

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)
Proposed Suspension of the)
Package Store (PS))
License held by:)
Christos G. Kissas)
TOM'S GROCERY)
1239 SW Morrison Street)
Portland, Oregon)
- - - - -)
Multnomah County)

FINAL
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER
OLCC-84-V-020

A hearing in the above matter was held on the 24th day of August, 1984, in Portland, Oregon, before Hearings Examiner Douglas Crumme'. The Licensee appeared in person and was not represented by legal counsel. The Commission was not represented by legal counsel.

The Hearings Examiner, having considered the record of the hearing, the applicable law and regulations and being fully advised, issued a Proposed Order dated November 14, 1984.

No Exceptions were filed to the Proposed Order within the fifteen (15) day period specified in OAR 845-03-050.

RECORD OF PREVIOUS VIOLATIONS

NONE

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. Christos G. Kissas held a Package Store (PS) license at TOM'S GROCERY, 1239 SW Morrison Street, Portland, Oregon, on May 7, 1984.

2. The Commission's Enforcement Staff has charged the Licensee with the violation of the following:

- a. ORS 471.315(1)(g) and ORS 471.410(2) (knowingly sold alcoholic liquor to person under 21 years of age).
- b. ORS 471.130(1) (failed to check identification where there was reasonable doubt that buyer of alcoholic beverages had reached 21 years of age).

3. Kerry Williams was born on January 25, 1965. Mr. Williams was 19 years of age on May 7, 1984.

4. Kerry Williams appeared under 21 years of age on May 7, 1984 due to his youthful facial features and general appearance.

5. Kerry Williams entered Tom's Grocery at about 11:50 a.m. on May 7, 1984. Mr. Williams asked clerk Donald Adelsberger if the store had any Mickey's Malt Liquor. Mr. Adelsberger said the store did not. Mr. Williams then went back to the beer case and picked out three quarts of Magnum Malt Liquor.

6. Mr. Williams purchased the three quarts of Magnum Malt Liquor from clerk Adelsberger at the cash register. Mr. Adelsberger did not ask Mr. Williams his age or for identification. Mr. Adelsberger did not ask Mr. Williams to fill out a Statement of Age form. Mr. Williams made no statements concerning his age.

7. It was busy at Tom's Grocery at 11:50 a.m. on May 7, 1984 during the sale to Kerry Williams.

8. Commission Inspector James Miller contacted the Licensee's son George Kissas (an employee at Tom's Grocery) on March 12, 1984 and gave Mr. Kissas instructions concerning prohibitions on the sale of liquor to minors. George Kissas relayed Mr. Miller's instructions to his father.

9. Commission Enforcement Division employees gave instructions to Tom's Grocery employees regarding sales to minors on April 23, 1984 and May 4, 1984.

10. The Licensee had instructed Mr. Adelsberger concerning precautions against selling alcoholic beverages to minors.

11. Christos Kissas was not on the licensed premises during the sale to Kerry Williams at 11:50 a.m. on May 7, 1984.

12. On or about May 15, 1984, the Licensee discovered Mr. Adelsberger in the process of selling alcoholic beverages to an adult who was plainly purchasing the items for minors waiting outside. The Licensee had warned Mr. Adelsberger following the sale of May 7, 1984. The Licensee consequently fired Mr. Adelsberger on May 15, 1984.

13. Following the sale on May 7, 1984, the Licensee turned over a greater portion of responsibility for the management of the premises to his son George Kissas. George Kissas formerly owned Tom's Grocery and is experienced with the Commission's rules and regulations. George Kissas now works at the store from 7:00 a.m. to 7:00 p.m. He has been making a concerted effort to avoid further violations at Tom's Grocery.

14. Following the May 7, 1984 sale, Commission Inspector James Miller gave a class at Tom's Grocery on asking for and determining valid identification.

DISCUSSION

The charges involved in this Order are being treated as the Licensee's third major violation within two years for purposes of the Commission's penalty schedule rule, OAR 845-06-200, because Proposed Orders have been issued finding the Licensee guilty of major violations committed on April 23, 1984 (Christos Kissas, Tom's Grocery, OLCC 84-V-018) and on May 4, 1984. Christos Kissas, Tom's Grocery, OLCC 84-V-019.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. 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 any of the following to be true:

(1) That the licensee:

. . . .

(g) Knowingly has sold alcoholic liquor to persons under 21 years of age or to persons visibly intoxicated at the time of sale. ORS 471.315(1)(g).

The requirement of "knowledge" under ORS 471.315(1)(g) may be imputed to the Licensee through the knowledge of the Licensee's employee. Taylor's Coffee Shop, Inc. v. OLCC, 28 Or App 701, 706, 560 P2d 693 (1977); OAR 845-06-025. The requirement of "knowledge" is satisfied when there is reasonable ground to believe that the seller knew the purchaser of alcoholic liquor

was under the age of 21 years. Plaid Pantries, Inc. v. OLCC, 17 Or App 199, 203, 517 P2d 1192 (1974). In the instant matter, there is reasonable ground to believe that Clerk Adelsberger knew Kerry Williams was under 21 years of age because Mr. Williams appeared under 21 years of age. Hence there was a violation.

2. All licensees and permittees of the commission, before selling or serving alcoholic liquor to any person about whom there is any reasonable doubt of the person's having reached 21 years of age, shall require such person to produce the person's motor vehicle operator's license or if the license does not bear a photograph of the operator, then an identification card issued to the person under ORS 482.900. However, if the person has no motor vehicle operator's license or an identification card, the permittee or licensee shall require such person to make a written statement of age and furnish evidence of the person's true age and identity. ORS 471.130(1).

The Licensee violated ORS 471.130(1) in the case of the sale to Kerry Williams on May 7, 1984. There was reasonable doubt that Mr. Williams was at least 21 years of age because he appeared under 21 years of age. He thus should have been requested to furnish identification or fill out a statement of age form. Clerk Adelsberger did not do this. Hence there was a violation.

ULTIMATE CONCLUSIONS OF LAW

When there has been a violation of this chapter or ORS chapter 472 or any rule adopted thereunder upon any premises licensed by the Commission, the Commission may revoke or suspend either the service permit of the employee who violated the law

or rule or the license of the licensee upon whose premises the violation occurred, or both the permit and the license. ORS 471.385(3).

The Commission may cancel or suspend the Licensee's license for the violations of ORS 471.315(1)(g) (knowing sale to minor) and ORS 471.130(1) (failure to check identification).

The record indicates that the penalty in this matter should not be mitigated despite the fact that the Licensee instructed his employees about precautions to take to avoid sales to minors and despite the fact that the Licensee has taken further steps along these lines since the violation. See Findings of Fact Nos. 10, 12, 13, and 14. The Licensee should have received ample warning concerning sales to minors due to warnings given or charges issued at Tom's Grocery on March 12, 1984, April 23, 1984, and May 4, 1984. The Licensee has the responsibility to know what is happening at his licensed premises and to make sure that the law is being followed.

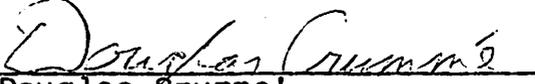
FINAL ORDER

It is hereby proposed that the Package Store license held by Christos Kissas at Tom's Grocery, 1239 SW Morrison Street, Portland, Oregon, be SUSPENDED for thirty (30) days or that a fine of \$1,950 be paid in lieu of said suspension.

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

If you choose to pay the fine it must be paid within ten (10) days of the date of this Order, otherwise the suspension must be served.

Dated this 12th day of December, 1984.



Douglas Crumme
Hearings Examiner
Hearings Division



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.