

**BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON**

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| In the Matter of the Full On-Premises |) | FINAL FINDINGS OF FACT |
| Sales License Held by: |) | CONCLUSIONS OF LAW |
| |) | AND ORDER |
| Cedars Restaurant and Lounge, Inc. |) | OLCC-08-V-099 |
| David G. Layman, Pres/Dir/Stockholder |) | OLCC-08-V-099A |
| dba CEDARS RESTAURANT & |) | |
| LOUNGE |) | |
| 200 Detroit Ave. |) | |
| Detroit, OR 97342 |) | |

HISTORY OF THE CASE

On October 22, 2008, the Oregon Liquor Control Commission (OLCC or Commission) issued a Notice of Proposed License Cancellation to Cedars Restaurant & Lounge, Inc., David Layman, President/Director/Stockholder (collectively Licensee), dba Cedars Restaurant & Lounge, located at 200 Detroit Avenue, Detroit, Oregon. The Notice charged Licensee with a violation of ORS 471.405(1), based on allegations that Licensee sold or offered for sale alcoholic beverages in a manner other than the license permits by selling or offering for sale alcoholic beverages from an unlicensed location. Licensee timely requested a hearing.

The Commission referred Licensee's hearings request to the Office of Administrative Hearings on December 8, 2008. On April 13, 2009, the Commission issued Licensee an Amended Notice of Proposed License Cancellation and Notice of Proposed Refusal to Renew License. The Commission proposed to refuse renewal of the license based on Licensee's compliance record, consisting of two adjudicated violations and the pending violation of ORS 471.405(1).

A contested case hearing was held in this matter in Salem, Oregon, on May 20, 2009, before Administrative Law Judge Alison Greene Webster. Licensee was represented by Michael Mills, Attorney at Law. Becky Voelkel presented the case for the OLCC.

OLCC inspectors Steve Berrios and Jackie Miranda, OLCC Regional Manager James Lynch and Marion County Sheriff's Department Sergeant Bill Sherburn testified on the Commission's behalf. Corporate principal David Layman, and Licensee's employee and permittee Lee O'Leary Layman testified on Licensee's behalf. The record closed on May 20, 2009, at the conclusion of the hearing.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed June 15, 2009.

Licensee filed Exceptions to the Proposed Order on June 30, 2009. On September 30, 2009, Licensee filed its Motion to Reopen Hearing.

On October 15 and 16, 2009, the Commission considered the record of the hearing, Licensees Motion to Reopen Hearing¹, the applicable law, the Proposed Order of the Administrative Law Judge, Licensee's Exceptions to the Proposed Order and the Administrative Law Judge's Response to Licensee's Exceptions. Based on this review and the preponderance of the evidence, the Commission enters the following:

EVIDENTIARY RULINGS

OLCC Exhibits A1 through A17 were admitted into the record. Exhibits A15 and A16 were admitted over Licensee's hearsay objections. Licensee's Exhibits P2 and P3 were admitted at hearing. Licensee's Exhibit P1 was withdrawn.

ISSUES

1. Whether, between August 29, 2008 and August 31, 2008, Licensee sold or offered for sale alcoholic beverages at an unlicensed location in violation of ORS 471.405(1).
2. If the violation occurred, what is the appropriate sanction?
3. Whether the Commission has grounds to refuse to renew Licensee's license under ORS 471.313(4)(g) because Licensee did not have a good record of compliance with the liquor laws of this state while previously licensed.
4. If so, whether Licensee has shown good cause to overcome the Commission's refusal to renew the license.

FINDINGS OF FACT

1. Cedars Restaurant and Lounge, Inc., and corporate principal David Glenn Layman, dba Cedars Restaurant & Lounge, located at 200 Detroit Avenue, Detroit, Oregon have been licensed by the OLCC since 1985. Since April 2001, Licensee has held a Full On-Premises Commercial (F-COM) Sales license for the premises. Since July 30, 2003, Layman has been the President, Director and sole stockholder of the corporation. (Ex. A1.)

2. On at least 14 occasions over the past several years, Licensee applied for and received from the Commission a "Temporary Use of Annual License" (TUAL) allowing Licensee to mix, sell or serve alcoholic beverages at off-premises events. Licensee obtained TUALs for the Cedars' sponsored fishing derby and for other events at a property across the street from the licensed premises known as "The Meadows Event Area."² On at least four occasions prior to 2007, Licensee has applied for, and been granted, a TUAL for the "Lazy Lizard Labor Day Lake Run," a Labor Day weekend "biker" event at the Meadows property. (Test. of Miranda.)

¹ The Commission declines Licensee's request to reopen the hearing record.

² Corporate principal Layman and his family also own the Meadows property, located at 210 D St, Detroit, OR. (Test. of Layman.)

3. Until about May 2007, Licensee had a good record of compliance with the liquor laws. Starting in May 2007 through about July 26, 2007, however, Licensee violated ORS 471.405(1) by selling or offering for sale alcoholic beverages in a manner other than Licensee's license permits. Licensee allowed its alcohol to be sold at events at the Meadows Event Area at a time it was not licensed to do so. As a result of this violation, Licensee served a 21 day license suspension in March 2008. In August 2008, Licensee violated OAR 845-006-0335(1) when employees failed to verify the age of a minor before allowing the minor to buy or be served an alcoholic beverage. As a consequence of this violation, Licensee paid a fine and was given credit for the purchase and use of age verification equipment at the licensed premises. (Test. of Miranda.)

4. On February 11, 2008, Licensee applied for renewal of its liquor license. On the renewal application, Licensee disclosed that corporate principal Layman had been arrested for DUII in Stayton, Oregon, on October 31, 2007. On February 21, 2008, the Commission granted Licensee a Conditional Letter of Authority to Operate, effective April 1, 2008 through March 31, 2009, or until the Commission took final action on the renewal application, whichever came first. (Exs. A2 and A3.)

5. Service permittee Lee O'Leary has been Licensee's employee for approximately 10 years. For about that same time period, Ms. O'Leary and corporate principal Layman have been a couple. They were married in late September 2008. (Test. of O'Leary.)

6. On or about August 18, 2008, Licensee, through corporate principal Layman, completed a TUAL application for an upcoming event to be held at the Meadows. Licensee described the event, to take place on August 29 through September 1, 2008, as a motorcycle rally with live bands. Licensee sought a license to serve beer and wine at the event. Licensee submitted the TUAL application and supporting documentation for the 2008 Lazy Lizard Labor Day Run to the City of Detroit for a recommendation. The supporting documentation included an advertisement for the event and a control plan. The advertisement encouraged early registration for the event, and listed the price at \$45 per person for all three days, or \$20 for a daily pass. (Exs. A6 and A7.)

7. On August 26, 2008, the City of Detroit denied the recommendation. Corporate principal Layman learned of the denial and picked up the denied application from the city the following day. (Ex. A7.)

8. Meanwhile, on August 26, 2008, corporate principal Layman and employee O'Leary contacted Western Beverage Co. and placed an order for alcoholic beverages for the Lazy Lizard event. Using Licensee's account, Layman and O'Leary rented a draft beer trailer and ordered 10 half kegs of Budweiser beer, 10 half kegs of Bud Light, a case of Bacardi Mojito, two cases of Bacardi Silver Raz, a case of Bacardi Pomegranate Mojito and a case of 14 ounce plastic cups. At the time the order was placed, neither Layman nor O'Leary advised Western Beverage that the alcoholic beverages were for Ms. O'Leary's individual use. (Exs. A11 and A13.)

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9. On August 27, 2008, OLCC Inspector Berrios heard from the Marion County Sheriff's Office that the City of Detroit had declined to endorse Licensee's TUAL application for the Lazy Lizard event. Berrios was also advised that corporate principal Layman planned to move the event to a location outside the city limits, and that he planned to provide beer with a donation box on the table. (Test. of Berrios; Ex. A6.)

10. That same day, Berrios checked Licensee's MySpace webpage, and found an advertisement for the "6th Annual Lazy Lizard Labor Day Lake Run," scheduled for August 29-31, 2008. The advertisement read as follows:

THE CEDARS
RESTAURANT & LOUNGE
wants you to know the

**6th Annual Lazy Lizard
Labor-Day Lake Run**

August 29-31, 2008
Don't miss it!!

**New & Improved Event Location:
2 miles past Detroit, towards Sisters,
at Pacific Pride, Hwy 22 mile post 52.**

MAP [hyperlink]

**We are looking forward to a fun and exciting
2008 Lazy Lizard Labor-Day Lake Run!**

On site camping
Beer
Live Music
Beer
Bike Games
Beer
Poker Stagger
Beer
Wet T-shirts
Beer
& Detroit City Shuttle
if you have too much Beer!

(Ex. A9.)

11. On August 28, 2008, Tim Benninger of Western Beverage delivered a draft trailer and the beer and alcohol order to the new Lazy Lizard event location behind the Pacific Pride on

Highway 22. Benninger had been advised that corporate principal Layman would be meeting him there for any last minute instructions. When Benninger arrived at the location, only Ms. O'Leary was available. Benninger gave her the instructions on how to use the trailer. She wrote him a personal check for the delivery. (Ex. A14.)

12. That same day, from about 6:20 p.m. to 7:20 p.m., Inspector Berrios met with corporate principal Layman about the event. Layman confirmed that the City of Detroit had declined to approve the TUAL, and that he had moved the event to a new location outside the city limits. Layman also confirmed that the beer trailer and beer kegs had been delivered to the event location. Berrios asked Layman why Licensee had not submitted a TUAL to the OLCC for the event. Layman responded, "This is Lee's [O'Leary's] deal." Layman also noted that O'Leary had purchased the alcohol with a personal check, and that they planned to take donations for the alcohol at the event. Berrios advised Layman that because there was a registration fee for the event, Licensee could not provide alcohol without an Off-Premises Sales license. Berrios also told Layman that his liquor license would be in jeopardy of alcohol was provided at the event. (Test. of Berrios; Ex. A6.)

13. After meeting with Layman, Berrios went to the event location and spoke to O'Leary, who was setting up in preparation for the next day. Berrios looked inside the beer trailer and saw 20 half kegs, nine of which had already been tapped. Berrios also saw pull handles installed on both sides of the trailer. Berrios checked each keg, and determined that all 20 appeared to be full. In Berrios' presence, Layman told O'Leary not to tap any other kegs. Berrios told Layman and O'Leary that they could not profit from the sale of alcohol at the event. They assured Berrios that no alcohol would be purchased by those who attended the event, and no money would exchange hands. (Test. of Berrios; Ex. A6.)

14. On the morning of August 29, 2008, OLCC Regional Manager James Lynch called Layman regarding the Lazy Lizard event. Lynch advised that if Layman was charging a registration or entry fee for the event, he could not provide alcohol without a license. Lynch explained that the entry or registration fee would be considered indirect financial consideration for the alcohol, and that without a temporary license for the event, Layman would be violating the liquor laws. Layman assured Lynch that he would not be selling or giving away any alcohol at the event. (Test. of Lynch; Ex. A10.)

15. At about 9:00 p.m. on August 29, 2009, Berrios went to the event location with Sgt. Sherburn and others from the Marion County Sheriff's Office. Layman approached Berrios and reported that he was angry with O'Leary because she was giving away beer from the beer trailer. Layman acknowledged that he had been advised by Lynch earlier in the day not to make any beer available. Layman said that when he told O'Leary, she responded that it was her alcohol, she had purchased it and she could give it away if she wanted to. (Test. of Berrios; Ex. A6.)

16. Berrios also spoke with O'Leary, who admitted that Layman had told her not to make the beer available. She advised that she had since moved the registration booth "inside" the event area and left the beer trailer "outside," so the beer was not part of the event. O'Leary also asserted that she had spoken to a lawyer who told her that she could make alcohol available at a private event. Berrios explained to O'Leary that the Lazy Lizard event was not a "private

event” because it was open to the general public, in that anyone willing to pay the registration fee could attend. (Test. of Berrios; Ex. A6.)

17. Berrios then rechecked the beer trailer. He saw pull handles installed on both the back and front sides of the trailer. He went inside and checked each of the kegs that had been tapped. Berrios noted that two kegs were completely empty, and one was partially empty. The remaining kegs appeared full. On a table outside the trailer, Berrios saw red plastic cups containing beer. He also saw red plastic cups on the ground. There was a group of people, event attendees, gathered around as well. (Test. of Berrios; Ex. A6.)

18. While Berrios was talking with Layman and O’Leary, Corey Marcott approached Sgt. Sherburn. Sgt. Sherburn knew Marcott from previous contacts. Marcott told Sgt. Sherburn that earlier in the night, O’Leary had been pouring beer from the pull handles on the trailer. Marcott said that she stopped pouring the beer when several police cars pulled into the Pacific Pride station.³ (Test. of Sherburn; Ex. A16.)

19. About 7:15 p.m. on Saturday, August 30, 2008, Marion County Sheriff’s deputies were dispatched to an off-road ATV accident in the area behind the Lazy Lizard event location. Dispatch directed the responders to “follow road past beer garden, look for truck, then 100 yard hike up from there.” (Ex. A15.)

20. On Tuesday, September 2, 2008, Jason McConnell of Western Beverage picked up the draft trailer and beer kegs from the Lazy Lizard event location behind the Pacific Pride station. He talked with O’Leary, who asked that Western Beverage redo the invoice to show that she had purchased the alcohol rather than Licensee. O’Leary advised that she and Layman had problems obtaining some permits and she was concerned that Layman would lose his liquor license because he sold beer at the event when Licensee did not have a permit. McConnell contacted Benninger to discuss the situation. Benninger advised McConnell not to change the invoice and keep the transaction as originally ordered. Benninger explained that had Western Beverage known they were selling the alcohol to an individual as opposed to a licensee with an established account, they would have handled the transaction differently. (Exs. A13 and A14.)

21. After picking up the beer trailer, McConnell dropped off the nine tapped kegs at the Meadows property, leaving them with Layman. He returned the trailer with the two empty kegs and nine untapped kegs to Western Beverage. (Test. of Berrios; Ex. A13.)

22. Inspectors Berrios and Miranda went to Western Beverage to inspect the beer trailer on September 2, 2008. Berrios confirmed that there were 11 kegs in there, two empty and nine untapped. McConnell advised Berrios that the other nine kegs went to Licensee because Western Beverage will not resell a keg that has been tapped, and a tapped keg becomes the responsibility of the party who purchased it. McConnell also advised Berrios that he checked the nine tapped kegs that he had off-loaded at the Meadows. He said that three were less than one

³ There had been a fatal accident a short time earlier on Highway 22 and Breitenbush Road. Several police units and the chaplain had stopped at the Pacific Pride fueling station on their way to notify the family of the fatality. (Test. of Sherburn; Ex. A16.)

half full and the others had an undetermined amount of alcohol in them. (Test. of Berrios; Ex. A6.)

23. Two days later, on September 4, 2008, Inspectors Berrios and Miranda were contacted by a person who had attended the Lazy Lizard event. The person, who asked to remain anonymous, reported that after the event was shut down on Friday night, August 29, O'Leary announced that it was now "Bring your own beer." This person also reported that on Sunday, August 31, O'Leary reported to the crowd that the problem had been "fixed" and they were "not being fined." The person added that no one was controlling who was coming or going during the event. He also stated that the event hosts were promoting a game called "Staggering Drunk" in which participants paid a fee, were given tokens, and then taken into Detroit to drink at different establishments. (Test. of Berrios; test. of Miranda; Ex. A6.)

24. Licensee and O'Leary did not promote a game called "Staggering Drunk" during the Lazy Lizard event. They did, however, host a "Poker Stagger." For an entry fee of \$5, the participants in the "Poker Stagger" were taken into town, where they could stop in at five different locations -- Cedars, the Meadows, the marina, the gas station store and the Parkers' home -- have a drink and pick up a playing card. The participant with the best five card poker hand won a prize. Licensee and O'Leary had about 16 people participate in the "Poker Stagger." The participants were taken into town in two nine passenger vans rented by O'Leary for the Lazy Lizard event. (Test. of Layman; test. of O'Leary.)

25. Two hundred nineteen people attended the event and all paid registration fees. Registration fees were collected before and during the event. Registrations paid via credit card were processed through Licensee's account. (Test. of O'Leary.)

CONCLUSIONS

1. Between August 29, 2008 and August 31, 2008 Licensee sold or offered for sale alcoholic beverages at an unlicensed location in violation of ORS 471.405(1).
2. The appropriate sanction for this violation is cancellation of the license.
3. The Commission has grounds to refuse to renew Licensee's license under ORS 471.313(4)(g) because Licensee did not have a good record of compliance with the liquor laws of this state while previously licensed.
4. Licensee has not shown good cause to overcome the Commission's refusal to renew the license.

OPINION

1. Violation

As set out above, the Commission asserts that Licensee violated ORS 471.405(1) by selling or offering for sale alcoholic beverages in a manner other than the license permits.

Licensee's license permits the sale and service of alcoholic beverages at the licensed premises' location at 200 Detroit Avenue, Detroit, Oregon. The Commission contends that Licensee violated ORS 471.405(1) by selling or offering for sale alcoholic beverages from an unlicensed location during the 2008 Lazy Lizard event. As the proponent of this contention, the Commission bears the burden of proof. ORS 183.450(2); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position).

ORS 471.405(1) provides as follows:

No person shall peddle or deliver alcoholic beverages to or at any place, where, without a license, alcoholic beverages are sold or offered for sale. No licensee shall sell or offer for sale any alcoholic beverage in a manner, or to a person, other than the license permits the licensee to sell.

The 2008 Lazy Lizard event occurred August 29-31, 2008, on private land behind the Pacific Pride fueling station along Highway 22, two miles east of the licensed premises in Detroit. The Commission contends that, as evidenced by Licensee's signed August 18, 2008 Application for Temporary Use of Annual License, the advertisements promoting the 2008 Lazy Lizard event, and Licensee's website information, Licensee was a sponsor of, and provider of alcoholic beverages to, the event. The Commission further contends that because Licensee procured alcoholic beverages for the event and patrons were charged a fee to attend, Licensee received indirect financial consideration for the alcohol, an activity prohibited by ORS 471.406.⁴

Licensee, on the other hand, asserts that it did not purchase, provide or procure alcoholic beverages for the 2008 Lazy Lizard event, and that it did not receive any financial consideration for alcohol sales at the event. Corporate principal Layman contends that once the city denied Licensee's TUAL application and the Lazy Lizard event moved to the new location, Licensee had nothing to do with the provision of alcohol at the event. Layman asserts that O'Leary, and not Licensee, purchased the alcoholic beverages from Western Beverage. Layman maintains that although he, through Cedars Cascade Catering, provided food for the event, Licensee did not receive any proceeds from the event. Finally, Layman asserts that no alcoholic beverages were

⁴ ORS 471.406 provides:

Any prohibition on the sale of alcoholic beverages provided for in this chapter includes:

- (1) Soliciting orders for alcoholic beverages or receiving orders for alcoholic beverages.
- (2) Keeping alcoholic beverages for sale or exposing alcoholic beverages for sale.
- (3) Delivering alcoholic beverages for value or in any way other than purely gratuitously.
- (4) Peddling alcoholic beverages.
- (5) Keeping alcoholic beverages with intent to sell.
- (6) Trafficking in alcoholic beverages.
- (7) For any consideration, promised or obtained, directly or indirectly, or under any pretext or by any means, procuring alcoholic beverages, or allowing alcoholic beverages to be procured, for any other person.

actually sold at the event, and that the beer trailer was removed from the event location on Saturday afternoon, August 30.

The first question to be resolved is whether Licensee procured or supplied alcoholic liquor for the Lazy Lizard event. Licensee's claim that the alcohol belonged to O'Leary because she paid Western Beverage with a personal check is not persuasive. For the reasons set out below, the Commission finds that O'Leary was acting as Licensee's agent or representative when she accepted delivery of, and paid for, the alcoholic beverage order.

Layman and O'Leary ordered the alcoholic beverages for the 2008 Lazy Lizard event from Western Beverage using Licensee's account. As evidenced by Western Beverage's records, the distributor processed the order and delivered the goods with the understanding that Licensee was the purchaser. When Benninger delivered the beer trailer to the event location, he was supposed to meet with Layman for any last minute instructions. Instead, he talked with O'Leary because Layman was not available. It was not until after the event, when it became clear to Layman and O'Leary that they had run afoul of the liquor laws, that they asked Western Beverage to change the invoice. But, even at that point, the parties to the transaction acted in accordance with Licensee as the purchaser. Indeed, it was Layman, on behalf of Licensee, who took custody of the nine tapped kegs that remained. The Commission has therefore established that Licensee, through the actions of corporate principal Layman and employee O'Leary, procured and supplied the alcoholic liquor for the 2008 Lazy Lizard event.

Having found that Licensee procured and supplied the alcoholic beverages for this off-premises event, the next question is whether alcoholic beverages were sold or offered for sale at the event. As noted above, pursuant to ORS 471.406(7), a prohibition on the sale of alcohol includes the provision of alcoholic beverages "for any consideration, promised or obtained, directly or indirectly, or under any pretext or by any means." Consequently, even though Licensee did not directly charge persons for the beer provided at the 2008 Lazy Lizard event, attendees were required to pay \$20 per day, or \$45 for all three days, to attend the event. This registration/admission fee constitutes indirect financial consideration.⁵ Regardless of whether the beer trailer was removed from the event at some point on Saturday, August 30,⁶ attendees

⁵ ORS 471.475, which prohibits the mixing, storing or serving of liquor without a license, provides that "financial consideration" may be "by way of a charge for service, membership fee, admission fee, initiation fee, club dues, contributions, or other fee or charge."

⁶ Both Layman and O'Leary testified that, at some point on Saturday afternoon or evening, a friend of a friend with a truck towed the beer trailer from the event site to a secure location in Gates, about 20 miles to the west. O'Leary claimed the beer trailer remained at that secure location and did not return to the event site. Layman testified to the contrary, asserting that after the event, the same friend of a friend with a truck towed the trailer back to the event site, where it was later picked up by Western Beverage. Layman's testimony in this regard also differed from what he had previously told Inspector Berrios. On September 25, 2008, Layman told Berrios that he hired Santiam Towing to move the trailer. Yet, Santiam Towing had no record of the tow. Neither Layman's nor O'Leary's testimony appeared credible on this issue and the Commission is not persuaded that the beer trailer was towed away during the event. Further, the information given to dispatch in connection with the Saturday evening ATV accident ("follow the road past the beer garden"), suggests that the beer trailer remained in place. However, even if the trailer was towed away on Saturday evening, the evidence establishes that event attendees

consumed beer from the kegs provided by Licensee during the 2008 Lazy Lizard event.⁷ Given these circumstances, the violation of ORS 471.405(1) has been proven. By making alcoholic beverages available at an unlicensed location for indirect financial consideration, Licensee sold or offered for sale alcoholic beverages in a manner other than the license permits.

2. Penalty

A violation of ORS 471.405(1) is a Category I violation. A Category I violation is one that makes the licensee ineligible for a license. OAR 845-006-0500(7)(a)(A). Under the Commission's guidelines, the standard penalty for a first Category I violation is cancellation of the license. OAR 845-006-0500(7), Exhibit 1.

This is Licensee's second Category I violation. In July 2007, just 13 months prior to the violation found above, Licensee violated this same statutory provision (ORS 471.405(1)) by allowing its alcohol to be sold at events at the Meadows without a license to do so. Licensee also had a Category III violation in 2008, when its employees failed to verify the age of a minor before allowing the minor to buy or be served an alcoholic beverage.

In addition to these two prior violations within the past two years, there are aggravating circumstances with the current violation. Corporate principal Layman was personally involved in the violation. *See P-Mart* (OLCC, Final Order, OLCC-92-V-098, April 1993) (where the licensee personally committed the violation, there is basis for aggravation). Further, the violation was intentional. Less than 24 hours before the Lazy Lizard event, both OLCC Regional Manager Lynch and Inspector Berrios specifically advised Layman that Licensee could not provide alcoholic beverages at the event without a TUAL. Finally, as evidenced by Layman's and O'Leary's attempts to persuade Western Beverage to change the invoice, attempts were made to conceal the violation.

Giving consideration to the severity of the violation, the established bases for aggravation of this violation and Licensee's record of three violations within two years, cancellation is warranted.

3. License Refusal

a. Record of Compliance When Previously Licensed.

Pursuant to ORS 471.313(4)(g), the Commission "may refuse to license any applicant * * * if the commission has reasonable ground to believe any of the following to be true":

consumed more than two half kegs of beer from the trailer before then.

⁷ When Inspector Berrios inspected the beer trailer on Thursday night, nine half kegs had already been tapped. Inspector Berrios checked each tapped keg, and each appeared full. When the inspector returned to the event location the following night, two of the tapped kegs were completely empty, and a third was partially empty. (Test. of Berrios.) When Western Beverage picked up the beer trailer from the event location on September 2, 2008, 11 of the kegs had been tapped. Two kegs were completely empty, one was half empty and the others were at least partially empty. (Test. of Berrios; Ex. A6.)

(4) That the applicant:

* * *

(g) Did not have a good record of compliance with the alcoholic liquor laws of the state and the rules of the Commission when previously licensed.

The Commission may count as evidence of a poor record of compliance charges that are proved for the first time during the license refusal contested case, as long as the Commission gives reasonable notice of the charges and provides the applicant an opportunity to contest the charges. *Riverside Restaurant & Lounge* (OLCC, Final Order, 94-L-008, December 1996).

In this case, Licensee was given reasonable notice of the charge and an opportunity to contest it. In the course of this contested case, the Commission has proved that Licensee, through Layman and O'Leary, sold or offered for sale alcoholic beverages in a manner other than the license permits. The next question is whether this violation, and the two previously adjudicated violations, give the Commission "reasonable grounds to believe" that Licensee "did not have a good record of compliance" sufficient to justify the refusal to renew the license.

As discussed above, a violation of ORS 471.405(1) is a Category I violation, one that renders the licensee ineligible for a license. Licensee has two Category I violations within two years. This second violation, as noted above, included aggravating circumstances. In addition, Licensee has one Category III violation, failing to verify the age of a minor. This constitutes a poor record of compliance while previously licensed, which entitles the Commission to refuse to renew Licensee's license.

b. Good Cause Exception.

The Commission has held that a prior record of violations may be overcome as a ground for refusal where the evidence shows that despite the violation record, the applicant would not be a poor risk for future compliance with the alcoholic beverage laws. *See, e.g., Crane Supply Tavern* (OLCC, Final Order, 85-L-019, August 1985) (evidence established that future violations were unlikely and the area had a need for the license); *Hale's Tavern* (OLCC, Final Order, 85-L-010, June 1985) (good cause shown where applicant had only one violation in nine years as a licensee, the violation was committed by applicant's employee rather than the applicant personally and the applicant took swift action to prevent recurrence of the violation). Factors to be considered in determining the existence of good cause include the period of time without violations as a licensee, the nature and seriousness of the violations, whether the violations were mitigated or aggravated, and acceptance of responsibility for the violations. *See, e.g., Quincy Store* (OLCC Final Order, 02-V-008/L-001, December 2002.)

The burden is on the licensee to demonstrate that it is a good candidate for future compliance with the liquor laws. *See Dad's Restaurant & Lounge*, OLCC Final Order at 23. In this case, Licensee did not offer any evidence to support its position that future violations would be unlikely. As noted above, the past violations were serious and, for the most recent violation, there were aggravating circumstances. Based on this record, the Commission is entitled to refuse to renew Licensee's license application.

FINAL ORDER

The Commission orders that the Full On-Premises Sales license held by Cedars Restaurant and Lounge, Inc., David G. Layman, President, Director and Stockholder, dba Cedars Restaurant & Lounge, 200 Detroit Avenue, Detroit, Oregon be CANCELLED.

It is further ordered that the application to renew the Full On-Premises Sales license held by Cedars Restaurant and Lounge, Inc., David G. Layman, President, Director and Stockholder, dba Cedars Restaurant & Lounge, 200 Detroit Avenue, Detroit, Oregon be REFUSED.

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

Dated this 27th day of October, 2009.

/s/ Rudy Williams for:
Stephen A. Pharo
Executive Director
OREGON LIQUOR CONTROL COMMISSION

Mailed this 27th day of October, 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.