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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Proposed Fine Against:)	
)	
Drexel L. Mathews)	FINAL
Holder of a Retail)	FINDINGS OF FACT,
Malt Beverage License)	CONCLUSIONS OF LAW,
at CAMPBELL'S SERVICE)	AND ORDER
Columbia & Main)	
PO Box 404)	OLCC-84-V-038
Helix, Oregon 97835)	
- - - - -)	
Umatilla County)	

A hearing in this matter was held on February 15, 1985, in Pendleton, Oregon, before Hearings Examiner Allen R. Scott. 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 and the applicable law, and issued a Proposed Order dated April 17, 1985.

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

RECORD OF PREVIOUS VIOLATIONS

NONE.

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. Licensee has held a Retail Malt Beverage license at Campbell's Service at all times relevant to this matter.

2. Licensee has been charged with violation of OAR 845-06-010(4) (hidden ownership).

3. In May 1984, Licensee entered into an oral agreement with Alvin R. Phillips according to which Mr. Phillips would take over operation of Campbell's Service, pay Mr. Mathews \$250 a month rental, and purchase the existing inventory of beer and food for \$327.

4. Mr. Phillips began operating the premises in June. Shortly thereafter, Licensee Mathews left the area and went to Spokane, Washington, to live.

5. Mr. Phillips continued to operate the premises under the oral agreement throughout the summer of 1984. He purchased beer and other items for the store and retained any profits from the operation of the licensed premises.

6. The license was due to expire on September 30, 1984. When Licensee noted that the renewal form asked whether anyone besides Licensee will share in the profits of the business, he realized that Mr. Phillips should be added to the license.

7. In late September, Licensee submitted a renewal form signed by himself and Mr. Phillips.

8. OLCC personnel informed Licensee that he needed to formally apply to add Mr. Phillips to the license.

9. During September and October, Mr. Phillips began the process for adding his name to the license. However, the formal application process, including payment of the appropriate fees, was not completed.

10. Mr. Phillips continued to operate the premises until October 27, 1984, when he closed the premises. He operated the premises independently of the Licensee during the period involved.

11. Licensee had not reopened the premises as of the time of the hearing. The Staff therefore proposed that a fine with no alternative suspension be levied.

ULTIMATE FINDINGS OF FACT AND 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).

Subsections (3)(a) and (c) of OAR 845-06-010 state that an "interest in the business" includes the right to receive profits and the management or operation of the business other than as an employee. The evidence in this case establishes that Alvin Phillips was entitled to the profits from the business and was the manager and operator of the business from approximately June 1, 1984, to October 27, 1984. He operated basically independently of Licensee during this time and was not an employee. Licensee did not apply during this time to add Mr. Phillips to the license. Prior approval of Mr. Phillips' interests in the business was not given by the License Division. The Commission therefore concludes that Licensee violated the above rule.

Licensee argued that part of the problem resulted from the failure of Mr. Phillips to follow through on the application to add Mr. Phillips as a partner. The evidence does indicate that Licensee, who was living in Spokane, Washington, during this period, did leave the matter in Mr. Phillips' hands and that Mr. Phillips did delay completion of the application process. However, Licensee is responsible for seeing that the application is completed in a timely manner. The Commission therefore does not believe that Mr. Phillips' delay constitutes mitigation in this case. Licensee also argued that the Commission's Staff somehow contributed to the problems. The Commission concludes, however, that there is no evidence that anything the staff did or did not do contributed to Licensee's failure to follow the rule.

ULTIMATE CONCLUSIONS OF LAW

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:

(a) Has violated any provision of this chapter or any rule of the commission adopted pursuant thereto. ORS 471.315(1)(a).

The Commission concludes that Licensee has violated OAR 845-06-010(4).

FINAL ORDER

The Commission orders that a fine of \$455 be levied against Drexel L. Mathews, holder of a Retail Malt Beverage license in the trade name Campbell's Service, Columbia and Main, PO Box 404, Helix, Oregon 97835.

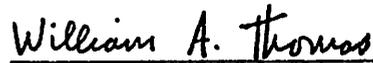
It is further ordered that notice of this action, including the reasons for it, be given as provided by law.

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 20th day of May, 1985.



Allen R. Scott
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.