

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-001  
- - - - - )  
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 Staff has charged the Licensee with violation of the following on November 16, 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).

The Staff has proposed a 15-day suspension or \$975 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 violation would be the Licensee's second "major" violation within two years.

3. The regular dining hours at Fred's Good Times are from 5 p.m. or 6 p.m. until 7 p.m.

4. Commission Enforcement Inspector Steve Syron entered the side door marked "restaurant" at Fred's at 6:20 p.m. on November 16, 1984.

5. When Mr. Syron entered the restaurant door, a loud electronic buzzer sounded for several seconds until the door closed.

6. Upon entering Fred's dining room, Mr. Syron waited for two to three minutes to be waited on. No other patrons were in the dining room area. The dining room was very dimly

lighted. No Fred's employees came to wait on Mr. Syron. He therefore walked to the small lounge of the premises, located in a separate part of the building.

7. Upon entering the lounge, Mr. Syron contacted an employee who was sitting at the bar eating a sandwich. Mr. Syron asked the employee if the restaurant was open. The employee asked Mr. Syron if he was the person that had come in a few minutes ago and said that if Mr. Syron wanted to eat, she would have to fix him something.

8. Mr. Syron then asked what food was available. The employee responded that she could fix him a hamburger or some broasted chicken. Mr. Syron asked if those were the only things available to eat. The employee responded that they were.

9. Mr. Syron asked if he could have a cheeseburger. The employee responded that there was no cheese for cheeseburgers.

10. Mr. Syron declined to order a hamburger or chicken. He stayed for five or ten minutes and then left the premises.

11. There were no other employees on duty visible to Mr. Syron.

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 Applicant'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.

DISCUSSION

The charges involved in this order are being treated as the Licensee's second major violation within two years for purposes of the Commission's penalty schedule rule, OAR 845-06-200, because a Proposed Order has been issued finding the Licensee guilty of major violations committed on November 6,

1984. North's Restaurants, Inc., Fred's Good Times, OLCC-85-V-002. See Christos G. Kissas, Tom's Grocery, OLCC-V-019 and 20, February, 1985.

#### CONCLUSIONS OF LAW

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)(a) at 6:20 p.m. on November 16, 1984 by failing to cook and serve a variety of regular meals. 6:20 p.m. is a normal dinner hour at Fred's. A hamburger does not constitute a regular meal under OAR 845-08-015(2)(b) because dining implements are not required for the consumption of a hamburger. Therefore, the only arguably "regular meal" available as defined under OAR 845-08-015(2)(b) was the broasted chicken. 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 inspector that the only items available at the premises were the hamburger and chicken.

2. DISCOURAGING FOOD SERVICE. No licensee shall discourage or attempt to discourage a patron from ordering regular meals during regular meal hours or ordering the minimum food items at any other time. Regular meals do not have to be served in nondining areas. Minimum food service items must be available in non-dining areas before and after regular meal hours. OAR 845-08-015(4).

The Licensee violated OAR 845-08-015(4) at 6:20 p.m. on November 16, 1984 when no employees waited on Inspector Syron when he entered the dining room at Fred's. The Licensee's employees were fully aware that someone had entered the dining room because there was a buzzer on the front door making a sound that the dining room door had been opened. The dining room was dimly lighted, suggesting that dining room patrons were not welcome. When Mr. Syron finally left the dining room and went into the lounge, the employee on duty there was eating a sandwich and did not appear to be too busy to have gone into the dining room to wait on Mr. Syron there.

3. 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(6).

The Licensee violated OAR 845-08-015(6) at 6:20 p.m. on November 16, 1984 by failing to provide the food service last approved by the Commission in granting the relocation of the 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 availability of only a hamburger and broasted chicken 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 cook and serve regular meals) OAR 845-08-015(4) (discouraged ordering 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.

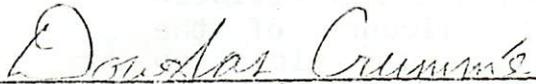
FINAL ORDER

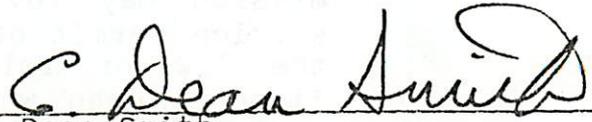
The Commission orders that the DA license that North's Restaurants, Inc. holds at Fred's Good Times, 2424 North Pacific Highway, Medford, Oregon, be SUSPENDED for fifteen (15) days or that the Licensee pay a fine of \$975 in lieu of said suspension.

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.