BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the Proposed Cancellation of the Retail Malt Beverage (RMB) License held by: Robert and Alice Trudo Lloyd and Beatrice McElroy MY HOUSE TAVERN 306 Ferry Street Dayton, Oregon 97114 - - - - - - - - - - - - - - Yamhill County	)	FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

A hearing in the above matter was held on the 17th day of August, 1983, in McMinnville, Oregon, before Hearings Examiner Jill Thompson. The Licensees appeared in person and were not represented by legal counsel. The Commission was not represented by legal counsel.

RECORD OF PREVIOUS VIOLATIONS

NONE.

On March 27, 1984 the Commission considered the record of the hearing, the applicable law and regulations, the Proposed Order of the Hearings Examiner, and Exceptions to the Proposed Order of the Hearings Examiner. Being fully advised, the Commission makes the following:

FINDINGS OF FACT

1. At all times relevant to the facts herein, Robert and Alice Trudo and Lloyd and Beatrice McElroy held a Retail Malt Beverage (RMB) license at MY HOUSE TAVERN, 306 Ferry Street, Dayton, Oregon.

2. The Commission has charged Licensees with violation of OAR 845-06-101(6) (willful hidden financial interest).

3. Licensees employed Edward Rose as a bartender at their premises from 1970 to 1975. Prior to May 1981, Rose and his wife Ruth agreed with Licensees to purchase My House. They executed a five-year lease with option agreement with the McElroys and began operating the premises in May 1981. The McElroys are co-owners with the Trudos of the real property on which the premises is located.

4. The Roses also agreed to pay the Trudos a varying percentage of the net profits, depending on the amount of gross revenue. The Trudos worked at My House until about mid-1982 when both became ill and stopped participating in the premises operation. Between May 1981 and mid-1982, the Roses paid the Trudos 50 percent of the net when revenues were high enough to make it practicable; since mid-1982 the Roses send the Trudos a 35 percent share. The balance of the net goes to the Roses. The premises' overhead (including rent) and operating expenses are paid by the Roses from gross revenues.

5. On May 5, 1981, the Roses bought the Trudos' half of the premises' inventory for $260, and also contributed $300 to the establishment's operating capital.

6. The McElroys do not receive a profit percentage, but receive lease payments of $285 monthly. They also received a $2,000 earnest money payment on the lease/option from the Roses in May 1981.

7. The lease/option agreement between the McElroys and the Roses requires the Roses to "maintain the OLCC license on the premises." The Roses regard this clause as requiring them to obtain an RMB license from the Commission. The Roses got the necessary application forms in May 1981 but did not file them with the Commission. Subsequent to the Commission learning of their relationship with Licensees the Roses submitted their application. The Commission has refused to process it pending the outcome of the charge against Licensees.

8. None of the Licensees notified the Commission of their intention or agreement to sell the premises to the Roses.

9. None of the Licensees supervise the Roses' management of the premises.

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).

. . .

Any person or firm who contracts to manage or operate the licensed business, or any part of it, other than as an employee of the licensee, will be deemed to have an interest in the licensed business. OAR 845-06-010(5).

. . .

Any person who invests money or other property in the licensed business, other than a stockholder previously approved by the

> Commission, will be deemed to have an interest in the licensed business. For purposes of this rule, a bona fide loan which entitles the lender to a return of only principal and interest on the principal shall not be deemed to be an investment. OAR 845-06-010(7).

The Roses have been managing My House for over two years as part of an agreement to purchase the premises from Licensees. Additionally, the Roses paid cash for the Trudos' interest in the inventory, and contributed non-recourse funds to the business. No prior approval was requested from the Commission by Licensees.

ULTIMATE CONCLUSIONS OF LAW

Licensees have violated OAR 845-06-010(6) (hidden financial interest). Although the lease/option agreement contains a requirement that the Roses obtain a license, it does not mitigate the fact that Licensees failed to notify or seek Commission approval. Instead it indicates Licensees' awareness of Commission licensing requirements and demonstrates that Licensees' failure was willful rather than negligent.

FINAL ORDER

It is hereby ordered that the Retail Malt Beverage (RMB) license held by Robert and Mary Trudo and Lloyd and Beatrice McElroy at My House Tavern, 306 Ferry Street, Dayton, Oregon, be CANCELLED.

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 March, 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.