BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:	) **FINAL FINDINGS OF FACT**
	) **CONCLUSIONS OF LAW**
	) **AND ORDER**
7-ELEVEN #2363-16155F	) OLCC-08-V-109
FARZAN MORTAZAVI	)
6117 N Lombard	)
Portland, OR 97203	)

HISTORY OF THE CASE

On October 29, 2008, the Oregon Liquor Control Commission (OLCC or Commission) issued a Notice of Proposed Letter of Reprimand to Farzan Mortazavi, formerly doing business as 7-Eleven Store #2363-16155F (Licensee). The OLCC alleged that Licensee was convicted of two Class A misdemeanors involving crimes on the licensed premises: Failure to Maintain Complete and Accurate Tobacco Products Invoices (ORS 323.540(1); and Failure to Maintain Complete and Accurate Invoices Related to Cigarette Transactions (ORS 323.220). Because Licensee's interest in the license had expired, the Commission proposed a Letter of Reprimand.

Licensee made a timely request for hearing. The Commission referred the request to the Office of Administrative Hearings on December 12, 2008. The case was assigned to John Mann, Senior Administrative Law Judge (ALJ). A contested case hearing was held on March 2, 2009 in Tualatin, Oregon, before ALJ Mann. Licensee appeared without counsel and testified on his own behalf. OLCC was represented by Anna Davis, Case Presenter. Testifying on behalf of OLCC was OLCC Inspector Hector Caballero. The record closed at the end of the hearing on March 2, 2009.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed May 7, 2009.

No Exceptions to the Proposed Order were filed within the 15-day period specified in OAR 845-003-0590.

The Commission adopts the Proposed Order of the Administrative Law Judge as the Final Order of the Commission and enters the following based on the preponderance of the evidence:

ISSUES

1. Whether Licensee was convicted of two Class A misdemeanors committed on the licensed premises. ORS 471.315(1)(a)(I).

2. If a violation is proved, what is the appropriate penalty?

EVIDENTIARY RULING

Exhibits A1 through A4 were admitted to the record without objection. Licensee offered a copy of a letter from the Oregon Lottery Commission. The letter was not admitted into the record because it was not relevant and Licensee failed to submit it at least 14 days prior to the hearing in violation of a Discovery Order issued on January 20, 2009.

After the hearing, ALJ Mann discovered that Exhibit A2 refers to a different 7-Eleven store (No. 2363-14494C) than is at issue in this case. The exhibit contains some information, such as the compliance history and the address of the business that is irrelevant to this case. However, the exhibit also has some information regarding Mr. Mortazavi's criminal convictions and notes of a conversation between Mr. Mortazavi and an OLCC investigator that is relevant to the facts of this case. Therefore, Exhibit A2 will remain part of the record.

FINDINGS OF FACT

1. Licensee held an Off-Premises Sales License at the 7-Eleven Store # 2353-16155F, located at 6117 N. Lombard, in Portland, Oregon, from May 18, 1998 until he sold the business on February 3, 2005. (Ex. A1; test. of Licensee.)

2. On May 17, 2005, the Marion County District Attorney filed an Information alleging that Licensee violated ORS 323.540(1) and 323.630(5), Failure to Maintain Complete and Accurate Tobacco Products Invoices, and ORS 323.220 and 323.480(5), Failure to Maintain Complete and Accurate Invoices Related to Cigarette Transactions. The Information alleged that the violations took place at the licensed premises on or between May 1, 2004 and December 31, 2004. (Ex. A3.)

3. Licensee purchased tobacco products from a business known as Beaverton Tobacco Warehouse. Licensee believed that the company was properly licensed and paid all required taxes. Licensee purchased cigarettes from the company because they sold them at a lower price than Licensee would pay to other vendors. Licensee re-sold those tobacco products at the licensed premises. Licensee understood that both of the criminal charges against him were based on his failure to retain the tobacco invoices for those products on the licensed premises. (Test. of Licensee.)

4. On October 20, 2005, Licensee pled no contest to, and was convicted of, both charges listed in the Information. (Exs. A2, A3, and A4) As a result of his conviction, Licensee was required to perform 16 hours of community service, pay $1,500 to the Oregon Department of Revenue as a compensatory fine, and was sentenced to probation for 12 months. (Ex. A4.) Licensee decided to plead no contest based on advice from his attorney. Licensee did not understand that the convictions would have any affect on his liquor license. (Test. of Licensee.)

5. After Licensee learned that the convictions could affect his liquor license, he hired another attorney to see if he could change his plea. He was advised that it was not possible. (Test. of Licensee.)

CONCLUSIONS OF LAW

1. Licensee was convicted of two Class A misdemeanors committed on the licensed premises. ORS 471.315(1)(a)(I).

2. A Letter of Reprimand is appropriate.

OPINION

The Commission has the burden of proving its charges by a preponderance of the evidence. ORS 183.450(2); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation specifying a different standard, the standard of proof in administrative hearings is preponderance of the evidence).

The Commission has charged Licensee with a violation of ORS 471.315(1)(a)(I), which states:

> (1) The Oregon Liquor Control Commission may cancel or suspend any license issued under this chapter, or impose a civil 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 licensee:
>
> * * * * *
>
> (I) Since the granting of the license, has been convicted of a felony, of violating any of the liquor laws of this state, general or local, or of any misdemeanor or violation of any municipal ordinance committed on the licensed premises.

Licensee admits that he pled no contest to the two charges at issue, both of which were Class A misdemeanors, and both of which were committed on the licensed premises during the period that Licensee owned the business.

Although the convictions in this case did not directly involve the sale or distribution of alcohol, the Commission may rely on them to impose a sanction against Licensee. The Commission cited two cases in support of its argument that Licensee's convictions were relevant to Licensee's fitness to hold a license. In *Kimmel's Little Giant* (OLCC, Final Order, 95-V-028, June 1996), a licensee was convicted of selling stolen truck parts, equipment, and hardware on licensed premises. Although truck parts, equipment and hardware have no inherent relationship

to alcoholic beverages, the Commission held that the criminal act of selling stolen goods on the licensed premises was closely connected to the exercise of the liquor license privileges.

The Commission also cited *Swan Mart* (OLCC, Final Order, 05-L-008, October 2006). In that case, the Commission restricted a license based on the conviction of the licensee's husband for the unlawful distribution of pseudoephedrine: a legal, but controlled, substance. The Commission held that the failure to follow the laws relating to a legal controlled substance indicates a likelihood that a licensee will fail to follow the laws relating to alcoholic beverages, which are also legal, but regulated controlled substances.

As with *Swan Mart*, the convictions at issue here were related to the distribution of legal controlled substances; in this case tobacco. The Commission contends that Licensee's failure to follow the law regarding the sale of tobacco and cigarettes demonstrates the possibility that Licensee may fail to follow the law related to the sale of alcohol. The Commission also contends that Licensee's misconduct with regard to the sale of tobacco and cigarettes bears a relationship to his fitness to exercise the liquor license. The Commission's arguments in this case are supported by Commission precedent as demonstrated by the cited cases. As noted in *Swan Mart*:

> The Commission has concluded that it is reasonable to infer that an applicant who engages in illegal acts involving one controlled substance will be a poor risk for complying with laws concerning another controlled substance (alcoholic liquor).

Swan Mart at 8.

The evidence established that Licensee was convicted of committing two misdemeanors on the licensed premise in violation of ORS 471.315(1)(a)(I). Those convictions were relevant to Licensee's fitness to hold a liquor license.

Penalty

OAR 845-006-0500 (Exhibit 1) defines a violation of ORS 471.315(1)(a)(I) as a Category III violation. The standard penalty for the first Category III violation within two years is a 10-day license suspension or a $1,650 civil penalty in lieu of suspension. The Commission noted that this was Licensee's first Category III violation within two years. The Commission alleged that the existence of two convictions was an aggravating factor because it was a repeated failure to comply with the law. OAR 845-006-0500(7)(c). Under most circumstances, the presence of such an aggravating factor could have some bearing on the appropriate sanction.

However, in this case Licensee no longer has an interest in the licensed premises. Therefore, a 10-day suspension would be of no effect. In cases where a licensee no longer holds an interest in a licensed premises, the Commission will issue a Letter of Reprimand. *See*, *Omar's Inc.* (OLCC, Final Order, 04-V-031, August 2005.) Thus, in this case, a Letter of Reprimand is appropriate.

FINAL ORDER

The Commission orders that a Letter of Reprimand be issued to Farzan Mortazavi, formerly doing business as 7-ELEVEN STORE #2363-16155F, located at 6117 N. Lombard, Portland, Oregon for violation of ORS 471.514(1)(a)(I).

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

Dated this _____ day of June, 2009.

_____
Stephen A. Pharo
Executive Director
OREGON LIQUOR CONTROL COMMISSION

Mailed this _____ day of June, 2009.

THIS ORDER IS EFFECTIVE ON THE DATE MAILED.

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for judicial review within 60 days from the service of this Order. Judicial review is pursuant to the provisions of ORS Chapter 183.

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APPENDIX A
LIST OF EXHIBITS CITED

Ex. A1: OLCC License History Records for 7-Eleven Stores #2363-16155F and #2353-14494C.

Ex. A2: OLCC Intake/Compliance Action Report and Violation Report prepared by OLCC Inspector Caballero dated July 23, 2008.

Ex. A3: Marion County Circuit Court Information for Case No. O5C44942 filed May 17, 2005.

Ex. A4: Marion County Circuit Court Judgments (2) for Case No. O5C44942 dated October 20, 2005.