BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the Proposed Cancellation of the Service Permit held by: Theresa Lee Gerber 1784 NE Wichita Way Bend, Oregon 97701 - - - - - - - - - - - - - - - Deschutes County	)	FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OLCC-84-V-031

A hearing in the above matter was held on the 30th day of November, 1984, in Bend, Oregon, before Hearings Examiner Douglas Crumme'. The Permittee appeared in person and was represented by L. Ross Brown, Attorney at Law, Bend, Oregon. The Commission was not represented by legal counsel.

The Hearings Examiner, having considered the record of the hearing, the applicable law and regulations and being fully advised, issued an Amended Proposed Order dated January 3, 1985.

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

RECORD OF PREVIOUS VIOLATIONS

NONE.

Now, therefore, the Commission hereby adopts the Proposed Order of the Hearings Examiner as the Final Order of the Commission, and enters the following:

FINDINGS OF FACT

1. Theresa Lee Gerber, 1784 NE Wichita Way, Bend, Oregon holds a Service Permit from the Commission. She was first issued a Service Permit on February 12, 1982.

2. Ms. Gerber has been charged by the Commission's Enforcement Division with the violation of ORS 471.385(1)(a) (made false statements concerning true age on applications for Service Permits).

3. In February 1982, Ms. Gerber applied for a position as a kitchen worker with the Cinders Restaurant in Bend. After the interview, the restaurant offered her a position as a cocktail waitress.

4. Ms. Gerber had arrived in Bend two months prior to being offered the position as a cocktail waitress at the Cinders. She had looked for work in Bend without success until the Cinders offered her a position.

5. Ms. Gerber filled out the Service Permit application required in order to be employed as a cocktail waitress at the Cinders. On the application, she listed her date of birth as April 21, 1959, which would have made her 22 years of age. However, her true date of birth was April 21, 1961, which would have made her 20 years of age when she filled out and signed her Service Permit application on February 5, 1982. Ms. Gerber mailed the application to the Commission and was issued a permit within two weeks.

6. Ms. Gerber worked at the Cinders for about one month. She then obtained a position as a cocktail waitress at the Bend River House Restaurant in March 1982. Upon starting at the Bend River House, Ms. Gerber showed her employer the

Service Permit that the Commission had issued her indicating her date of birth to be April 21, 1959.

7. Ms. Gerber has worked continuously as a cocktail waitress at the Bend River House since March 1982.

8. In the summer of 1984, Ms. Gerber lost her wallet. Among the contents that she lost was her Service Permit. She therefore applied for a duplicate Service Permit from the Commission on August 14, 1984.

9. On her August 14, 1984 duplicate Service Permit application, Ms. Gerber again listed the false birthdate as April 21, 1959, although she had now reached the age of 23. She again put down the false birthdate in order to be consistent with her original application and to avoid any problems that might arise from detection of the false birthdate on her original permit application.

10. Other than the present matter, Ms. Gerber has not been cited by the Commission for any violations of the liquor laws during her employment either at the Cinders or at the Bend River House.

11. The management at the Bend River House considers Ms. Gerber one of its most valuable employees. She is considered particularly conscientious in following the Commission's rules and regulations in checking for identification and cutting off persons who appear to have become intoxicated. Shortly prior to the issuance of the present charges, the management at the

Bend River House was strongly considering Ms. Gerber for promotion to the position of head cocktail waitress. The Bend River House intends to retain her as an employee if her Service Permit is not cancelled.

12. Theresa Gerber supports herself. She is also helping support a sister who is attending college.

CONCLUSIONS OF LAW

> The commission may revoke or suspend a service permit, 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 grounds to believe any of the following to be true:
>
> (a) That the permittee has made any false statement in the application for the permit. ORS 471.385(1)(a).

Ms. Gerber violated ORS 471.385(1)(a) through listing the false birthdate of April 21, 1959 on her February 5, 1982 and August 14, 1984 applications for Service Permits from the Commission.

ULTIMATE CONCLUSIONS OF LAW

> When there has been a violation of this chapter [ORS 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 Ms. Gerber's Service Permit for the violations of ORS 471.385(1)(a) (false statement in Service Permit application).

In its charge letter, the Commission's Enforcement Staff proposed cancellation of Ms. Gerber's Service Permit based on the argument that this violation involved aggravation.

The Commission concurs that some aggravation is indicated in this case because of the seriousness of the false statements. The false statements in question were obviously made because Ms. Gerber realized initially that she was not old enough to hold a Service Permit, and then in the second instance, in order to conceal the earlier false statement.

A review of the entire record, however, indicates that a penalty of less than cancellation would be appropriate. Absent aggravation or mitigation, the Commission's penalty schedule rule, OAR 845-06-200(5), calls for a 15-day suspension or a $375 fine for a violation of ORS 471.385(1)(a) that is a first major violation within the previous two years. Ms. Gerber's record with the Commission is entirely good other than these two false statements. In addition, there are mitigating factors that balance against the aggravation. The false statements initially arose almost three years ago, when Ms. Gerber found herself in the position of needing to misrepresent her age in order to qualify for a job when she had gone two months without work in a new town. Ms. Gerber has proven herself to be a valuable and reliable employee at the Bend River House. She is a candidate for promotion there. She is recognized as particularly effective and conscientious in following the Commission's rules and regulations.

FINAL ORDER

It is hereby ordered that the Service Permit held by Theresa Lee Gerber, 1784 NE Wichita Way, Bend, Oregon, be SUSPENDED for 30 days or that a fine of $500 be paid in lieu of said suspension.

It is further ordered that due notice of such action, stating the reasons therefor, 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 29th day of January, 1985.

Douglas Grumme'
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.