

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the
Application for a
Service Permit by:

Emilio Gutierrez

)
) FINAL
) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND ORDER
)
) OLCC-85-SP-002
)

A hearing in this matter was held on February 11, 1985, in Albany, Oregon, before Hearings Examiner Jill Thompson. The Applicant appeared and was not represented by legal counsel. The Commission was not represented by legal counsel.

On May 28, 1985, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and Response to Exceptions. Based on this review, the Commission makes the following:

FINDINGS OF FACT

1. Emilio Gutierrez has applied for a service permit.
2. OLCC staff denied the application on the grounds of false statements in the permit application (ORS 471.380(2)) and conviction of violating alcoholic liquor laws or of a felony. (ORS 471.380(4)).
3. Applicant was a DA licensee at El Charro, a Salem restaurant, from January 1981 to May 1984. During this period he was held to have committed several violations of OLCC rules and statutes, either as a result of administrative hearings or by not contesting charge letters.

4. Question 4a on the service permit application form is as follows:

4a. Have you ever been convicted of, or sentenced, put on probation, or forfeited bail for, any crime, violation, or infraction of any law? (Include traffic violations with a fine or bail of \$50.00 or more.) LIST ALL. Yes No

<u>Offense</u>	<u>Date</u>	<u>City and State</u>	<u>Result</u>
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Applicant marked the "No" response.

5. In May 1983 Applicant pled guilty to and was convicted of violating a City of Salem noise ordinance. He was then charged by the OLCC under a statute (ORS 472.180(10)) which penalized a licensee who is found to have violated a local ordinance. Applicant requested an administrative hearing of the OLCC charge; the hearing was held October 1983.

6. The application form also contains a question asking whether the Applicant has ever had an OLCC license "denied, suspended or revoked." Applicant responded that he had.

7. Applicant had actually returned his DA license to the agency.

8. Applicant has difficulty communicating in the English language.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The commission may refuse to grant a service permit if it has reasonable grounds to believe any of the following to be true:

.....

(2) That the applicant has made false statements to the commission in the permit application. ORS 471.380(2).

Although Applicant stated on the form that he had not been convicted of any law violations, he had in fact been convicted, following a guilty plea, of violating Salem's noise ordinance. Nevertheless, the Commission does not believe Applicant intentionally misrepresented the conviction. For one thing, Applicant could not logically hope to conceal the subject of an OLCC charge for which he requested and received an administrative hearing less than a year before filling out the application.

Also, Applicant does not seem to fully comprehend the meaning or significance of how some events are characterized either by the OLCC or as a matter of law. For instance, he indicated on the application form that his DA license had been revoked; in actuality he had returned it to the OLCC. In discussing his conviction for violating a noise ordinance he acknowledged that he had pled guilty and paid a fine but said he didn't think it was a conviction because he paid the assessed penalty.

The Commission concludes that the Applicant did not intend, or even hope, to conceal the noise violation from the OLCC. His failure to understand the meaning of the term "convicted" in the application, or generally, is not a ground for determining an intent to mislead the Commission. The Commission has

commonly considered unintentional inaccuracies to be insufficient grounds to refuse a service permit or license application.¹ The Commission concludes ORS 471.380(2) is not a basis for denial of the application.

2. The commission may refuse to grant a service permit if it has reasonable grounds to believe any of the following to be true:

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- (4) That the applicant has been convicted of violating any of the alcoholic liquor laws of this state, general or local, or has been convicted at any time of a felony. ORS 471.380(4).

Applicant has been found, as a result of administrative proceedings, to have committed violations of agency rules and statutes, while he was a DA licensee. However, the Commission concludes that these violations are an insufficient basis for denial of a service permit, under ORS 471.380(4).

ULTIMATE CONCLUSIONS OF LAW

The application should be granted. There are no grounds for concluding that Applicant intentionally misled the Commission or that violations he committed as a licensee are adequate grounds for denial of a service permit.

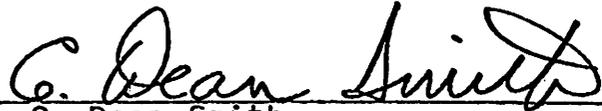
¹Yvonne Blassingame, July 1983; Richard & Sunya Porter, Porterhouse, October 1983; Norma Gallagher, February 1984; Michael Ramon, March 1984; National Sports Organization, Inc., Medford A's, May 1984.

FINAL ORDER

The Commission orders that the application for a service permit by Emilio Gutierrez be GRANTED.

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

Dated this 31st day of May, 1985.



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.