thompson. The Applicants appeared in person and were represented by Robert Lovlien, Attorney at Law, Bend. The Commission was not represented by legal counsel.

On September 24, 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. Raymond J. and Sharon Arias have applied for a Dispenser Class C (DC) license at LA CASA CHICA, 342 NE Burnside, Bend, Oregon. The premises currently has a Restaurant (R) license.

2. The Commission has denied the application, citing OAR 845-05-040(2)(b) (failure to establish a preference for unique service or atmosphere) and 845-05-040(3)(f) (lesser services).

3. The premises opened in April, 1983 and was granted an R license in June, 1983. It is located on the ground floor of a three-story house in a commercial area of Bend. When Applicants acquired the premises they invested approximately \$100,000 in remodeling and furnishing it.

4. The restaurant features antique furnishings and natural wood fittings. Applicants do not attempt to establish a commercial Mexican atmosphere - there are no serapes, sombreros or bullfighter paintings. The premises does not have a bar or lounge area.

5. La Casa Chica seats 40, and has no banquet facilities. It offers taped background music. Its hours are 11:00 a.m. to 9:30 p.m. Monday through Thursday, 11:00 a.m. to 10:00 p.m. Friday and 4:30 p.m. to 10:00 p.m. Saturday.

6. Applicants' menu offers 15 combination dinners ranging from \$4.50 to \$6.00; three steak dinners at \$7.00; 34 a la carte items at from \$.75 to \$4.75; two lunch specials at \$2.75 and \$3.00; three egg entrees at \$4.50 to \$5.00; a children's menu at \$3.25; four types of hamburgers and a grilled cheese sandwich at \$1.25 to \$3.00; soup and salad choices at \$.75 to \$2.95; and a variety of appetizers at \$1.50 to \$4.25.

7. Applicants' food preparation methods and ingredients comport with authentic Mexican cuisine. Their cooking staff has been trained by Mexican chefs, and no pre-prepared ingredients are used. Applicants only use hamburger in their hamburger sandwiches.

8. There are two other dispenser-licensed Mexican restaurants in Bend. Each has a DA license, seats well over 100 people and has an active bar or lounge area. No other restaurant within 20 miles uses Applicants' authentic approach to its food or attempts to offer a homelike warm atmosphere.

9. Applicants emphasize a non-commercial friendly and family-oriented tone. All the premises' employees are members of Applicants' family.

10. Applicants presented testimony and written statements from nine individuals in support of the application, some of which mentioned that Applicants' food is unique in the Bend area.

11. Relevant dispenser sales figures are as follows:

	<u>GROSS</u>	<u>FOOD</u>	<u>FOOD %</u>
Deschutes County	\$63,172	\$43,470	69%
City of Bend	43,430	29,058	67%
La Casa Chica (Actual)	13,598	11,106	82%
La Casa Chica (Projected)	20,595	15,158	74%

The above figures are almost entirely drawn from DA premises. Bend has only two DB and one DC licensees.

12. The OLCC made a comparison survey of 15 dispenser outlets in Applicants' area; one was a DC licensee. These premises seat from 98 to 539 patrons and have average gross sales ranging from \$23,250 to \$102,467; their per-seat average sales range from \$74 to \$513. Applicants' projected sales are reasonable and would result in per-seat sales of \$515; their actual per-seat average with only an R license is \$340. Of the

outlets in the Commission's comparison survey, Applicants' actual per-seat sales are higher than nine, and their projected per-seat sales are higher than all 15. The only other DC licensee in Bend seats 98, has average gross sales of \$37,356 and per-seat sales of \$381.

13. Bend has a population of 17,840.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Preference for issuance of a dispenser license will be given to applicants who provide dining service or atmosphere which is unique or substantially different in quality or type from that offered by other licensees within a 20-mile radius as indicated by menu, decor and amenities, entertainment or other characteristics. OAR 845-05-040(2)(b).

The Commission cited this criterion as a ground for denial, stating applicants failed to establish the preference. Failure to establish a preference is not a refusal criterion. The Commission concludes that Applicants may have established a slight preference for licensing under this criterion; however, it is not a basis for granting the license in this case.

2. Unfavorable consideration may be given to an applicant if the applicant's premises will provide lesser services, facilities and economic benefit to the area or to the general public, as indicated by actual or reasonably projected number of patrons served, seating capacity, banquet facilities, hours of operation, number of employees, extent of investment in facilities, amenities, or other such characteristics. Gross sales figures may be used as a basis for determining the number of patrons served. OAR 845-05-040(3)(f).

Applicants have invested \$100,000 in their premises, and offer as an amenity a quiet family-oriented dining atmosphere

not available at other area restaurants. Although their total sales projections are below city and county averages, their actual and projected per-seat sales exceed those of DA licensees in their area; Applicants have only applied for a DC license. The Commission concludes that this criterion does not provide a basis for unfavorable consideration because of the extent of Applicants' investment and their actual and projected sales.

3. Preference in licensing may be given to applicants showing any one or more of the following. The applicant shall have the burden of proving that these provisions apply:

. . . .

(e) Applicant's premises are located in . . . an incorporated area with population of less than 25,000 and applicant's premises has seating capacity for 100 or fewer patrons. OAR 845-05-040(2)(e).

The Commission concludes that preference for licensing exists under this criterion because Applicants' premises seats fewer than 100 and is located in an incorporated area of less than 25,000 in population.

ULTIMATE CONCLUSIONS OF LAW

The Commission concludes a DC license should be granted. No criteria have been shown which indicate unfavorable consideration, and Applicants have established a preference for limited seating in a small community (OAR 845-05-040(2)(e)).

FINAL ORDER

It is hereby ordered that the application for a Dispenser Class C (DC) license by Raymond J. and Sharon Arias at La Casa

Chica, 342 NE Burnside, Bend, Oregon be GRANTED upon payment of appropriate license fees to the Commission.

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

Dated this 28th day of September, 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.