

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

In the Matter of the Full)	FINAL FINDINGS OF FACT
On-Premises Sales License Held By:)	CONCLUSIONS OF LAW
)	AND ORDER
)	
Don's Dugout, LLC)	OLCC-12-V-065
Don Douglas, Managing Member)	OLCC-12-V-065A
Janice Douglas, Member)	OLCC-12-V-065B
dba DON'S DUGOUT)	
11642 NE Halsey)	
Portland, OR 97220)	

HISTORY OF THE CASE

On October 26, 2012, the Oregon Liquor Control Commission (OLCC or Commission) issued a Notice of Proposed License Cancellation to Don's Dugout, LLC, Don Douglas, Managing Member and Janice Douglas, Member, dba Don's Dugout (collectively referred to as Licensee). The Notice proposed to cancel Licensee's license based upon an alleged history of serious and persistent problems involving disturbances, unlawful activities or noise either in the premises or involving patrons of the establishment in the immediate vicinity of the premises, a violation of ORS 471.315(1)(c). Licensee timely requested a hearing.

The hearing request was referred to the Office of Administrative Hearings on November 15, 2012, and assigned to Senior Administrative Law Judge Alison Greene Webster.

ALJ Webster presided over a prehearing conference on November 30, 2012. Attorney William Macke appeared on Licensee's behalf, and OLCC Case Presenter Anna Davis appeared on the Commission's behalf. During the telephone conference, the hearing was scheduled for February 5 through 8, 2013.

On January 22, 2013, the Commission issued an Amended Notice of Proposed License Cancellation adding a proposed refusal to renew Licensee's license pursuant to ORS 471.313(5), on the grounds of Licensee's alleged history of serious and persistent problems, and pursuant to ORS 471.313(4)(g) based on Licensee's alleged poor record of compliance when previously licensed.

The hearing was held in Tualatin, Oregon on February 5, 6 and 8, 2013 before ALJ Webster. OLCC was represented by Case Presenter Anna Davis. Licensee was represented by Attorney William Macke.

OLCC called the following witnesses: Portland Police Officers David Arnold, Grigoriy Budey, Todd Christensen, Sabrina Dobbs, Aaron Howledge, Joshua Howery, Scott Jungling, Patrick Murphy, Louis Seals, Grant Smith, Chad Steiner, Eric Strohmeyer, Mary Toops and Zachary Zelinka; Portland Police Sergeant Josh Kraner; Portland Police Criminalists Heather Durham, Dale Miller and Vince Nebling; and OLCC Inspector David Taylor.

Licensee called corporate principals Don and Janice Douglas to testify on its behalf.

The record remained open for written closing arguments, and closed on February 20, 2013, upon receipt of OLCC's Rebuttal.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed March 5, 2013.

Licensee filed Exceptions to the Proposed Order on March 20, 2013. Staff filed Comments on the Proposed Order on March 20, 2013. The Administrative Law Judge responded to Licensee's Exceptions and Staff's Comments on March 27, 2013.

On April 25, 2013, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Administrative Law Judge, Licensee's Exceptions to the Proposed Order, Staff's Comments on the Proposed Order and the Administrative Law Judge's Response to Licensee's Exceptions and Staff's Comments. Based on this review and the preponderance of the evidence, the Commission enters the following:

EVIDENTIARY RULINGS

OLCC Exhibits A1 through A54 and A56 through A58 were admitted into the record. Exhibit 55 was withdrawn. The written police reports were admitted over Licensee's hearsay objections. Licensee's Exhibits P1 and P3 were also admitted.

ISSUES

1. Whether there is a history of serious and persistent problems at the licensed premises, based upon incidents occurring between December 30, 2011 and September 12, 2012. ORS 471.315(1)(c).
2. If so, whether Licensee has demonstrated a willingness and ability to control the premises. ORS 471.315(1)(c).
3. If a violation of ORS 471.315(1)(c) is found, what is the proper penalty.
4. Whether the Commission has grounds to refuse to renew Licensee's license under ORS 471.313(5) (history of serious and persistent problems) or ORS 471.313(4)(g) (poor record of compliance with the liquor laws of this state while licensed) and, if so, whether Licensee has shown good cause to overcome the Commission's refusal to renew the license.

FINDINGS OF FACT

1. Since May 2, 2001, Don's Dugout, LLC, Don Douglas, Managing Member, and Janice Douglas, Member, dba Don's Dugout, have held a Full On-Premises Sales License for premises located at 11642 N.E. Halsey Street, Portland, Oregon. (Ex. A1.)
2. For many years, the licensed premises operated as a relatively quiet neighborhood bar with few problems and few calls for police service. (Test. of Steiner; test. of Jungling; test. of J. Douglas; test. of D. Douglas). Since it opened for business, the licensed premises has had lottery

machines and pool tables. Licensee has hosted many in-house pool tournaments over the years. (Test. of D. Douglas.)

3. At about 11:59 p.m. on December 30, 2011, Portland Police Bureau (PPB) officers responded to a disturbance at the licensed premises. The caller reported that a female patron was swinging a pool stick at another patron. While en route, the officers were advised that an employee had taken the pool stick from the female patron. Officers arrived, contacted the female patron in question and interviewed witnesses. They determined that the patron, who appeared intoxicated and admitted to drinking four margaritas at the bar, had argued and fought with her boyfriend inside the premises. The female patron admitted to officers that she threw a pool ball, and swung a pool stick at her boyfriend because he had accused her of infidelity. Officers arrested the female patron for Disorderly Conduct and transported her to the Multnomah County Detention Center. (Exs. A2, A3 and A4; test. of Jungling; test. of Steiner.)

4. About two hours later, at 1:58 a.m. on December 31, 2011, PPB officers again responded to the licensed premises on a reported fight between patrons. The caller reported that a group of about 15 females were fighting in the premises' parking lot. The fight ended before officers arrived, but the bartender advised the officers that two female patrons started yelling and pushing each other as they exited the premises, and that others gathered to watch as the women continued to scream obscenities and racial slurs at each other. Officers noted that the bar was crowded, there were people milling about in the parking lot, and that Licensee did not have any bouncers or other security personnel. When Officer Steiner asked the bartender why Licensee had no bouncers present, the bartender replied that they cost too much. (Ex. A6; test. of Steiner.)

5. At about 11:00 p.m. on March 14, 2012, PPB officers responded to a reported fight at the licensed premises. Upon arrival, officers determined that a patron had punched another patron in the face. The victim had redness and a small abrasion on her cheekbone. Officers arrested the aggressor patron for Assault IV and Possession of Controlled Substances (marijuana and Oxycodone). (Exs. A7 and A8; test. of Zelinka.)

6. At about 11:20 p.m. on March 24, 2012, PPB officers responded to the licensed premises on a noise complaint. A person whose residence backs up to the premises' south parking lot called to report several people yelling, and a loud car stereo playing in the south parking lot. The caller also reported smelling the odor of marijuana coming from the parking lot. While officers were en route, Licensee's bartender called the police to report a fight inside the bar. Upon arrival, officers learned that the two patrons who had been fighting had since left the bar and fled the area. Licensee's cook advised that he came out of the kitchen to see two male patrons squaring off to fight each other by the pool tables, as a female patron who appeared to be the girlfriend of one of the two men tried to prevent them from fighting. Licensee's cook added that he told these patrons to leave and then pushed them out the front door. Officers noted about 40 persons inside the premises, with several other persons milling about in the parking lot. (Ex. A9; test. of Steiner.)

7. The neighbor who complained about noise coming from the premises' south parking lot on the night of March 24, 2012 later told the investigating officer that noise problems in the bar's back parking lot had become a regular occurrence and had gotten progressively worse over the past two years. (Ex. A9; test. of Steiner.)

8. At about 1:46 a.m. on April 1, 2012, PPB officers responded to the licensed premises on a disturbance call. Upon arrival, Licensee's cook advised the officers that a group of patrons got angry with another group of patrons, prompting him to pull the drinks from all involved and to ask them to leave. The cook explained that although the altercation between the parties was verbal only, he was concerned that it would escalate into a physical fight, so he called 9-1-1. (Ex. A10; test. of Arnold.)

9. In April 2012, Gossip Restaurant & Bar, another licensed establishment about three blocks to the west of the Don's Dugout, went out of business. Gossip had been a very popular nightspot over the past couple of years, and many of the patrons who had frequented Gossip started patronizing Don's Dugout. The crowds at Don's Dugout grew, and people also started gathering and hanging out in the premises' parking lot. Some from this crowd, a few of whom were known gang members, started causing problems at the licensed premises. (Test. of Jungling; test. of Arnold; test. of J. Douglas.)

10. At about 12:53 a.m. on May 20, 2012, PPB officers responded to report of shots fired at the premises. Officers arrived to find multiple shell casings and bullet fragments in the premises' parking lot, along with two bullet holes in the west exterior wall of the building. Officers interviewed witnesses, including Licensee's bartender, a patron who had been standing out in front of the premises, and a neighbor who lives south of the licensed premises on NE 117th. Licensee's bartender reported that there were about 15 or 20 people hanging out in the parking lot when a vehicle pulled in and someone in the vehicle yelled, "You better run." She added that just seconds later, she heard multiple gunshots, and saw two cars drive off at high speed. The patron reported hearing "a bunch of kids yelling at each other" while he was standing out front of the premises. He then heard gunshots and saw about six cars leave the parking lot very quickly. The neighbor reported hearing several gunshots, and looking outside to see vehicles rapidly exiting the premises' parking lot. (Exs. A11, A12, A13 and A14; test. of Howledge; test. of Steiner.)

11. Licensee Don Douglas was not present at the licensed premises on May 20, 2012 when someone fired shots in the premises' parking lot. (Test. of D. Douglas.)

12. On May 25, 2012, OLCC Inspector Taylor contacted Licensee Don Douglas to discuss the recent shooting in the premises' parking lot. Mr. Douglas claimed that he was aware of the incident, although he did not know that there were two gunshot holes in the side of his building until he spoke with Inspector Taylor. Inspector Taylor warned Mr. Douglas about disorderly activities at the premises and about the potential for a history of serious and persistent problems violation. (Ex. A43; test. of Taylor.)

13. At about 1:10 a.m. on May 26, 2012, PPB officers responded to a reported fight at the licensed premises. En route to the call, officers were advised that female patrons were throwing chairs at each other. Upon arrival, officers found a large group of people yelling at each other as they scattered towards their vehicles in the premises' parking lot. An officer interviewed Licensee's bartender, who confirmed that female patrons were throwing chairs, and said that these patrons had fled the premises before the officers' arrival. The bartender also told the officer that she was closing the bar an hour early because she could not control the crowd. Officers located one patron with a bloody nose, but this patron refused the offer of medical attention and refused to describe what had happened. (Ex. A15; test. of Smith.)

14. At about 2:15 a.m. on May 29, 2012, PPB officers responded to a reported theft at the licensed premises. Officers determined that a patron had left her purse at the licensed premises and when she returned to retrieve it about five minutes later, it had been taken by another patron claiming to be her friend. The victim advised officers that she tracked down and confronted the patron who took her purse at the 7-Eleven a block from the premises, and got her purse back, but there were items missing from her purse, including a \$10 bill and headphones. (Ex. A16; test. of Budey.)

15. On or about June 1, 2012, Licensees Don and Janice Douglas met with representatives of the City of Portland, including Theresa Marchetti, the City's liquor licensing specialist, Portland Police Sergeant Josh Kraner and someone from the City's Office of Neighborhood Involvement. The meeting was to address the recent problems with guns and violence that had occurred at the licensed premises. During the meeting, the City representatives advised Licensees that the recent problems at the licensed premises implicated the City's time, place and manner ordinance. The City representatives sought to develop a plan with Licensees to abate such problems at the premises. The attendees discussed the lack of adequate security and staffing at the premises. They also discussed the need for DPSST-certified security at the premises. Mr. Douglas said that was going to terminate employees who he believed were contributing to the problems at the premises, and replace them with bartenders who could do a much better job controlling the premises. He also stated that he was considering establishing a "membership" program for patrons, where only preapproved persons would be granted access to the premises. Mr. Douglas also said that he thought the problem patrons were coming to the premises from Jody's, another establishment in the area. (Test. of Kraner.)

16. On June 12, 2012, in follow up to the June 1st meeting, Mr. Douglas wrote a letter to Ms. Marchetti outlining a plan for controlling the premises. Mr. Douglas wrote, in pertinent part, as follows:

I informed the attendees at the June 1st meeting that I had been making myself present at the bar during the hours of 10:00pm and 3:00am on Friday and Saturday nights. I have increased my owner-involvement greatly in that I am present in the bar and parking areas much more frequently throughout the week.

Janice and I have instructed our bartenders to make notes in the incident log book for every disturbance or every situation which the bartender believes should be documented. They have been instructed to make an entry with the date and their signature even where there isn't a circumstantial [sic] incident.

We provided a preliminary membership form with I am currently working on to insure our patrons are protected from harm. The software, equipment and associated background checks and supplies are expensive. We fully intend to provide out guests with a safe place to relax. Please review the attached "tentative membership application."

* * * * *

The cook we have hired for Friday and Saturday nights is an individual who has gone through training for security. He can take care of any altercation with ease. He is polite and friendly and a good cook. We have given our cooks raises and instructed our bartenders to "tip them out" appropriately at the end of the shift. This, of course, keeps good employees.

We will continue to monitor our bar, the parking areas and, above all, the patrons who seem to be causing the problems.

(Ex. A47 at 1.)

17. At about 11:41 p.m. on June 14, 2012, PPB officers responded to the licensed premises on a reported “strong arm” robbery involving a gun. While officers were en route, they were advised that the suspects were walking west on Halsey. Upon arrival, officers learned that the suspects had gone into Rounders Bar. Officers apprehended two persons a short time later at 7-Eleven, a few blocks down the street from the licensed premises. The police investigation of the incident disclosed the following: A female patron took cash out of her purse to pay her bar tab, and another patron, Sergius Collins, grabbed the cash from her. The female patron confronted Collins and demanded her money back. The female patron and Collins then went outside, where they continued to argue. Others intervened in the altercation. When another patron took a swing at Collins, Collins brandished a gun and threatened to shoot him. Collins and a friend (Harry Washington) then left Don’s Dugout for Rounders, a bar just to the west, where they dropped the handgun into a nearby trash can. After leaving Rounders, the two walked to the 7-Eleven, where they were located by the police and taken into custody. Officers recovered the gun from the trash can at Rounders and the stolen cash from Collins. Collins was arrested and charged with Robbery III, Felon in Possession of a Firearm, Unlawful Possession of a Firearm, Possession of a Loaded Firearm in Public and Disorderly Conduct. (Exs. A17, A18, A19, A20, A21, A22, A23, A24, A25, A26, A27, A28, A29, A30 and A57; test. of Jungling; test. of Christensen; test. of Steiner; test. of Murphy; test. of Howery; test. of Seats; test. of Durham; test. of Miller.)

18. Licensee Don Douglas was not present at the licensed premises on the night of June 14, 2012 when patron Collins grabbed the female patron’s cash and threatened another patron with a gun. (Test. of D. Douglas.)

19. At about 11:12 p.m. on June 22, 2012, PPB officers responded to a report of loud music and possible fight at the licensed premises. A neighbor living just to the south of the licensed premises reported noise coming from the premises’ back parking lot. Officers found several people smoking and talking loudly in the back parking lot, but no one fighting. Officers went inside the bar and asked the bartender to turn down the music, which he agreed to do. The complainant later advised Officer Jungling that noise at the bar is a problem almost every night, and in the morning she often finds beer bottles and trash in her back yard, which is adjacent to the premises’ back parking lot. (Ex. A31; test. of Jungling.)

20. While performing a records check of Licensee’s bartender that night, Officer Jungling discovered that the bartender had an active warrant out for his arrest. The officer contacted Licensee Don Douglas, to advise that one of Licensee’s two employees on duty was being taken into custody on an outstanding warrant. Mr. Douglas came to the premises to avoid having to close the bar early. In talking with Mr. Douglas, Officer Jungling mentioned his concern that the licensed premises was attracting problem patrons and becoming a nuisance in the neighborhood. Officer Jungling also expressed concern about Licensee’s lack of security on site at the premises. (Ex. 32; test. of Jungling.)

21. At about 1:18 a.m. on July 22, 2012, PPB officers responded to a possible disturbance at the licensed premises. A neighbor living immediately south of the licensed premises reported hearing the sounds of a woman screaming and other people yelling in the bar's back parking lot. Upon arrival, the officers did not find anyone in the premises' back parking lot. Officer Steiner spoke to a patron standing outside the bar's front entrance. The patron advised that she too had heard a woman yelling earlier, but she just assumed that the woman was drunk. The patron added that the woman who had been yelling in the parking lot probably left in a vehicle before the officer's arrival. (Ex. 33; test of Steiner.)

22. At about 1:20 a.m. on August 4, 2012, PPB officers responded to the licensed premises on a report of an unwanted person at the bar. Officers arrived and contacted the bartender on duty. She advised that a patron who started yelling and screaming inside the bar had been asked to leave, and had left before the officers arrived. Officers noted that the bar was crowded and busy, and there were additional people, a group of about 20 or so, hanging out in the premises parking lot. There was no security person on duty. (Ex. A34; test. of Strohmeyer.)

23. As the officers were about to leave, they were informed by dispatch that the same problem patron had assaulted another patron in the premises' parking lot. Officer Strohmeyer contacted the assault victim across the street from the premises. She reported that she had been inside Don's Dugout when the problem patron started verbally abusing her. She then went outside, and the problem patron followed her out to the parking lot and hit her multiple times in the face and head. The victim was later hospitalized with facial injuries and bleeding on the brain. (Exs. A34, A35, A36 and A52; test. of Strohmeyer; test. of Nebling.)

24. Licensee Don Douglas was not present at the licensed premises on the early morning of August 4, 2012 when officers responded to the premises to investigate the unwanted person/assault on a patron in the parking lot. (Test. of D. Douglas.)

25. At about 2:10 a.m. on September 1, 2012, PPB officers responded to a report of shots fired in the licensed premises parking lot. On arrival, officers located seven empty 9mm brass Winchester shell casings in the parking lot. Witnesses reported that a person exiting the licensed premises fired shots into the air and then left by car. Moments later, officers were called to Jody's, located at 12035 NE Glisan, on a report of a man yelling and waving a gun around in the back parking lot. Officers determined that the suspect with the gun at Jody's (later identified as Gerry Cunningham) was the same person who had fired the shots in the premises' parking lot a short time before. Officers also determined that the gun, a 9 mm semi-automatic, belonged to Melissa Brouwer, a dancer at Jody's. Brouwer admitted to officers that she and Cunningham had been to Don's Dugout, where Cunningham started arguing with another patron. She said she witnessed Cunningham exit the bar, and then pull out her gun and wave it around while arguing with the other patron. Brouwer claimed that the other patron took the gun and fired the shots into the air. Officers arrested Cunningham and charged him with Felon in Possession of a Firearm, Unlawful Possession of a Firearm, and Unlawful Use of a Weapon. Officers arrested Brouwer and charged her with Furnishing a Firearm Used in a Felony and Hindering Prosecution. (Exs. A38 and 3; test. of Arnold.)

26. Licensee Don Douglas was not present at the licensed premises on the morning of September 1, 2012 when a patron fired shots into the air in the premises parking lot. (Test. of D. Douglas.) He did not learn of the shooting until the police responded to another incident at the bar the following night. (Ex. A40.)

27. At about 11:32 a.m. on September 1, 2012, a woman contacted PPB to report that she had her purse stolen the night before at the licensed premises. The woman advised that she was outside in the parking lot talking to a group of people when a man and woman she did not know approached her. The man grabbed her arm, the woman grabbed her purse and right then, the shots were fired in the parking lot. The woman advised that she took off running without her purse. (Ex. A37; test. of Dobbs.)

28. At about 12:42 a.m. on September 2, 2012, a PPB officer driving past the licensed premises saw a male on the ground in the premises' parking lot, with a large group of people congregating nearby. The officer requested that additional units respond to the location. Officers arrived to find a crowd of about 50 or 60 people in the parking lot, as well as a large crowd inside the bar. They determined that the man on the ground had been involved in a fight in the premises' parking lot. The man, who appeared intoxicated, was conscious and had superficial cuts and swelling on his face. Responding officers also determined that, just before the fighting in the parking lot, two female patrons inside the bar had engaged in a fight. When that fight spilled out into the parking lot, one of the women sprayed the other with pepper spray. The patron who had been pepper sprayed also had a small "goose egg" injury above her right eye from the altercation. She was also visibly intoxicated. Both injured patrons were transported to the hospital for evaluation. (Ex. A40; test. of Jungling.)

29. Licensee Don Douglas was not present at the licensed premises when officers responded to the premises to investigate the man on the ground in the parking lot. When Officer Jungling interviewed the on duty bartender, she indicated that she was working alone that night. She explained that the other bartender scheduled to work did not show up because of the shooting at the bar the night before. The bartender also stated that Licensee did not have any security on site. Officers suggested that the bartender close the bar for the night. Mr. Douglas arrived at the premises a short time later, looking like he had just woken up. He was upset that he had not been called before the bar was closed for the night. He told the officers that he was unaware a shooting had occurred in the parking lot the night before. Officers advised Mr. Douglas to reevaluate the overall security and safety of the premises, and make changes to keep patrons and the community safe. (Ex. A40; test. of Jungling.)

30. On the evening of September 5, 2012, OLCC Inspector Taylor contacted Licensee Don Douglas to discuss the recent incidents at the premises. Mr. Douglas claimed (incorrectly) that the shooter was not a patron of the bar, just someone who drove into the parking lot. When Inspector Taylor asked Mr. Douglas what he was going to do about the ongoing problems at the premises, Mr. Douglas proposed to change his alcohol selections and raise the price on alcohol. Mr. Douglas also said he planned to hire another bartender for weekend nights, and he again mentioned turning the premises into a private club with card access.¹ Inspector Taylor again warned Mr. Douglas about disorderly activities at the premises and about a looming history of serious and persistent problems violation. (Ex. A45; test. of Taylor.)

¹ Later, after researching the costs associated with turning the premises into a private club, Mr. Douglas determined that Licensee was unable to afford the \$7,500 to \$10,000 investment necessary to do so. (Test. of Douglas.)

31. At about 10:39 p.m. on September 12, 2012, PPB officers responded to a reported fight inside the licensed premises. While en route, officers were advised that the patrons involved had run outside, and that a medical response was requested. Officers arrived after the combatants left the premises, but witnesses reported two patrons fighting, with one hitting the other with a glass on the head. (Ex. A42; test. of Jungling.)

32. A short time later, about 11:03 p.m., a PPB officer was dispatched to Portland Adventist Hospital on a report of a person who walked into the emergency room with a stab wound to the hand. The officer contacted the injured person who stated that he had been drinking whiskey at Don's Dugout with some friends when another group of patrons started "talking shit" to him. He explained that he and another patron "had words and then we just started throwing punches." He said he looked down at his hand, and saw that it had been cut. He then fled the premises and caught a ride to the hospital. The patron needed surgery to repair an approximately 10 centimeter cut across the palm of his right hand. (Ex. A41; test. of Toops.)

33. Licensee Don Douglas was not present at the licensed premises on the night of September 12, 2012 when officers responded to the premises to investigate the fight inside the premises. He was called to the premises soon thereafter, and arrived while the officers were still at the scene. Officer Jungling and Mr. Douglas reviewed the surveillance videos, which showed a fight involving several patrons starting near the lottery machines at 10:38 p.m. The group of fighters move from the lottery machines to the front of the bar, the fighting stops and then patrons start leaving the bar in all directions. The video also showed a patron seated on a barstool holding a bandage to the left side of his head. (Ex. A42.)

34. On or about September 13, 2012, Licensee Don Douglas made operational changes at the premises in an attempt to better control patron behavior. Mr. Douglas removed the following alcoholic beverages from the bar inventory: Hennessy cognac, Grey Goose vodka, Grand Marnier orange cognac, Courvoisier VS cognac, Courvoisier Rose cognac and Remy Martin champagne cognac. Mr. Douglas also instituted and posted a dress code, prohibiting certain clothing and attire at the premises.² In addition, Mr. Douglas pledged to be at the

² The posted dress code provided as follows:

Persons wearing the following clothing or displaying
any characteristic listed below are not welcome.

Jerseys, printed t-shirts
Baggy clothing
Tight fitting clothing
Flip flops, Foam soles
Offensive tattoos
Low cut necklines
High heeled shoes
Gang related colors
Hats of any kind
Excessive jewelry
Hoodies
Shaved heads
Sunglasses

premises more often, and to serve as a patron monitor at the premises after 9:00 p.m. on Friday and Saturday nights, if at least two bartenders and a cook were not present. (Ex. 48; test. of D. Douglas.)

35. At some point in September 2012 the City of Portland issued Licensee a time, place and manner ordinance violation notice, and asked the OLCC to suspend Licensee's license on an emergency basis due to the recent serious problems at the premises. (Test. of Kraner.) In addition, on or about September 23, 2012, the Oregon Lottery Commission notified Licensee that would be turning off and removing Licensee's lottery machines on October 8, 2012 due to the recurring problems at the licensed premises. (Test. of J. Douglas; test. of D. Douglas.)

36. At about 11:42 p.m. on September 22, 2012, a PPB officer responded to the licensed premises on an unwanted persons call. The caller reported two suspected prostitutes and their pimp were trolling the premises' parking lot. The officer contacted the two women and the man, who were standing outside the front entrance. They left the area when Licensee Douglas advised them that they were trespassed from the property. (Ex. A56; Ex. A53 at 50.)

37. The following incidents are documented in Licensee's incident log: On October 4, 2012, Licensee's bartender "86'd" a patron for flashing gang signs. On October 5, 2012, Licensee's bartender asked several patrons to leave because they were in violation of the posted dress code. The patrons left without incident. On October 6, 2012, Licensee's bartender asked a patron to leave after he argued with his girlfriend and tried to sell drugs to another customer. On October 9, 2012, the same patron who had been 86'd the weekend before returned to the bar. The bartender again told him to leave, and he left without incident. On the night of October 10, 2012, Licensee's bartender asked two male patrons to leave due to their baggy pants. (Ex. A53 at 54-58.)

38. After the lottery machines were removed from the premises on or about October 11, 2012, Licensee's business slowed down significantly. At about this same time, Licensees Don and Janice Douglas started taking over bartending shifts at the premises. (Ex. A53 at 58; test. of D. Douglas.) Once the crowds thinned and Licensee's staff started enforcing the dress code there were fewer problems at the premises. Officers familiar with the premises and the problem patrons it had been drawing over the past several months attributed the reduction in problems at the licensed premises to the removal of the lottery machines. (Test. of Arnold; test. of Steiner; test. of Jungling.)

39. On or about November 13, 2012, Licensees Don and Janice Douglas again met with representatives from the City of Portland Office of Neighborhood Involvement and agreed to an Abatement Plan to address nuisance activities occurring at the licensed premises. Licensees agreed to operational changes and to increased security at the premises. Among other things, Licensees agreed to have a responsible manager on staff from 8:00 p.m. until close every day and to stop service of alcohol at 12:30 a.m. and close the premises by 1:00 a.m. Licensees also agreed to maintain a detailed incident log and make at least one entry every operating day, to implement a no-reentry policy, and to serve no more than two drinks at a time to any patron. As for security, Licensees agreed to maintain one DPSST certified security person to monitor the premises, inside and outside, from 9:00 p.m. to close on weekend nights and all major holidays. Licensees further agreed to have all patrons entering the premises checked by security, and to have security staff monitor the outside perimeter of the establishment every 15 minutes. (Ex. P1; test. of D. Douglas.)

40. In December 2012, Licensee Don Douglas obtained his DPSST private security executive manager certification to perform security services at the licensed premises. Since that time, in accordance with the Abatement Plan, Mr. Douglas has been performing security duties at the premises, including routinely monitoring the premises parking lot. (Test. of D. Douglas.)

41. On the night of January 7, 2013, a group of female patrons became upset when Mr. Douglas refused them service. They knocked over a chair as they left the premises, and they pushed and shoved Mr. Douglas when he followed them out to the parking lot to get their vehicle license plate. Mr. Douglas did not call the police because he handled the problem patrons himself. He did not think the situation merited police intervention. In documenting the incident in the incident log, Mr. Douglas also noted that two of these three patrons “had been trouble on an earlier visit in November.” (Ex. A53 at 73; test. of D. Douglas.)

42. As of the time of the hearing in February 2013, Licensees Don and Janice Douglas and their daughter were the only bartenders working at the premises. Mr. and Mrs. Douglas currently work at the premises every day, all day during hours of operation. Licensee also employs cooks to work at the premises, and is willing to hire additional DPSST certified security staff. (Test. of D. Douglas.)

CONCLUSIONS

1. There is a history of serious and persistent problems at the licensed premises, based upon incidents occurring between December 30, 2011 and September 12, 2012. ORS 471.315(1)(c).

2. Subsequent to September 12, 2012, Licensee has demonstrated a willingness and ability to control the premises. ORS 471.315(1)(c).

3. The proper penalty for the violation of ORS 471.315(1)(c) is a mandatory 30 day license suspension.

4. Licensee’s license should be renewed because, subsequent to the history of serious and persistent problems, licensee has demonstrated the willingness and ability to control the premises.

OPINION

1. History of Serious and Persistent Problems

The Commission has charged Licensee with a history of serious and persistent problems at the licensed premises pursuant to ORS 471.315(1)(c).³ In the Amended Notice, the

³ ORS 471.315(1)(c) states in relevant part:

(1) The Oregon Liquor Control Commission may cancel or suspend any license * * * if it finds or has reasonable ground to believe any of the following to be true:

* * *

Commission alleged that there were at least 15 serious incidents at the licensed premises over an eight month period, from December 30, 2011 to September 12, 2012. Commission Staff contends that these incidents included assaults, disturbances, fights, shots fired, and guns displayed. Commission Staff also asserts that there have been indications that some of these incidents were gang-related. As the proponent of these allegations, the Commission bears the burden to prove the violation. ORS 83.450(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).

In interpreting ORS 471.315(1)(c), the Commission has found that a history of serious and persistent problems is based on the nature and circumstances of the incidents in each case. Incidents inside the licensed premises count, whether or not they are related to the licensee's sale of alcohol. Incidents outside do not count unless the incident is related to the licensee's sale or service of alcohol. The Commission gives significant weight to severe crimes, such as those involving drugs, violence or the threat of violence to a patron or licensee, unless the incident was isolated and happenstance. Less severe crimes, such as shoplifting, will be given little weight, unless the crime is shown to be related to alcohol. *Handy Food Mart* (OLCC Amended Final Order, 91-L-020, March 1994). A licensee may overcome the history by showing that the problems are not serious or persistent or by demonstrating a willingness and ability to adequately control the premises and patrons' behavior.

In *La Brisa* (OLCC Final Order, 91-L-037, December 1992), the OLCC found that incidents involving persons going into and coming from the licensed premises are related to the exercise of the license privilege and count regardless of whether the persons consumed alcoholic liquor on the premises. In that case, the OLCC found that the language "related to the sale or service of alcohol" does not require a showing that the patron involved purchased, was served or consumed alcohol in the licensed premises. The OLCC presumed that the persons are coming to the premises because the licensee has a license and for the purpose of consuming alcoholic liquor. *Id.*

In *Headless Horseman* (OLCC, Final Order, 92-L-016, June 1993), the OLCC found that the licensed premises had a history of serious and persistent problems where there were seven incidents over 13 months. Although the number of incidents was not large, most of the incidents involved fights. Similarly, in *Balzer's Pub & Grill* (OLCC, Final Order, 99-V-019, March

(c) That there is a history of serious and persistent problems involving disturbances, lewd or unlawful activities or noise either in the premises proposed to be licensed or involving patrons of the establishment in the immediate vicinity of the premises if the activities in the immediate vicinity of the premises are related to the sale or service of alcohol under the exercise of the license privilege. Behavior which is grounds for cancellation or suspension of a license under this section, where so related to the sale or service of alcohol, includes, but is not limited to obtrusive or excessive noise, music or sound vibrations; public drunkenness; fights; altercations; harassment or unlawful drug sales; alcohol or related litter; trespassing on private property; and public urination. Mitigating factors include a showing by licensee that the problems are not serious or persistent or that licensee has demonstrated a willingness and ability to control adequately the licensed premises and patrons' behavior in the immediate vicinity of the premises which is related to licensee's sale or service of alcohol under licensee's exercise of the license privilege.

2001), the OLCC found a history of serious and persistent problems where there were five serious incidents within six months: two fights outside the premises, an assault on a security guard, the display of a gun by a patron who was denied entry to the premises, an assault and robbery upon a waitress by patrons inside the premises, and a very intoxicated person on the street outside the premises.

In *The Hydrant* (OLCC, Amended Final Order, 00-L-006, October 2001), the Commission held that incidents resulting from a licensee's appropriate steps to deal with problem persons by refusing service and/or by removing them from the premises would be counted among those comprising a history of serious and persistent problems. The Commission explained that it will weigh each incident according to its seriousness, as determined by the presence or absence of violence or the threat of violence directed toward persons (serious) or property (less serious). The Commission will consider the licensee's security staff's efforts in evaluating the licensee's willingness and ability to control the problems associated with the licensed premises.

As another example, in *Dr. Feelgood's Pub* (OLCC Final Order, 08-V-052 and 08-V-074, June 2009), the Commission found a history of serious and persistent problems when, over the course of 13 months, there were at least 11 disturbances involving violence or the threat of violence with patrons of the licensed premises inside, or in the immediate vicinity of, the premises. During this same time period, there were at least six other instances of visibly intoxicated patrons, public drunkenness and/or public urination related to the licensee's sale or service of alcohol. In *Big Shots Bar & Broiler* (OLCC Final Order, 09-V-077, April 2010), the Commission found a violation of ORS 471.315(1)(c) where there were 20 disturbances involving violence or threat of violence, along with instances of visibly intoxicated patrons and public drunkenness, and several DUII arrests related to the licensed premises.

In this case, as set out below, the evidence establishes that, during the eight month period in issue (December 30, 2011 to September 12, 2012), Licensee had at least 12 documented disturbances involving violence or threat of violence (disorder, fights, assaults and/or altercations) inside, or in the immediate vicinity of, the licensed premises involving patrons of the licensed premises. In addition, the evidence establishes instances of excessive noise and of unlawful activity in, or related to, the licensed premises (*i.e.*, thefts and the unlawful possession of a firearm).

Disturbances involving violence or threat of violence inside, or in the immediate vicinity of the licensed premises involving patrons of the premises:

(1) December 30, 2011: A female patron threw a pool ball and swung a pool cue at another patron, her longtime boyfriend.

(2) December 31, 2011: Two female patrons started yelling and pushing each other as they exited the premises. The fighting spilled out into the parking lot, with other patrons gathering to watch.

(3) March 14, 2012: A patron punched another patron in the face, causing injury.

(4) March 24, 2012: Two patrons started fighting near the pool tables. Licensee's cook intervened and pushed the patrons out the door.

(5) April 1, 2012: A group of patrons became angry when Licensee's cook removed their drinks. Although the altercation was verbal only, the cook called 911 because he was concerned the patrons might become violent.

(6) May 20, 2012: A vehicle pulled in to the premises parking lot and someone inside the vehicle yelled, "You better run" to a group of people gathered in the parking lot. Seconds later, someone fired off multiple gunshots, two of which struck the premises' exterior wall. Immediately after the gunshots went off, several cars left the parking lot very quickly.

(7) May 26, 2012: Female patrons fought and threw chairs at each other inside the premises. One patron sustained a bloody nose.

(8) June 14, 2012: A male patron grabbed cash from a female patron as she took it out to pay her bar tab. When the female confronted the male, other patrons got involved and an altercation ensued. The male patron brandished a gun and threatened to shoot it.

(9) August 4, 2012: A female patron asked to leave the premises due to her disorderly conduct assaulted another patron in the premises' parking lot.

(10) September 1, 2012: A patron exiting the licensed premises argued with other patrons, and then fired several shots into the air in the premises' parking lot. Officers recovered seven 9mm brass shell casings in the parking lot.

(11) September 2, 2012: Two female patrons inside the premises began fighting. The fight spilled out into the parking lot, where one patron got pepper sprayed. This patron sustained an injury above her eye. Other patrons began fighting in the parking lot, during which a male patron was knocked to the ground. He also sustained injuries to his face.

(12) September 12, 2012: Several patrons physically fought inside the premises. At least two patrons were injured. One patron sustained an injury to his head and another sustained a cut or stab to his hand.

Other documented serious incidents at the licensed premises:

(1) May 29, 2012: A patron stole another patron's purse from the licensed premises.

(2) June 22, 2012: A neighbor living just to the south of the licensed premises complained of excessive noise coming from the premises' back parking lot.

(3) July 22, 2012: A neighbor living immediately south of the licensed premises complained of excessive noise, including persons yelling and screaming, coming from the premises' back parking lot.

(4) September 1, 2012: A woman had her purse snatched in the premises parking lot just before shots rang out in the parking lot.

Licensee argues that many of these incidents are not serious, or that they are mitigated in that alcohol does not appear to be a factor in most of them, and/or because that Licensee's cook

or bartender intervened and ejected the problem patrons from the premises. These contentions are not persuasive.

As discussed above, incidents that occur inside the licensed premises count against a licensee, whether or not they are related to the licensee's sale of alcohol. Additionally, because this is an on-premises licensed business, incidents involving persons going into, or exiting from, the licensed premises are deemed related to the exercise of the license privilege regardless of whether the persons consumed alcoholic liquor on the premises. *La Brisa*, Final Order at 16. For that reason, the incidents that started inside the premises and spilled out into the parking lot, and the disturbances that erupted in the parking lot as patrons exited the premises count as related to Licensee's sale or service of alcohol under the exercise of the license privilege.

As for the May 20, 2012 shots fired incident, though there is no evidence that shooter was a patron of the premises, the shooting occurred in the premises' parking lot and involved persons hanging out in the parking lot. Under the circumstances presented, and given the nature of Licensee's business (an on-premises sales license), it is reasonable to conclude that persons congregating in the premises' parking lot when the premises is open for business are there to patronize the premises. This shooting incident placed patrons, and persons assembled in an area under the Licensee's control, at serious risk of injury or death. For these reasons, the shooting in Licensee's parking lot is considered related to Licensee's sale or service of alcohol. *See La Brisa*, Final Order at 12-13, finding that an incident of "shots fired in the parking lot" was related to the licensee's sale or service of alcoholic liquor; *cf. The Rainbow Market* (OLCC Final Order, 09-V-122, February 2011).⁴

Consequently, Licensee's record of 12 serious incidents involving violence or threat of violence inside or in the immediate vicinity of the licensed premises, plus other incidents of excessive noise and theft at the premises during an eight month period constitutes a history of serious and persistent problems under ORS 471.315(1)(c). *See, e.g., Balzer's Pub & Grill* (five serious incidents within six months constitutes a history of serious and persistent problems); *Rastafarian Private Club* (OLCC, Final Order, 90-V-059, April 1991) (eight serious incidents during a one year period); *Headless Horseman* (seven serious incidents within 13 months); *New Copper Penny Restaurant* (OLCC, Final Order, 04-V-040, October 2005) (eight incidents involving violence or threat of violence in less than seven months); *see also Dr. Feelgood's Pub* (OLCC, Final Order, 08-V-052, -074, June 2009) (11 disturbances involving violence or threat of violence plus six other instances of public drunkenness and/or public urination related to the licensee's sale or service of alcohol over 13 months). The violation of ORS 471.315(1)(c) has been proven.

2. Mitigating Factors/Willingness and Ability to Control the Premises

Having found that Licensee has a history of serious and persistent problems, the next issue is whether there is a basis for mitigation. As noted above, under ORS 471.315(1)(c),

⁴ In *The Rainbow Market*, the Commission found no evidence linking shots fired in the premises' parking lot to the licensee's sale of alcohol. But, *The Rainbow Market* involved an off-premises licensed business, rather than an on-premises licensed business such as Don's Dugout or *La Brisa*. In *The Rainbow Market*, the Commission noted that the presumption that people are coming to a licensed premises because the licensee has a liquor license cannot be made about persons coming to an off-premises establishment. Also, in *The Rainbow Market*, unlike this case, the licensee took action to remove loiterers and unwanted persons from congregating in areas within the licensee's control.

mitigating factors include a showing by the licensee that the problems are not serious or persistent, or that the licensee has the willingness and ability to control adequately the premises. The licensee has the burden of establishing both the willingness and the ability to adequately control the premises. ORS 183.450(2); *Cisco & Pancho's* (OLCC, Final Order, 99-080ES, September 2000).

The Commission has mitigated the penalty from cancellation to a suspension or fine where the licensee has demonstrated a willingness and ability to adequately control the premises. *See, e.g., Girtle's Restaurant & Lounge* (OLCC Final Order, 08-V-079, December 2009) at 19-20 (although there were a few serious problems at, or related to, the premises after the history was established, these problems were more sporadic than persistent and the licensee went several months without having any serious incidents); *Downtown Deli & Greek Cusina*, (OLCC, Amended Final Order, 08-V-028, October 2009) at 23-25 (where there was a several month gap between serious problems and an overall decrease in the need for police service at the licensed premises, the licensee established a willingness and ability to control the premises through operational changes and reduced patron capacity). Similarly, in the licensing context (under ORS 471.313(5)), the Commission has granted renewal of a license with restrictions where the licensee demonstrated the willingness and ability to control the premises and patrons' behavior in the immediate vicinity of the premises. *Cabana Club Café & Grill* (OLCC Final Order, 03-L-010, April 2005); *see also Silver Lace Club* (OLCC Final Order, 10-L-001, February 2011).

The Commission will consider a licensee's security efforts, including taking appropriate steps in dealing with problem persons by refusing service and/or by removing them from the premises in evaluating the willingness and ability to control the problems associated with the licensed premises. *Downtown Deli & Greek Cusina*, Amended Final Order at 24, n. 11; *Girtle's Restaurant & Lounge* Final Order at 19, n. 8; *Cabana Club*, Final Order at 21.

In this case, subsequent to the period charged in the Amended Notice (ending on September 12, 2012), there have been fewer problem incidents associated with the premises and noticeably fewer calls for police service. On September 22, 2012, officers were called to assist Mr. Douglas in removing unwanted persons, two suspected prostitutes and their pimp, from the premises parking lot. After that, Licensee's incident log reflects a few problems at the premises (including a patron 86'd for flashing gang signs, a customer trying to sell drugs to another customer, and patrons upset over being denied service), but these incidents were handled by Mr. Douglas or Licensee's staff and did not require a police response. Licensee's incident log also shows that, since mid-September 2012, Licensee's staff has been enforcing the dress code and refusing service to patrons wearing hoodies and other attire deemed inappropriate.

Licensee attributes the reduction in problems in and around the premises subsequent to September 12, 2012 to the removal of certain liquors from Licensee's inventory, the posting and enforcement of a dress code, and Mr. Douglas's increased presence at the premises. On the other hand, police officers familiar with the premises and the surrounding neighborhood attribute the reduction in problems to the removal of the lottery machines and to persons with a propensity to cause trouble choosing to patronize other establishments. All of these factors likely contributed in some fashion to the reduction of problem incidents at the licensed premises.

In *Downtown Deli & Greek Cusina*, the reduction in serious problems at the premises and an overall decrease in the need for police service was attributable to a combination of factors, not all of which were of the licensee's volition. There, after a spate of serious problems, the licensee

made operational changes and retrained and refocused its security and bar staff. In addition, the involuntary closure of one of the premises' three floors resulted in a reduction in the licensee's patron capacity. The reduced capacity and resultant smaller crowd enabled the licensee to better control the premises and patrons' behavior.

Here, too, the removal of the lottery machines in October 2012, the smaller crowds at the licensed premises, Mr. Douglas' increased presence at the premises and Licensee's implementation of the Abatement Plan in November has enabled Licensee to better control the premises and patrons' behavior in the immediate vicinity of the premises. Though Licensee was ineffective at controlling the premises and patrons' behavior during the eight month period alleged in the Notice, Licensee has since made operational changes that, in combination with the removal of the lottery machines, have reduced the number and frequency of problems at the premises. Thus, similar to *Downtown Deli*, Licensee has demonstrated a basis for mitigation of the sanction.

Citing to *Felipe's Finest Mexican & Seafood Restaurant* (OLCC Final Order, 06-V-016, February 2007), Commission Staff argues that a four month break in serious incidents is not sufficient to show the problems were not persistent. In *Felipe's*, the licensee had 10 incidents involving violence or the threat of violence over a 10 month period, and then an intervention meeting with the OLCC. Following the intervention, the licensee had no problem incidents for four months. After that, serious problems recurred, and there were 17 additional incidents, 13 of which involved violence or the threat of violence, over the next 10 months. In that context, the Commission held that four months without problem incidents was insufficient to prove the problems were not persistent over the two year period.

This case, however, presents different circumstances. As discussed above, conditions at the premises have changed since September 2012. The crowd is smaller. The premises is once again operating as relatively quiet neighborhood bar, as it did before the serious problems began. Unlike *Felipe's*, where the licensee's serious problems began only 14 months after the premises opened for business, Licensee here operated for years without a violation and had relatively few calls for police service prior to late December 2011.

In this context, Licensee's four month period without significant incidents following the eight month history of serious and persistent problems is sufficient to show the serious problems are not likely to persist. Also unlike *Felipe's*, where the licensee did not adhere to the terms of its compliance plan, Licensee here has addressed the problems at the premises and appears to be in compliance with the terms of the Abatement Plan. Therefore, *Felipe's* is not controlling.

3. Sanction

The Commission treats a violation of ORS 471.315(1)(c) as a Category I violation. OAR 845-006-0500(7). The standard penalty of a first Category I violation is cancellation of the license. OAR 845-006-0500, Exhibit 1. The Commission also has the discretion to take into account the particular circumstances of each case, and increase or decrease the sanction where there are aggravating or mitigating circumstances. OAR 845-006-0500(7)(c).

As discussed above, following a history of serious and persistent problems over eight months, Licensee has demonstrated that the problems are no longer persistent and that, with operational changes and compliance with the Abatement Plan, it has the ability to adequately

control the premises. Therefore, mitigation of the standard sanction is appropriate.

In *Downtown Deli*, Amended Final Order at 26, the Commission expressed the intention to impose an appropriate period of mandatory suspension (not less than one day and no more than 30 days) where a licensee has had a history of serious and persistent problems, but there are grounds for mitigation of the standard penalty. The Commission reasoned that giving a licensee an option of paying a civil penalty in lieu of suspension is insufficient to deter violations of this magnitude and or to encourage rapid resolution of the underlying problems. *Id.* The Commission affirmed this holding in *Girtle's Restaurant & Lounge*, Amended Final Order at 21.

Pursuant to the Commission's established guidelines, the standard penalty for a first Category I violation is cancellation, whereas the standard penalty for a first Category II violation is a 30 day suspension, without any option for civil penalty in lieu of suspension. OAR 845-006-0500, Exhibit 1. Based on the Commission's penalty guidelines and the Commission's pronouncements in *Downtown Deli* and *Girtle's Restaurant & Lounge*, the appropriate penalty in this case for Licensee's violation of ORS 471.315(1)(c) is a 30 day suspension.

4. License Renewal

In its January 22, 2013 Amended Notice, the Commission also proposed to refuse to renew Licensee's license based upon ORS 471.313(5) (history of serious and persistent problems) and 471.313(4)(g) (poor record of compliance).⁵

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).

As discussed in detail above, Licensee has a history of serious and persistent problems violation, which also constitutes a poor record of compliance. But, despite this violation record, the Commission finds, for the reasons set out below, that Licensee's license renewal should be granted with restrictions on the license.

A poor record of compliance 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); *see also Hale's Tavern* (OLCC, Final Order, 85-L-010, June 1985). 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, 06-V-029, December 2007). As discussed in *Quincy Store* (OLCC Final Order, 02-V-008/L-001,

⁵ Pursuant to ORS 471.313(4) and (g), the Commission "may refuse to license any applicant * * * if the Commission has reasonable ground to believe any of the following to be true":

(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.

December 2002), factors to be considered in determining whether good cause exists 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 violation.

In *Downtown Deli*, Final Order at 28-31, the Commission decided to renew the licensee's license despite the violation of ORS 471.315(1)(c) where the licensee adopted and adhered to new policies and procedures that significantly reduced the number of serious problems related to the licensed premises. Similarly, in *Girtle's Restaurant and Lounge*, Final Order at 23, the Commission opted to renew the license despite the licensee's history of serious and persistent problems because the licensee implemented new measures that resulted in a reduction in the number and frequency of serious problems. In both cases, the Commission imposed restrictions on the licensees' sale and service of alcohol and added requirements for control of the premises to ensure the licensees' future compliance and reduce the likelihood of future disturbances.

As discussed above, subsequent to that history, serious problems did not continue and Licensee has shown a willingness and ability to adequately control the premises and patrons' behavior in the immediate vicinity. Therefore, consistent with prior Commission final order precedent, Licensee's license should be renewed. *See, e.g., Cabana Club* Final Order; *Silver Lace Club* Final Order.

Here, Commission Staff has requested that if Licensee's license is to be renewed then restrictions such as reduced hours of alcohol service, limits on alcohol consumption and the presence of certified security staff should be imposed on the license. Given Licensee's history and the current circumstances at the premises, restrictions on the license consistent with the Abatement Plan are warranted. To further ensure that Licensee is not a poor risk for future compliance and to reduce the likelihood of disturbances in the future, the following restrictions are appropriate:

1. All alcohol sales and service at the licensed premises is prohibited between 12:30 a.m. and 2:00 a.m. Licensee shall prohibit the consumption of alcoholic beverages from 1:00 a.m. until 7:00 a.m.
2. The licensed premises must be closed to the public between the hours of 1:00 a.m. and 7:00 a.m.
3. Licensee shall limit each patron to possessing no more than one container of alcohol at one time. Licensee shall limit the amount of alcohol in a container to no more than 16 ounces of malt beverage, 6 ounces of wine, or 2 ounces of distilled spirits.
4. Licensee shall have at least one Department of Public Safety Services and Training (DPSST) certified security staff on duty on the premises from 8:00 p.m. until the close of business. The sole duties of this DPSST certified staff person are to monitor patron behavior inside the premises and in the immediate vicinity of the premises, including the parking lot, for compliance with laws.

5. Licensee shall have DPSST certified⁶ security staff patrol the parking lot every 15 minutes when the premises is open to the public. Security staff patrolling the parking lot will be identifiable by wearing either a bright colored traffic safety vest or a t-shirt with the premises' trade name clearly printed on the front and back. Patrolling the parking lot consists of physically exiting the premises and walking to all four corners of the premises' parking area.

6. Licensee shall have DPSST certified security staff check all persons entering the premises. Licensee shall deny entry to persons without valid identification, persons exhibiting signs of intoxication, or persons not in compliance with the dress code.

7. Licensee shall submit a plan of the premises to the Commission for approval that includes a designated smoking area.⁷ Licensee shall not allow patrons to enter or re-enter the premises between 12:00 a.m. and 7:00 a.m., except patrons wishing to smoke who exit the premises to access the designated smoking area.

Should Licensee fail to comply with a restriction on the license, then the license would be subject to cancellation under the provisions of OAR 845-005-0355(5) and OAR 845-006-0500(7).

FINAL ORDER

The Commission orders that, for the violation of ORS 471.315(1)(c), the Full On-Premises sales license of Don's Dugout, LLC, Don Douglas, Managing Member and Janice Douglas, Member dba Don's Dugout, at 11642 NE Halsey Street, Portland, Oregon be **SUSPENDED** for 30 days.

It is also ordered that, the application for renewal of the Full On-Premises sales license filed by Don's Dugout, LLC, Don Douglas, Managing Member and Janice Douglas, Member dba Don's Dugout, at 11642 NE Halsey Street, be **GRANTED** with the following restrictions:

1. All alcohol sales and service at the licensed premises is prohibited between 12:30 a.m. and 2:00 a.m. Licensee shall prohibit the consumption of alcoholic beverages from 1:00 a.m. until 7:00 a.m.
2. The licensed premises must be closed to the public between the hours of 1:00 a.m. and 7:00 a.m.

⁶ In the Administrative Law Judges Response to Staff's Comments and Licensee's Exceptions to Proposed Order, the ALJ agreed with staff's request to clarify restrictions number 5 and 6 to specify that persons performing the listed duties be DPSST certified because the duties described in the two restrictions fall within the list of duties requiring DPSST certification pursuant to ORS 181.870(7) and (8).

⁷ A review of the findings of fact by the Commission shows that Licensee has not designated a smoking area for the premises. Consequently, the Commission concludes that Licensee must designate a smoking area in order to accomplish the objectives of restriction number seven. The smoking area does not need to be enclosed with a physical barrier, but the smoking area must have defined boundaries which can be observed for the purpose of enforcement.

3. Licensee shall limit each patron to possessing no more than one container of alcohol at one time. Licensee shall limit the amount of alcohol in a container to no more than 16 ounces of malt beverage, 6 ounces of wine, or 2 ounces of distilled spirits.
4. Licensee shall have at least one Department of Public Safety Services and Training (DPSST) certified security staff on duty on the premises from 8:00 p.m. until the close of business. The sole duties of this DPSST certified staff person are to monitor patron behavior inside the premises and in the immediate vicinity of the premises, including the parking lot, for compliance with laws.
5. Licensee shall have DPSST certified security staff patrol the parking lot every 15 minutes when the premises is open to the public. Security staff patrolling the parking lot will be identifiable by wearing either a bright colored traffic safety vest or a t-shirt with the premises' trade name clearly printed on the front and back. Patrolling the parking lot consists of physically exiting the premises and walking to all four corners of the premises' parking area.
6. Licensee shall have DPSST certified security staff check all persons entering the premises. Licensee shall deny entry to persons without valid identification, persons exhibiting signs of intoxication, or persons not in compliance with the dress code.
7. Licensee shall submit a plan of the premises to the Commission for approval that includes a designated smoking area. Licensee shall not allow patrons to enter or re-enter the premises between 12:00 a.m. and 7:00 a.m., except patrons wishing to smoke who exit the premises to access the designated smoking area.

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

Dated this 1st day of May 2013

/s/ Merle Lindsey
Merle Lindsey
Interim Executive Director
OREGON LIQUOR CONTROL COMMISSION

Mailed this 1st day of May 2013

THIS ORDER IS EFFECTIVE ON THE DATE MAILED. The suspension will begin at 7:00 AM on May 16, 2013 and end at 7:00 AM on June 15, 2013.

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.