

BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

|                              |   |                     |
|------------------------------|---|---------------------|
| In the Matter of the         | ) |                     |
| Proposed Cancellation of the | ) |                     |
| Dispenser Class A (DA)       | ) | AMENDED             |
| License held by:             | ) | FINAL               |
|                              | ) | FINDINGS OF FACT,   |
| Jack and Kaye Briggs         | ) | CONCLUSIONS OF LAW, |
| THE TOWNE HOUSE              | ) | AND ORDER           |
| 5251 N. Coast Highway        | ) |                     |
| Newport, Oregon 97365        | ) |                     |
| -----                        | ) |                     |
| Lincoln County               | ) |                     |

A hearing in the above matter was held on the 29th day of September, 1983, in Eugene, Oregon, before Hearings Examiner Douglas Crumme'. The Licensees appeared in person and were represented by William Kent, Attorney at Law, Eugene, Oregon. The Commission was represented by legal counsel.

RECORD OF PREVIOUS VIOLATIONS

| <u>DATE</u>         | <u>OFFENSE</u> | <u>DISPOSITION</u>  |
|---------------------|----------------|---------------------|
| July 1, 1981        | Late Renewal   | Letter of Warning   |
| August 8 & 13, 1982 | NSF Checks     | Letter of Reprimand |

The Commission having considered the record of the hearing, the applicable law and regulations, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and now being fully advised, makes the following:

FINDINGS OF FACT

1. Jack and Kaye Briggs held a Dispenser Class A (DA) license at THE TOWNE HOUSE, 5251 N. Coast Highway, Newport, Oregon, through June 30, 1983. The license expired following this date because no renewal application was submitted.

2. The Commission's Enforcement Staff has cited the Licensees with the violation of OAR 845-06-105(3) (failed to re-open premises within time specified by the Commission).

3. The Licensees originally submitted a request to the Commission dated February 15, 1983, seeking Commission approval for closure of The Towne House through April 5, 1983. The Commission approved this closure.

4. The Licensees subsequently requested an extension of the closure of The Towne House through June 1, 1983. The Commission approved this closure.

5. The Commission's May 27, 1983 letter authorizing extension of closure of The Towne House through June 1, 1983 stated in part as follows:

"Therefore, you have until June 1, 1983 in which to be open or relocate this business. It will be necessary that you notify the License Division, Oregon Liquor Control Commission, P.O. Box 22297, Portland, Oregon 97222, in writing when your premises reopens.

If you feel that the 56 day period is not reasonable, you may request an appearance before the Commissioners. This request should be in writing and within 10 days of the date of this notice."

(Commission's Exhibit D.)

6. Having observed on June 1, 2 and 3, 1983, that The Towne House had not reopened, Enforcement Division Senior Inspector Ernie Fraser telephoned Licensee Jack Briggs and discussed the Commission's May 27, 1983 letter referred to in the

Findings of Fact above. Mr. Fraser advised Mr. Briggs to contact Paul Williamson, Executive Assistant, OLCC License Division, if Mr. Briggs desired an additional extension of authorization for closure of The Towne House.

7. Jack Briggs phoned Executive Assistant Paul Williamson on June 3, 1983. Mr. Briggs stated that he was negotiating a sale of The Towne House and desired to extend the closure of The Towne House beyond June 1, 1983. Mr. Williamson said that Mr. Briggs should submit a written request for the additional extension of the closure. Mr. Williamson also requested that Mr. Briggs submit a copy of the proposed earnest money agreement that had been drawn up for the sale. Mr. Briggs offered to drive a written request and the copy of the earnest money agreement from Newport to the Commission's office in Portland. Mr. Williamson told Mr. Briggs that that was not necessary and that mailing the documents to the Commission would be sufficient. Mr. Williamson stated to Mr. Briggs that Mr. Williamson did not see any difficulty in extending the authorization for the closure through June 30, 1983, when the Licensees' annual license expired.

8. The Licensees neglected to mail a request to the Commission for authorization for an extension of the closure of The Towne House beyond June 1, 1983 because of the Licensees' preoccupation with other activities and transactions involving the premises. These other activities included:

a. The Licensees entered into an agreement with a lending institution to remortgage The Towne House and to finance

the construction of 28 condominiums on property the Licensees' owned adjacent to The Towne House. The lending institution withdrew from the agreement however. This led to a foreclosure suit against the Licensees. The suit went to trial and was resolved in the Licensees' favor on May 18, 1983.

b. From late May, 1983 to June, 1983, Licensee Jack Briggs was actively pursuing a sale of the Towne House to three entities. A tentative earnest money agreement was drawn up with one of these prospective purchasers. During this period, Mr. Briggs and his attorney spent considerable time negotiating, meeting, documenting and prodding these prospective purchasers. The documentation included title reports, appraisals, financial statements, contacts with architects and other necessary reports.

c. In the Spring and Summer of 1983, the Licensees were required to construct a 140-foot sewer line for The Towne House.

9. The letter from the Commission to the Licensees that charged the Licensees with failure to reopen was dated July 21, 1983. The Commission takes official notice that the Licensees' request for a hearing on the charge was received by the Commission on August 2, 1983.

10. Mr. and Mrs. Briggs have held a DA license at The Towne House for approximately four and one-half years. Mr. Briggs has invested approximately \$600,000 in the business and the underlying property. The Licensees have entered into a new joint venture agreement to construct condominiums on property they own adjacent to The Towne House.

11. The Licensees originally closed The Towne House in February, 1983 because they concluded they would save money by closing in the winter pending consummation of the sale.

12. The different proposed sales that the Licensees were negotiating for The Towne House had fallen through at the date of the September 29, 1983 hearing and the Licensees now wish to reopen the business themselves with a DA license.

#### DISCUSSION

The Licensees were advised at the hearing to contact the License Division concerning their desire to reopen The Towne House with a DA license. Some sort of Commission action would be required for reopening since the Licensees did not apply to renew the DA license at the premises for the year beginning July 1, 1983. Any suspension or cancellation in the pending matter would be for the record only unless the license is renewed.

#### ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission may cancel the license, or otherwise penalize the licensee, for failure of the licensee to give notice of closure as required by [OAR 845-06-105(1)] or to reopen the premises or to complete construction or remodeling within the time specified by the Commission. OAR 845-06-105(1).

The Licensees failed to reopen The Towne House by the June 1, 1983 deadline set by the Commission's Staff. The Licensees therefore violated OAR 845-06-105(3).

#### ULTIMATE CONCLUSIONS OF LAW

When there has been a violation of ORS Chapter 471 or 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 Licensees' license for the violation of OAR 845-06-105(3) (failure to reopen premises within time, specified by Commission).

The Commission's penalty schedule rule, OAR 845-06-200, specifies license cancellation for a first violation of OAR 845-06-105(3). The Commission concludes, however, that the violation is mitigated and that a lesser penalty than cancellation is indicated.

The Licensees were clearly advised by the Commission about the need to submit a written request for extension of closure of The Towne House past June 1, 1983.

However, the Licensees were preoccupied with a number of projects and transactions that explain how they neglected submitting the written request. The Licensees were attempting to negotiate the sale of the premises to three prospective purchasers. The sale negotiations consumed much of the Licensees' attention during the period in question. The requirement to construct the sewer, the project to build condominiums on the Licensees' adjacent property, and the foreclosure suit against the Licensees when the remortgaging and financing of the condominium project fell through also consumed the Licensees' attention during the period in question.

All these circumstances indicate the Licensees' failure to obtain additional authorization for closure of the premises was

more oversight or negligence than an attempt to disregard the Commission's requirement that closures of dispenser outlets be authorized. Thus, mitigation of the violation penalty to something less than license cancellation seems warranted.

FINAL ORDER

It is hereby ordered that Jack and Kaye Briggs, former holders of a DA license at The Towne House, 5251 N. Coast Highway, Newport, Oregon, pay a fine of \$1,300 for the violation of OAR 845-06-105(3).

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

The fine must be paid within ten (10) days of the date of this Order and must be paid prior to the Commission's issuance of any new license to the Licensees.

Dated this 2nd day of March, 1984.



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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.