

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)
Proposed Suspension of the)
Retail Malt Beverage (RMB))
License held by:)
)
David Hanzlik)
dba BEAR PAW INN)
3237 SE Milwaukie Avenue)
Portland, Oregon 97202)
- - - - -)
Multnomah County)

FINAL
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

OLCC-85-V-003

A hearing in this matter was held on February 12, 1985, in Portland, Oregon, before Hearings Examiner Jill Thompson. The Licensee appeared and was not represented by legal counsel. The Commission was not represented by legal counsel.

The Hearings Examiner considered the record of the hearing, the applicable law and issued a Proposed Order dated March 12, 1985.

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

The Commission adopts the Proposed Order of the Hearings Examiner as the Final Order of the Commission, and enters the following:

FINDINGS OF FACT

1. David Hanzlik has been the licensee at the Bear Paw Inn for about ten years.
2. The Commission has charged Hanzlik with violation of OAR 845-06-010(4) (unauthorized financial interest).
3. During late 1983 and early 1984 Hanzlik was having difficulties operating the premises because of increasing drug

dependence. He turned the management of the tavern over to John DePue in January 1984. At that time Hanzlik had a preliminary agreement with DePue and two others to purchase the premises.

4. DePue began collecting profits from the Bear Paw in January 1984. In March 1984 the two other prospective purchasers withdrew from the agreement, and Hanzlik reached an agreement with DePue that DePue would be the sole purchaser.

5. Some time in the latter part of 1984 Hanzlik entered a drug rehabilitation program and retained an attorney to coordinate the sale of the Bear Paw with the OLCC and DePue.

6. No change of ownership application was submitted to the OLCC, nor was the staff notified by Hanzlik of the change, until October 1984 when Hanzlik's attorney responded to an OLCC notice to produce records.

7. Hanzlik does not dispute the fact that he sold the premises, within the definition of OAR 845-06-010, without prior OLCC authorization. He attributes this lapse to his disconnection from reality due to his drug habit.

8. Hanzlik has since completed a rehabilitation program which he feels was successful in overcoming his drug dependence. OLCC staff believes Hanzlik is serious about overcoming his past difficulties. His attorney and DePue have been open and cooperative with OLCC staff in this matter.

DISCUSSION

Licensee did not deny the allegation in the staff's charge letter, but requested a hearing to ask for mitigation of the

proposed penalty of a 15-day suspension or in-lieu fine of \$975. Commission staff has reached an agreement with licensee that payment of the in-lieu fine would be an appropriate alternative to the suspension, and the fine has been paid. The staff and licensee agreed on these details to expedite consideration of the change of ownership to DePue.

The penalty agreement acknowledges that the assessment is subject to change in the course of the administrative hearing process. The staff was aware that a hearing had been requested at the time it signed the penalty agreement, and the agreement does not constitute a negotiated settlement of the violation charge.

Although the Commission is sympathetic with licensee's circumstances, it is clear that the staff has already substantially mitigated the potential penalty for this charge. The OLCC penalty schedule (OAR 845-06-200(5)) imposes license cancellation for this violation. While a \$975 fine is high, it is far less harsh than cancellation, which would require a lengthier application process by DePue and immediate closure of the premises until a new license application is approved.

ULTIMATE CONCLUSIONS OF LAW

Commission approval: Except as provided in OAR 845-06-020, no person shall obtain an interest in the business covered by the license without prior approval by the License Division. This applies to any interest in the business whether or not such interest is specifically described in other sections of this rule. OAR 845-06-010(4).

Licensee violated OAR 845-06-010(4) by allowing a person to acquire an interest in the licensed business without obtaining prior approval from the Commission. Mitigating circumstances have already been addressed by the Commission by the nature of the proposed penalty.

FINAL ORDER

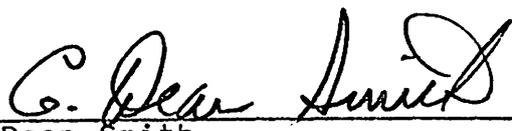
The Commission orders that David Hanzlik, holder of a Retail Malt Beverage (RMB) license at Bear Paw Inn, 3237 SE Milwaukie Avenue, Portland, Oregon, pay a \$975 fine, in lieu of 15 days suspension. The Commission notes that this fine has already been paid.

It is further ordered that notice of this action, including the reasons for it, be given as provided by law.

Dated this 9th day of April, 1985.



Jill Thompson
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.