

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

In the Matter of the License Application for:)	FINAL FINDINGS OF FACT
)	CONCLUSIONS OF LAW
)	AND ORDER
)	
US Market #260, LLC)	OLCC-11-L-003
Lal Sidhu, Managing Member)	OLCC-11-L-003A
PO Box 5209)	
Salem, OR 97304)	
)	
dba: US Market #260 (O))	
910 N Coast Hwy, Suite A)	
Newport, OR 97365)	

HISTORY OF THE CASE

On March 28, 2011, the Oregon Liquor Control Commission (OLCC or Commission) issued a Notice of Proposed License Refusal to US Market #260, LLC, Lal Sidhu, Managing Member (collectively Applicant), doing business as US Market #260 (O), located at 910 N Coast Hwy, Suite A, Newport, Oregon. On April 4, 2012, the Commission issued an Amended Notice of Proposed License Refusal. The notices proposed to refuse to grant Applicant an Off-Premises Sales license pursuant to ORS 471.313(4)(g), alleging that Managing Member Sidhu did not have a good record of compliance with the alcoholic liquor laws of this state. Applicant timely requested a hearing.

On June 14, 2011, the Commission referred Licensee's hearing request to the Office of Administrative Hearings. The matter was assigned to Administrative Law Judge (ALJ) Jim Han, and reassigned to ALJ Lynnette M. Turner.

Prehearing conferences were held on January 9, 2012 and April 12, 2012 before ALJ Turner. A contested case hearing was held in this matter in Salem, Oregon, on April 17, 2012, before Administrative Law Judge Turner. Applicant was represented by Michael Mills, Attorney at Law. Kelly Routt presented the case for the OLCC. OLCC Inspector Steve Berrios and OLCC Investigator David Green testified at hearing on behalf of the OLCC. Managing Member Lal Sidhu testified on Applicant's behalf. The hearing was continued to June 1, 2012.

The hearing reconvened by telephone conference on June 1, 2012. Michael Mills appeared for Applicant, and Kelly Routt appeared on behalf of the OLCC. The hearing was continued and reconvened by telephone conference on August 8, 2012, with Michael Mills and Kelly Routt participating. The hearing was continued and reconvened by telephone conference on August 22, 2012. Michael Mills appeared for Applicant and Kelly Routt appeared for the OLCC. Dan Croy, OLCC licensing technician, testified on behalf of the OLCC. The hearing record remained open until October 16, 2012 for the exchange of written closing arguments. The OLCC and Applicant submitted closing arguments and the record closed on October 16, 2012.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed November 26, 2012.

Applicant filed Exceptions to the Proposed Order on December 18, 2012. Staff filed Comments on the Proposed Order on December 18, 2012. The Administrative Law Judge responded to Applicant's Exceptions and Staff's Comments on February 5, 2013.

On March 1, 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 A17 were admitted into the record without objection at the April 17, 2012 hearing. Exhibits A18 and A19, notices and reports regarding licensing actions issued in March 2012, were not admitted into evidence.

Applicant Exhibits P1 through P9, P11 through P19, P21, P31, P32, P51, P59, P60, P63 and P64 were admitted into the record without objection. Exhibits P10, P26, P28, P34, P36, P37, P40 and P52 were admitted over OLCC's relevancy objections. Exhibit P53 page 1 was admitted; pages 2 through 12 were not admitted, as they were duplicative (Ex. A3). Exhibit 54 pages 1, 2, and 6 through 8 were admitted; pages 3 through 5 were not admitted. Exhibit 70 was admitted with interlineations.

Exhibits P33, P35, P38 and P39 were admitted into evidence over OLCC's relevancy objection, with the proviso that the documents are summaries of records and may not be complete. On the ALJ's further review of these exhibits, they were found to contain several inaccuracies bringing into question their overall reliability.¹ Thus, the exhibits were given no weight.

Exhibits P20, P22, P23, P61, P62 and P73 were not admitted into evidence. Exhibit 57 was not admitted, as the document was not included in the Exhibit packet. Applicant withdrew Exhibits P24, P25, P27, P29, P30, P41 through P50, P55, P56, P58, P65 through P69, P71, P72 and P74.

ISSUE

Whether the Commission has grounds to refuse to grant Applicant's license under ORS 471.313(4)(g) based on Mr. Sidhu's record of compliance with the liquor laws and rules of this

¹ For example, Exhibit 35 lines 20 and 21 are duplicate reports for QFC at NE 33rd (*see* Ex. P36-31 and P36-38), and Exhibit 39 lines 32 and 33 are duplicate reports for Circle K Store #5462 (*see* Ex. P40-28 and P40-34). Exhibit P33 contains a numbering error between items 29 and 33.

state while previously licensed and, if so, whether there is sufficient good cause to overcome the refusal basis.

FINDINGS OF FACT

1. On or about December 9, 2010, US Market #260, LLC applied to the Commission for an Off-Premises Sales license for a convenience store located at 910 N. Coast Hwy, Newport, Oregon. Lal Sidhu is the only member of US Market #260, LLC. (Exhibit A1.)

2. Mr. Sidhu has held Off-Premises Sales licenses at 20 convenience store locations since March 10, 1998, either as an individual owner, partner, shareholder, or member of an LLC. He presently holds licenses at 11 locations. (Ex. A2, P1.)

3. On March 19, 2008, Mr. Sidhu and the Commission entered into a settlement agreement in which Mr. Sidhu agreed to have the following restriction placed on his existing licenses:

(2) Licensee has age verification equipment, as defined in OAR 845-009-0140(1)(b) installed at all of its locations and will install age verification equipment at any new locations at the time of licensure. Licensee will require that all individual employees or licensees use age verification equipment to verify the age of any patron who reasonably appears under the age of 26 who attempts to purchase alcoholic beverages.

(Ex. A17.)

4. Mr. Sidhu, as a licensee, has the following compliance record with the Commission:

Trade Name and Location	License Dates	Compliance History
Center Market (Salem)	3-10-98 to 10-11-99	No violations
K Market (Bend)	8-23-00 to present	Sale to minor decoy: 10-24-01 (Cat III) Sale to minor decoy: 6-4-05 (Cat IIIa)
Knothole Market (Lebanon)	11-15-00 to 11-3-09	Sale to minor decoy: 5-9-02 (Cat III) AVE 6-19-02 Sale to minor decoy: 11-8-05 (Cat IIIa) AVE 12-13-05 Sale to minor decoy: 7-18-09 (Cat III) Restriction violation (failure to use AVE): 7-18-09 (Cat I) License cancelled per Final Order on Default 11-3-09 Restriction violation (failure to use

		AVE): 8-29-09 (Cat I) Letter of Reprimand issued, as license already cancelled
Mt. Angel Market (Mt. Angel)	3-21-00 to 6-12-03 9-18-07 to present	No violations at time of proposed refusal Sale to minor decoy alleged: 10-28-11 Charges Pending (Cat III and Cat I)
Oak Market (Silverton)	2-10-98 to 5-1-02	No violations
US Market #101 (Waldport)	5-14-04 to 2-1-10	No violations
US Market #104 (Newport)	10-30-00 to present	Sale to minor decoy: 11-13-02 (Cat III) AVE 12-2-02
US Market #108 (Salem)	1-1-02 to 11-4-03	Sale to minor decoy: 8-28-03 (Cat III) AVE 9-10-03
US Market #109 (Woodburn)	7-12-02 to 1-4-10	Sale to minor decoy: 9-12-08 (Cat III) Restriction violation (failure to use AVE): 9-12-08 (Cat I) License cancelled and removal from RVP per Amended Final Order on 10-30-12 ²
US Market #115 (Salem)	12-18-02 to 4-1-04	No violations
US Market #120 (Salem)	6-4-04 to 12-27-04	No violations
US Market #125 (Keizer)	10-25-05 to present	No violations
US Market #140 (Eugene)	2-14-05 to 1-22-07	No violations
US Market #145 (Corvallis)	9-1-05 to present	Sale to minor decoy: 12-10-10 (Cat III) Restriction violation (failure to use AVE): 12-10-10 (Cat I) Civil penalty and removal from RVP per Final Order on 2-21-12
US Market #150 (Bend)	12-26-05 to present	Sale to minor decoy: 4-20-06 (Cat IIIa) Sale to minor decoy: 7-23-07 (Cat III)
US Market #155 (Lincoln City)	4-15-06 to present	No violations

² *US Market #109* (OLCC Amended Final Order, OLCC-08-V-112, October 2012).

US Market #170 (Albany)	6-6-07 to present	No violations at time of proposed refusal Sale to minor decoy alleged: 1-21-12 Charges Pending (Cat III and Cat I)
US Market #175 (Gresham)	7-6-07 to present	No violations
US Market #180 (Albany)	9-18-07 to present	Sale to minor decoy: 4-11-08 (Cat IIIa) ³
US Market #190 (Redmond)	1-1-08 to present	Sale to minor decoy: 4-24-09 (Cat III) AVE 1-21-10

(Ex. A2.)

5. In each of the Category I violations attributed to Mr. Sidhu, an employee sold alcohol to a minor without verifying the minor's age. Due to the restriction on his licenses, each incident was charged as a Category I restriction violation, as well as a Category III or III(a) violation. Mr. Sidhu has never personally sold alcohol to a minor. (Ex. A2, test. of David Green, Lal Sidhu.)

6. The Category I violation in the second *Knothole Market*⁴ case was aggravated, as was the Category I violation in *US Market #109*. (Exs. 13 and 16.) The violation in *US Market #145*⁵ was mitigated. (Ex. 17.)⁶

7. Mr. Sidhu appealed the OLCC Final Orders for *US Market #109* and *US Market #180*. The Court of Appeals reversed and remanded the Final Order for *US Market #180*, holding that the OLCC did not interpret the restriction language correctly. The Court reversed and remanded *US Market #109* for reconsideration. (Exs. P59, P60.) On remand, the Commission did not find a Category I violation in *US Market #180*, but upheld the *US Market #109* Category I violation. Mr. Sidhu did not appeal the Category I violations found in the *Knothole Market* and *US Market #145* Final Orders.

8. On October 28, 2011, the OLCC conducted a minor decoy operation at the Mt. Angel Market. On January 21, 2012, the OLCC conducted a minor decoy operation at US Market #170. In both instances, the clerk sold alcohol to the minor decoy. The OLCC has issued notices of violations to Mr. Sidhu in both of those cases. (Test. of Steve Berrios.)

³ *US Market #180* (OLCC Amended Final Order, 08-V-043, October 2012).

⁴ *Knothole Market & Texaco* (OLCC Final Order by Default, May 2010).

⁵ *US Market #145* (OLCC Final Order, 11-V-009, February 2012).

⁶ Errors in this Finding of Fact (FOF) as to which prior Final Orders contained aggravated Category I violations were raised in Staff's Comments on the Proposed Order (Comments) herein. In her response to Licensee's Exceptions and Agency Comments (Response), the Administrative Law Judge (ALJ) acknowledged the errors and agreed to the corrections proposed by staff.

9. Mr. Sidhu had age verification equipment (AVE) installed in all of his licensed locations before the 2008 restriction was imposed and has trained his employees in its use.⁷ It has been Mr. Sidhu's policy to require employees to use the AVE if a customer seeking to purchase an alcoholic beverage appeared to be under the age of 30. Since February 2012, Mr. Sidhu has required his employees to use the AVE if the customer appears to be under the age of 40. (Ex. P9, test. of Sidhu.) Mr. Sidhu conducts quarterly training in alcohol sales for all employees. (Ex. P11.) Mr. Sidhu pays employees \$50 if they follow store policies and do not sell alcohol or tobacco to minor decoys. (Ex. P18.) Starting in July 2011⁸, Mr. Sidhu hired an independent company to conduct quarterly minor decoy operations for the sale of alcohol and tobacco at his licensed locations. In July 2011, Mr. Sidhu contracted to increase the frequency of minor decoy operations to monthly, half for the sale of alcohol and half for the sale of tobacco. (Ex. P54.)

10. Circle K Stores, Inc. was first licensed with the OLCC in 1969 and currently has 15 stores statewide. Fred Meyer Stores, Inc. has been licensed since 1981 and currently has 57 Oregon stores. Safeway Stores, Inc. has 99 stores in Oregon and was first licensed in 1933. Plaid Pantries, Inc. has been licensed since 1965 and has 102 licensed Oregon locations. Mr. Sidhu's compliance record since 1998 has fewer total violations, and fewer violations for sales to a minor, than any of these corporate entities over its entire licensing history. None of these entities has a Category I violation on its compliance record. (Ex. P63, P64.) With the exception of two Plaid Pantry locations, none of the entities has a restriction on its license. (Ex. P64.)

CONCLUSION

The Commission has grounds to refuse to grant Applicant an Off-Premises Sales License pursuant to ORS 471.313(4)(g) based on Mr. Sidhu's compliance record, and there is insufficient good cause to overcome the refusal basis.

OPINION

License Refusal Based on Compliance History

In its Amended Notice, the Commission proposes to refuse to grant Applicant an Off-Premises Sales license under ORS 471.313. This statute provides, in part:

The Oregon Liquor Control Commission may refuse to license any applicant under the provisions of this chapter if the commission has reasonable ground to believe any of the following to be true:

* * * * *

⁷ Licensee excepted to the time period by which AVE equipment was installed in all his stores. In the Proposed Order, the ALJ stated it was "[S]ince 2008"; the correct time period, as asserted by Licensee and agreed to by the ALJ in her Response, is "before the 2008 restriction was imposed".

⁸ In their Comments, staff indicated an error in this FOF concerning the month Mr. Sidhu hired an independent company to conduct minor decoy operations at his stores. In her Response, the ALJ acknowledged the error and agreed to correct "April 2011" to "July 2011" and to delete the reference to Ex. P26 as a basis for the FOF.

(4) That the applicant:

* * * * *

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

Commission case precedent has established that the scope of review for a new license application differs from that of a license renewal. In a license renewal context, the Commission reviews only the licensee's compliance record for the premises seeking renewal. When, as here, the Commission receives an application for a new license, it reviews the aggregate compliance records of the applicant and of the individuals who own or have an interest in the business entity. *US Market #145* (OLCC-11-V-009, February 2012), *Center Market #18* (OLCC-10-L-011, April 2011).

Mr. Sidhu is the sole member listed on the application of the applicant, US Market #260, LLC. Mr. Sidhu has held Off-Premises Sales licenses at 20 convenience store locations since 1998, and presently holds licenses at 11 locations. The Commission received Applicant's application for an Off-Premises Sales license for a new location on December 9, 2010. At present, Mr. Sidhu has nine stores that have no violations.⁹ However, between 1998 and December 10, 2010, Mr. Sidhu's compliance record shows 13 Category III or III(a) violations for failure to verify the age of a minor and four Category I violations for failure to comply with a license restriction.¹⁰ The four Category I violations occurred in the 27 months between September 12, 2008 and December 10, 2010. Commission Staff contends this poor record of compliance justifies refusing to grant a license to Applicant.

Under the Commission's penalty schedule and rule, OAR 845-006-0500, a Category I violation is the most serious and carries a recommended penalty of license cancellation. *US Market #109*, (OLCC Amended Final Order, OLCC-08-V-112, October 2012). A Category I violation is defined as one that makes a licensee ineligible for a license. OAR 845-006-0500(7). The Commission has categorized the failure to comply with a restriction on a license as a Category I violation. OAR 845-005-0355(5).¹¹

⁹ When the Amended Notice was issued, eleven locations had no violation history. Since that time, two of these locations have been charged with violations.

¹⁰ In the Amended Notice, Commission Staff asserted that Mr. Sidhu's compliance history between 1998 and April 4, 2012, when the Amended Notice issued, included ten Category III and III(a) violations and five Category I violations. One Category I violation attributed to US Market #180 was subsequently dismissed in *US Market #180* (OLCC, Amended Final Order, 08-V-043, October 2012).

¹¹ OAR 845-005-0355(5) provides as follows:

A licensee or permittee who has a restricted license or permit must exercise license or permit privileges only in compliance with the restriction(s). Failure to comply with the restriction(s) is a Category I violation.

Mr. Sidhu's Category I violations arise from his failure to comply with a restriction on his license. The 2008 settlement agreement between Mr. Sidhu and the Commission created a restriction on Mr. Sidhu's licenses that requires the licensee to install age verification equipment at all of the licensed locations, and obligates the licensee to require that all employees use this equipment when fulfilling the freestanding age-verification obligation under OAR 845-006-0335(1)(a). The Commission found that Mr. Sidhu violated that restriction on five separate occasions at four different licensed locations. Mr. Sidhu appealed two of those determinations, against *US Market #180* (OLCC Final Order, 08-V-043, October 2009) and *US Market #109* (OLCC Final Order, 08-V-112, January 2010). In *US Market #180*, the Court of Appeals held that the agency did not interpret the restriction correctly and that Mr. Sidhu did not, in fact, violate the restriction. *US Market #180, LLC v. OLCC*, 249 Or App 666 (2012). In *US Market #109*, the Court upheld the violation, but remanded the case to allow the OLCC to reconsider the imposed sanction. *US Market #109, LLC v. OLCC*, 250 Or App 335 (2012).

Applicant argues that the other Category I violations should not be considered, as they were based on the same agency interpretation of the license restriction that the court found to be erroneous in *US Market #180*. This argument is without merit. Applicant did not appeal the adjudication of these other violations and has cited no legal authority allowing reversal of these final determinations in this forum. Thus, Mr. Sidhu retains a record of four Category I violations during the period of September 2008 through December 2010.

Applicant also argues that the license restriction requiring employees to use the AVE resulted in significantly disproportionate penalties for sales to minors compared to other licensees without such a restriction. This is correct and is, in fact, the rationale behind such license restrictions. The Commission imposes restrictions on the licenses to motivate licensees to comply with the liquor laws. In this case, Mr. Sidhu agreed to the placement of a restriction on his licenses, and consequently to the more severe sanctions for lack of compliance. Mr. Sidhu cannot now collaterally attack his prior stipulated settlement with the Commission.

As Applicant notes, Circle K Stores, Inc., Fred Meyer Stores, Inc., Safeway Stores, Inc. and Plaid Pantries, Inc. have never been denied licensing for a new location, despite having numerous Category III/IIIa violations on the corporations' records. Applicant argues that this demonstrates disparate treatment of Mr. Sidhu. However, these corporate licensees have no Category I violations on their records, which is a clear distinction from Mr. Sidhu and his corporate entities. Applicant argues that the underlying conduct involved in the violations is the same (*i.e.*, sales to a minor), but that assertion is incorrect. Mr. Sidhu agreed to a restriction on his license, so the act of selling alcohol to a minor/failing to verify age not only violates the law, it also violates the restriction agreement. Under the OLCC's administrative rules, the failure to comply with a restriction results in a Category I violation for any licensee. Applicant has not shown disparate treatment because these corporations do not have similar compliance records, and therefore are not similarly situated.

Applicant next argues that the OLCC has no objective standard to determine a poor record of compliance, which results in unjust and discriminatory treatment among Licensee, Applicants and individuals. OLCC case precedent establishes that a Category I violation together with a Category III violation constitutes a poor record of compliance. See *US Market #109*, *US Market*

#145, *City Center Food Mart*, (OLCC Final Order, OLCC-08-V-070, September 2009), *Cedars Restaurant & Lounge* (OLCC Final Order, OLCC-08-V-099, October 2009). A poor record of compliance determination is not invalidated where the violations do not result in cancellation or non-renewal due to a showing of good cause. *US Market #109, Downtown Deli and Greek Cuisina*, (OLCC-08-V-028, October 2009).

Commission witnesses testified that the first consideration in determining a poor record of compliance is the number and nature of violations on a licensee's compliance record. In the absence of any Category I violations, the Commission will generally not find a poor record of compliance. This is consistent with the case precedent cited above. If Category I violations are present, OLCC license investigators look further into the number of violations in relation to the number of licensed locations, the nature of the violations, and the time frame in which the violations occurred. OLCC case precedent includes these considerations in the determination of good cause to overcome a license refusal, as discussed below.¹²

ORS 471.313(4)(g) allows the OLCC discretion in refusing to license an applicant, requiring only a "reasonable ground to believe" that the applicant has a poor record of compliance. Case precedent cited above provides an objective standard of what constitutes a poor record of compliance. Given this standard, Mr. Sidhu's overall record of compliance as a licensee – four Category I violations and 13 Category III or IIIa violations over 12 years – constitutes a poor record of compliance. The next determination, therefore, is whether Mr. Sidhu has shown good cause to overcome the refusal basis.

Good Cause

An applicant with a poor record of compliance may show good cause to overcome a license refusal under ORS 471.313(4)(g). In determining whether good cause exists, the Commission will consider the following factors:

- (a) Lengthy period(s) of time without violations as a licensee;
- (b) The nature/seriousness of the violation;
- (c) Personal involvement by the licensee;
- (d) Whether the licensee took immediate corrective steps following the violation;
- (e) Time passage since latest violation;
- (f) Whether the incident was isolated;
- (g) Whether the violation is aggravated or mitigated;
- (h) Willingness to have a permanent restriction;
- (i) Acceptance of responsibility versus evasion of responsibility for the violation.

See US Market #145, Final Order at 16; *US Market #109*, Amended Final Order at 11-12. In both

¹² OLCC provided information from OLCC's Licensing Manual in its closing argument and encouraged the ALJ to take judicial notice of the document. It is unclear whether this manual is available to licensees or applicants for a license. While this manual outlines overall OLCC policy and it appears that the inspector who made the decision to refuse Applicant's license followed its general precepts, no OLCC witness testified to the existence of this manual or the use of it in his decision making. For this reason, the document is not admitted into evidence.

of these cases, Mr. Sidhu sought to renew a license and the review was limited to the compliance history of the particular location at issue. In this action, however, Mr. Sidhu has applied for a new license and therefore his aggregate record of compliance is relevant.

For the reasons explained below, Mr. Sidhu's overall compliance record at all of his licensed locations does not support a finding of good cause to overcome the license refusal:

(a) *Lengthy periods of time without violations as a licensee:* Mr. Sidhu was first licensed in 1998. Excluding 2004, Mr. Sidhu has accrued at least one violation per year since 2001. Although his last adjudicated violation was from a December 2010 incident, Mr. Sidhu currently has two additional sale to minor allegations (from October 2011 and January 2012) pending adjudication. Thus, this factor weighs against Applicant.

(b) *Nature/seriousness of the violation:* Mr. Sidhu's record contains four license restriction violations within the last four years which, as discussed above, are considered Category I, or the most serious, violations. This factor also weighs against Applicant.

(c) *Personal involvement by the licensee:* While Mr. Sidhu did not personally sell alcohol to minors or violate the license restriction, his lack of personal involvement does not qualify as mitigation or good cause. Personal involvement by a licensee qualifies as an aggravating factor; lack of personal involvement is merely a neutral factor. Thus, this factor is neutral.

(d) *Whether the licensee took immediate corrective steps following the violation:* Licensee has taken, and continues to take, affirmative steps to train employees on the alcohol sales laws, the requirement to check ID and the restriction requirement to use the AVE. However, there is no evidence that Mr. Sidhu made changes to his business operations **promptly** after these violations so as to prevent future occurrences. Therefore, this factor weighs against good cause.¹³

(e) *Time passage since latest violation:* The most recent adjudicated violation is from December 2010, and occurred within days of Applicant's license application. Although the adjudication process has taken some time, less than two years have passed since the violation occurred. In the interim, Mr. Sidhu had been charged with two additional violations for sales to minor decoys, one in October 2011 and one in January 2012. This factor weighs against Applicant.

(f) *Whether the incident was isolated:* From October 2001, when he received his first violation, to March 2008, when he agreed to the license restriction, Mr. Sidhu's compliance record contained eight Category III/IIIa violations. From March 2008 through December 2010, the month Applicant applied for the license at issue, Mr. Sidhu's compliance record contained five Category III/IIIa violations for sales to minors and four Category I violations for failure to comply with the license restriction. The adjudicated Category III/IIIa violations have occurred at

¹³ Agreeing with the Comments on the Proposed Order, the ALJ, in her Response, changed her conclusion on this factor from "this factor provides little or no good cause" to this factor weighs against good cause.

nine different locations over a period of ten years. The four Category I violations occurred at three different locations: one in 2008, two in 2009 (at a single location, one month apart), and one in 2010. As noted above, Mr. Sidhu has been charged with additional Category III sale to minor violations and Category I restriction violations, which are pending adjudication. Thus, Mr. Sidhu's poor compliance record is not limited to an isolated incident. This factor weighs against Applicant.

(g) *Whether the violation is aggravated or mitigated:* Aggravating circumstances were found in two of the adjudicated Category I violations, and mitigating factors were found in one. This does not weigh in favor of good cause.

(h) *Willingness to have a permanent restriction:* Initially, Mr. Sidhu demonstrated his willingness to have a permanent license restriction by entering into the March 2008 settlement agreement. However, Applicant has been unable to enact effective policies and procedures leading to compliance with the restriction, to some extent undermining the professed willingness to have the restriction in place. Despite the restriction, Mr. Sidhu's employees have continued to repeatedly violate the law. Overall, this factor is neutral with regard to good cause.

(i) *Acceptance of responsibility versus evasion of responsibility for the violation:* Mr. Sidhu has acknowledged that his employees sold alcohol to minor decoys as alleged in the adjudicated violations, and he or his corporate entities have paid any assessed fines. However, despite administrative rules to the contrary,¹⁴ Mr. Sidhu continues to argue that he should not be held accountable for the acts of his employees. This factor is neutral at best.

Of the nine factors discussed above, six weigh against a finding of good cause, three are neutral, and no factors unreservedly support a finding of good cause. Mr. Sidhu's poor record of compliance supports refusal of his application, and he has not shown good cause to overcome this refusal basis. The record demonstrates that Applicant will not be a good risk of compliance with the liquor laws at US Market #260 if a license is granted.

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¹⁴ OAR 845-006-0362 provides:

Each licensee may be held responsible for violation of any liquor control law or administrative rule or regulation of the Commission affecting his license privileges and for any act or omission of his servant, agent, employee, or representative in violation of any law, municipal ordinance, administrative rule, or regulation affecting his license privileges.

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FINAL ORDER

The Commission orders that the application for an Off-Premises Sales License filed by US Market #260, LLC and managing member Lal Sidhu, doing business as US Market #260 (O), located at 910 N Coast Hwy, Suite A, Newport, Oregon, be REFUSED.

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

Dated this 8th day of March, 2013

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

Mailed this 11th day of March 2013

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.