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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for a)	
Dispenser Class A (DA))	
License by:)	FINAL
)	FINDINGS OF FACT,
Ronald and Susan Martin)	CONCLUSIONS OF LAW,
RON MARTIN'S BISTRO)	AND ORDER
263 N. Hemlock)	
Cannon Beach, OR 97110)	
- - - - -)	
Clatsop County)	

A hearing in the above matter was held on the 28th day of December, 1983, in Cannon Beach, Oregon, before Hearings Examiner Allen R. Scott. The Applicants appeared in person and were represented by Dan Van Thiel, Attorney at Law, Astoria, Oregon. The Commission was not represented by legal counsel. The Commission having considered the record of the hearing, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and the entirety of the Criteria for the Issuance and Maintenance of Licenses and applicable statutes and regulations, enters the following:

FINDINGS OF FACT

1. Applicants seek a Dispenser Class A (DA) license at RON MARTIN'S BISTRO. The premises presently holds a Seasonal Dispenser license and a Restaurant (R) license.

2. The Commission's staff has recommended that the application be denied based upon OAR 845-05-040(1), 845-05-040(2)(b) (premises not shown to be unique), 845-05-040(2)(a) (not provide greater services, facilities and

economic benefit), 845-05-040(2)(c) (not shown that the public is not adequately served), and ORS 472.110(4) (quota).

3. Applicants' premises is located in downtown Cannon Beach. Applicants have operated it for approximately two and one half years. Applicants have operated other licensed premises in Oregon, including both dispenser outlets and beer and wine outlets, for approximately 13 years and have received no citations or warnings from the OLCC.

4. The premises seats 28 in the restaurant and 16 in the lounge and bar, for a total of 44. Applicants plan no expansion of the premises.

5. The premises is open from 3:00 p.m. to 1:00 a.m., Thursday through Monday.

6. Applicants' dinner menu features Italian foods. Among the items offered are nine pasta entrees, nine dinners, including garlic shrimp, sauteed scallops, baked scallops Devonshire, broiled swordfish, baked halibut, poached halibut, filet of sole siciliano, sauteed chicken breasts piccata, and steak and ravioli. The prices of the full dinners range from \$11.95 to \$15.95. Salads are also offered.

7. Sales at the premises during 1983 were as follows:

<u>MONTH</u>	<u>FOOD</u>	<u>LIQUOR</u>	<u>TOTAL</u>
<u>1983</u>			
January	\$6,463	\$4,897	\$11,360
February	6,357	5,133	11,490
March	Closed	Closed	Closed
April	6,130	4,041	10,171
May	7,105	5,325	12,430
June	7,350	5,395	12,745
July	8,636	5,964	14,600
August	7,413	4,949	12,363

<u>MONTH</u>	<u>FOOD</u>	<u>LIQUOR</u>	<u>TOTAL</u>
September	7,522	5,237	12,760
October	5,231	4,048	9,280
November	3,123	2,434	5,557
December	<u>3,859</u>	<u>2,555</u>	<u>6,411</u>
Average (11-mo.)	\$6,289	\$4,543	\$10,832

8. Average monthly sales at dispenser outlets in Cannon Beach and Clatsop County have been as follows:

	<u>FOOD</u>	<u>ALCOHOLIC BEVERAGE</u>	<u>TOTAL</u>
Cannon Beach	\$28,293	\$11,533	\$39,829
Clatsop County	21,677	7,305	28,982

9. Applicants believe that their sales will increase somewhat if a DA license is granted; however, they did not offer any specific projections.

10. Applicants received their Seasonal Dispenser license in August of 1982. They operated under Seasonal Dispenser privileges from August 1982 to February 1983. They then closed the premises for a month for vacation, after which they used the Seasonal Dispenser license from April 1983 through October 1983.

11. Applicants do not intend now to open for lunch. They were open for lunch sometime in the past but lost money doing so. They would open for lunch if it appeared to be economically sound to do so.

12. The Applicants serve a "premium well," featuring high priced name brands of liquor. They are among the only bars in the area doing so.

13. There are no other restaurants featuring Italian food holding dispenser privileges in Cannon Beach, Astoria, or Seaside.

14. Cannon Beach is attracting greater numbers of tourists. Two new motels, the Surfview Resort Inn (100 rooms) and the Haystack Resort (25 rooms), have opened within approximately the past year.

15. The population of Cannon Beach is approximately 1,215. The population has tended to remain about the same recently. There are presently five DA and DB dispenser outlets in Cannon Beach, including four DA premises and one DB.

16. Clatsop County has a population of 32,750. It presently has 43 DA and Dispenser Class B (DB) licenses issued. The population of the County has tended to remain relatively static.

17. According to the latest population figures, Oregon lost approximately 21,000 of its population during 1983. There are presently approximately 71 DA licenses available for issuance.

18. Applicants emphasize freshness and high quality in the food they serve. They prepare most of their food, other than pasta, on the premises.

19. Applicants' premises was listed in the Mobile Travel Guide recently. It is one of approximately six in Clatsop County and 20,000 nationwide to be listed.

20. Applicants' premises has no banquet room. Applicants do serve groups on occasion, however.

21. Some of the present licensed premises in Cannon Beach close for varying lengths of time during the winter. There are times when it is difficult to find a public place serving hard liquor during the winter.

22. Two individuals wrote letters to the Commission expressing support for the application. Both indicated that they believe that Applicants operate a good restaurant.

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, quantity 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).

Applicants provided uncontradicted evidence that no other outlet with dispenser privileges in Clatsop County serves an extensive Italian menu. Applicants also provided evidence that the food at their premises is of high quality.

The Commission concludes that Applicants have established some basis for preference under this criterion.

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' sales will be substantially below the average for Cannon Beach and Clatsop County. It is reasonable to infer, therefore, that Applicants' premises serves significantly fewer patrons than do existing premises. There is no reasonable likelihood that sales will dramatically increase if the DA license is granted, as Applicants presently have a Seasonal Dispenser license and have been operating under it for most of the past year. Furthermore, Applicants have a rather small seating capacity, no separate banquet facilities, and the premises is open only five days a week for approximately ten hours each day.

The Commission concludes that this criterion provides a basis for denying the application.

3. Preference in licensing may be given to an applicant showing that the public is not being adequately served by dispenser outlets, if any, in the applicant's community. OAR 845-05-040(2)(c).

The Evidence establishes that Cannon Beach and Clatsop County have substantially more premises than one per 2,000 population. These facts provide some basis for concluding that the public is adequately served. Although Applicants point out that the area is a growing tourist area, Applicants' evidence was not sufficient to establish that the area is not adequately served.

The Commission concludes that Applicants are entitled to no preference under this criterion.

4. The Commission must exercise caution in the grant of the limited number of dispenser's

licenses available to insure that these licenses are distributed in a manner to best serve the state's population. ORS 472.110(4).

The evidence that the state's population has declined within the last year indicates a need for even greater caution on the part of the Commission in granting dispenser licenses, which are limited by law to a fixed number.

5. Preference in licensing may be given to dispenser's license applicants where an applicant's premises are located in a rural or unincorporated area or in an incorporated area with a population of less than 25,000, or applicant's premises has seating for 100 or fewer patrons. OAR 845-05-040(2)(d).

Applicants are entitled to some preference under these criteria, because their premises does seat less than 100 and is located in a town of less than 25,000. The Commission does not believe, however, that this preference overcomes the bases for denial.

ULTIMATE CONCLUSIONS OF LAW

Although Applicants' premises is unique in the area and although it is entitled to some preference because of its size and location in a small town, the license should nevertheless be denied because Applicants' premises will provide lesser facilities, services and economic benefit than do existing licenses and because of the shortage of the type of license sought. OAR 845-05-040(3)(f), ORS 472.110(4).

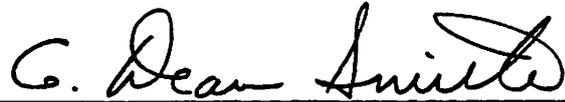
FINAL ORDER

It is hereby ordered that the application for a Dispenser Class A (DA) license by Ronald and Susan Martin in the trade

name Ron Martin's Bistro, 263 N. Hemlock, Cannon Beach, OR 97110 be DENIED.

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

Dated this 27th day of February, 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.