

BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the )  
Proposed Suspension of the )  
Dispenser Class A (DA) )  
License held by: )  
 ) FINAL  
 ) FINDINGS OF FACT,  
North's Restaurants, Inc. ) CONCLUSIONS OF LAW,  
dba FRED'S GOOD TIMES ) AND ORDER  
2424 N. Pacific Highway )  
Medford, Oregon 97501 ) OLCC-85-V-002  
- - - - - )  
Jackson County )

A hearing in this matter was held on February 22, 1985, in Medford, Oregon, before Hearings Examiner Douglas Crumme'. The Licensee appeared and was represented by Alan B. Holmes, Attorney at Law, Medford, Oregon. The Commission was represented by legal counsel.

The Hearings Examiner considered the record of the hearing, the applicable law and issued a Proposed Order dated March 28, 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. North's Restaurants, Inc. has held a Dispenser Class A (DA) license at Fred's Good Times, 2424 North Pacific Highway,

Medford, Oregon, at all times relevant to the Findings of Fact below.

2. The Commission's Enforcement Division has charged the Licensee with violation of the following on November 6, 1984:

a. OAR 845-08-015(2)(a) (Failed to provide a variety of regular meals during the normal dinner hour).

b. OAR 845-08-015(4) (Employee discouraged the ordering of regular meals during the normal dinner hour).

c. OAR 845-08-015(6) (Failed to operate premises as proposed at time of original licensing).

At the hearing, the Commission Staff moved that the charge under OAR 845-08-015(4) (discouraged ordering of regular meals) be dismissed. The Licensee did not oppose the motion. The Hearings Examiner granted the motion.

The Staff has proposed a 7-day suspension or \$455 fine as the penalty in this matter. This is the penalty prescribed under the Commission's penalty schedule rule, OAR 845-06-200, where the Licensee has no other "major" violations within the previous two years.

3. The main dinner hour at Fred's Good Times is from between 5 p.m. or 6 p.m. until 7 p.m.

4. Commission Enforcement Division Inspectors Larry Peck and Alvin Soward entered the small lounge at Fred's Good Times at 6:45 p.m. on November 6, 1984.

5. At about 6:50 p.m., Inspector Soward asked the employee on duty behind the bar if the premises was a restaurant. The employee responded "yes" and said Mr. Soward and Mr.

Peck could eat in the bar or the dining room. The two inspectors thereupon took seats at the bar.

6. Inspector Soward then asked for a menu. The same employee gave them a menu. The employee said that Fred's did not have all the items listed on the menu and that the business was running specials in the evening hours. The employee said that the specials that evening were chicken and hamburger baskets. The employee said that chicken and hamburger baskets were all that was available that evening.

7. Inspector Soward then said he was hungry and would like to order a steak. The employee responded she had not seen a steak in the freezer for about two weeks, but was willing to go into the kitchen to look.

8. Inspector Peck asked if any seafood was available. The employee responded "no", that all they had was hamburger and chicken baskets.

9. Inspectors Peck and Soward did not ask the employee to go back and check the kitchen for steaks or seafood.

10. The kitchen grill at Fred's was turned on during the inspectors' visit to Fred's on November 6, 1984.

11. The employee that Inspector Peck and Inspector Soward talked to in the lounge was the only employee on duty in the lounge during the inspectors' visit.

12. The Commission issued a Final Order on June 26, 1984 that granted North's Restaurants, Inc.'s request to relocate a DA license to Fred's Good Times, 2424 North Pacific Highway,

Medford, Oregon. The Commission's approval of the request was subject to certain conditions, including the following:

Applicant's entire proposed menu must be available from 11:00 a.m. until 2:00 a.m. or closing, whichever is earlier, in the dining room, pool area and 40-seat lounge.

Commission's Exhibit C.

13. The Licensee's proposed menu referred to in the condition set out in the Finding of Fact above included four chicken entrees, five steak entrees, five seafood entrees, ten snacks and appetizers, six salads, four types of sandwiches, barbecued ribs, five types of hamburgers, children's plates and desserts. Commission's Exhibit C.

14. The Licensee completed required remodeling and began operation with a DA license at Fred's Good Times in August 1984. The Licensee operated with two cooks at the business for approximately 60 to 90 days until the Licensee determined business was not as strong as had been projected. The Licensee thereafter operated with just one cook.

15. When contacted by the Commission on November 29, 1984, Fred's manager Fred Owen admitted that the one cook that had been retained at Fred's had been attending work sporadically and unpredictably.

CONCLUSIONS OF LAW

1. (1) PURPOSE: The Oregon Distilled Liquor Control Act allows the sale of liquor by the drink in commercial establishments with food service licensed under ORS Chapter 472. The purpose of this rule is to assist licensees by setting the food service requirements for those commercial establishments.

(2) MEALS REQUIRED AT MEAL HOURS: (a) Commercial establishments which are open after 5:00 p.m. must cook and serve a variety of regular meals during their normal dinner hour, which must last at least two hours.

(b) For purposes of this rule, "regular meal" means a combination of foods, excluding sandwiches, which is generally considered to be a complete meal, and at least a part of which is prepared and cooked on the licensed premises and requires the use of dining implements for consumption. OAR 845-08-015.

The Licensee violated OAR 845-08-015(2) at 6:45 p.m. on November 6, 1984 by failing to cook and serve a variety of regular meals. 6:45 p.m. is a normal dinner hour at Fred's Good Times. The Licensee only offered hamburger baskets and chicken baskets during this period. A hamburger does not require the use of dining implements for consumption. Therefore, the only arguably "regular meal" available as defined under OAR 845-08-015(2)(b) was the chicken basket. One item alone does not constitute a variety of regular meals.

The Licensee argued that it is not reasonable to expect a lounge employee to provide required food service. This argument is not persuasive, however. OAR 845-08-015 does not limit its requirements to a premises' dining room. In any case, the conditions on the Licensee's DA license required it to provide its full dining menu both in the lounge in question as well as in the dining room.

The Licensee also argued that the lounge employee was simply trying to promote the hamburger and chicken specials. However, this argument is also not well taken. It is apparent

from the findings that the employee was telling the two inspectors that the only items available at the premises were the hamburger and chicken.

2. (6) OPERATING AS PROPOSED. The following establishments must provide at least the food service last approved by the Commission, including number of meal periods, hours of meal service, and type of cuisine. Failure to provide this level of service is a violation and may result in a notice of violation or be grounds for refusing to renew a license. OAR 845-08-015.

The Licensee violated OAR 845-08-015(6) at 6:45 p.m. on November 6, 1984 by failing to provide the food service last approved by the Commission in granting the relocation of a DA license to Fred's Good Times on June 26, 1984. The menu required by the Commission's Final Order included a very large number of entrees and other items. See Finding of Fact No. 13. The Licensee's provision of only hamburger and chicken baskets on November 6, 1984 constituted a clear departure from the food service required by the Commission's order.

#### ULTIMATE CONCLUSIONS OF LAW

When there has been a violation of this chapter [chapter 471] 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 DA license for the violations of OAR 845-08-015(2)(a) (failure to provide regular meals) and OAR 845-08-015(6) (failure to

provide food service approved by the Commission) noted in the Conclusions of Law above.

The record indicates no particular mitigating factors regarding these violations. The requirements of OAR 845-08-015(2)(a) and condition C on the Commission's Final Order are clear. The Licensee did not offer any reasonable excuse for failing to meet these requirements.

FINAL ORDER

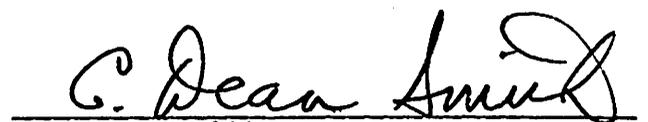
The Commission orders that the DA license that North's Restaurants, Inc. holds at Fred's Good Times, 2424 North Pacific Highway, Medford, Oregon, be SUSPENDED for seven (7) days or that the Licensee pay a fine of \$455 in lieu of said suspension.

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 24th day of April, 1985.

  
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.