

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

In the Matter of:)	FINAL FINDINGS OF FACT
)	CONCLUSIONS OF LAW
)	AND ORDER
)	
DUBLIN PUB, LTD.)	OLCC-14-V-094
BRIAN BULLARD, PRESIDENT)	
JOHN MACKEY, VICE PRESIDENT)	
KATHRYN BULLARD, SECRETARY/ TREASURER)	

HISTORY OF THE CASE

On October 7, 2014, the Oregon Liquor Control Commission (OLCC or Commission) issued a Notice of Proposed License Suspension/Civil Penalty to Dublin Pub, Ltd. dba Dublin Pub; Brian Bullard, President; John Mackey, Vice President; and Kathryn Bullard, Secretary/ Treasurer (Licensee). In the notice, the Commission alleged a violation of OAR 845-006-0335(3)(b) and proposed a 13-day license suspension or a \$2,145 civil penalty. Licensee, through counsel, timely requested an administrative hearing. On January 12, 2015, the OLCC referred the matter to the Office of Administrative Hearings (OAH).

On March 31, 2015, Senior Administrative Law Judge (ALJ) Monica A. Whitaker of the OAH convened a prehearing conference. Anna Davis represented the Commission. Attorneys Grant Wenzlick and Thomas Walsh represented Licensee. The parties scheduled a hearing for May 14, 2015.

On May 14, 2015, Senior ALJ Jennifer H. Rackstraw of the OAH convened a contested case hearing in Tualatin, Oregon. Ms. Davis represented the Commission. Attorneys Wenzlick and Walsh represented Licensee. The following persons testified: Dana Tawney, OLCC Inspector; Paul Rosenow, OLCC Compliance Technician; Brian Bullard, President of Dublin Pub, Ltd.; and John Mackey, Vice President of Dublin Pub, Ltd. The record closed at the conclusion of the hearing.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed June 9, 2015.

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

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

ISSUES

1. Whether, on August 8, 2014, Licensee's principals, Brian Bullard and John McKay, permitted minor Nicholas Klotzbach to be on the licensed premises, in violation of OAR 845-006-0335(3)(b).
2. If the violation of OAR 845-006-0335(3)(b) is established, what is the appropriate sanction?

EVIDENTIARY RULINGS

OLCC Exhibits A1 through A5 were admitted into the record without objection. Exhibit R1, which Licensee offered, was excluded pursuant to Commission staff's relevancy objection.

FINDINGS OF FACT

1. On April 1, 1996, the Commission issued a Full On-Premises commercial license to Dublin Pub, Ltd.; Brian Bullard, President; John Mackey, Vice President; and Kathryn Bullard, Secretary/Treasurer, dba Dublin Pub, located at 6821 SW Beaverton-Hillsdale Highway, in Portland, Oregon. (Ex. A1; test. of Tawney.) Licensee has a Number I Minor Posting, meaning that minors are prohibited from the licensed premises at all times. (Test. of Tawney; *see* Ex. A4.)
2. In October 1998, Licensee paid a \$390 fine to the OLCC for a violation of providing alcohol to a minor, or (in the alternative) failing to request/verify identification from a person appearing under 26 years of age. In August 1999, Licensee paid a \$780 fine to OLCC for allowing one or more minors to enter and remain in a prohibited area. In July 2005 and March 2008, Licensee paid two fines for violations pertaining to employee service permits. (Ex. A1 at 1-2.)
3. The Dublin Pub offers live music two to three times per week. Typically, Dublin Pub employees collect cover charges at the door for the live performances. On rare occasions, a band performing at the Dublin Pub will provide its own representative to collect cover charges at the door on the band's behalf. Licensee allows the musical performers to keep the cover charges collected. Licensee keeps all bar sales. (Test. of Mackey, Bullard.)
4. In August 2013, the band "Crazy 8s" performed at the Dublin Pub. The band prefers to provide its own representative to collect cover charges. For the August 2013 performance at the Dublin Pub, the wife of one of the band members collected the cover charges. (Test. of Mackey.)
5. Corporate principal John Mackey has worked at the Dublin Pub for more than 12 years. Sometime prior to August 8, 2014, he arranged for the Crazy 8s to perform at the Dublin Pub on August 8, 2014. Mr. Mackey and the band agreed that the band would provide its own sound technician, opening band, and representative to collect the cover charges. (Test. of Mackey.)
6. On August 8, 2014, Licensee had a sign posted at the entrance to the premises that stated the following, in block letters:

NO MINORS
PERMITTED ANYWHERE
ON THIS PREMISES

(Exs. A4, A2 at 3, A5 at 1-2; test. of Tawney.) The words “NO MINORS” was in large, red print. (See Ex. A4.)

7. On the evening of August 8, 2014, Mr. Mackey was working behind the bar and corporate principal Brian Bullard was working in the kitchen at the premises. Dublin Pub employee Robert Hammer was a few feet inside the door of the premises checking the IDs of bar patrons. Nicholas Klotzbach was standing a few feet inside the door of the premises collecting cover charges for the band performance. (Test. of McKay; Exs. A2 at 2, A5 at 2.)

8. Mr. Klotzbach is the son of one of the Crazy 8s band members. (Test. of Bullard.) The band designated him as its representative in charge of collecting cover charges on August 8, 2014. On that date, he was 20 years old. (Exs. A2 at 2, A5 at 2.) He objectively appeared his true age. (See Exs. A3 at 1, A2 at 2.) Neither Mr. Mackey nor Mr. Bullard was aware that he was a minor. (Test. of Mackey, Bullard; see Exs. A2 at 3, A5 at 2.)

9. At approximately 11:07 p.m. on August 8, 2014, OLCC Investigator Dana Tawney and Oregon State Police (OSP) Detective Travis Neubauer entered the Dublin Pub to conduct a retailer compliance inspection. Inspector Tawney observed that a youthful-looking male was standing several feet inside the door, along with another male. The youthful-looking male asked Inspector Tawney and Detective Neubauer to pay the cover charge. In response, they showed their credentials, stated that they were at the premises on official business, and then proceeded farther into the premises. Inspector Tawney wondered whether the youthful-looking male was a minor, so he stopped, returned to the male, and asked him for identification. The male provided his driver license, which identified him as Mr. Klotzbach, age 20. Inspector Tawney asked why he was in the premises, and Mr. Klotzbach responded that he was collecting the cover charge for the bands. He told Inspector Tawney that he had been at the premises for approximately one hour. (Exs. A2 at 2, A5 at 1-2; test. of Tawney.)

10. Detective Neubauer made contact with Mr. Mackey and Mr. Bullard. The three men then joined Inspector Tawney and Mr. Klotzbach. Mr. Bullard and Mr. Mackey stated that they had been unaware that Mr. Klotzbach was a minor, and the two men appeared angry regarding the situation. (Test. of Tawney; Exs. A2 at 3, A5 at 2.) Mr. Bullard was surprised that the band would designate a minor to collect cover charges because the band has been performing for many years and the members knew it was a “21 and over” club. (Test. of Bullard.)

11. Mr. Klotzbach stated that one of the band members had asked him to collect the cover charges that night because the plan for another person to do so had fallen through. (Ex. A5 at 2; test. of Tawney.) At one point during the discussion, Mr. Klotzbach’s mother began to interfere. Mr. Bullard firmly told her to stay out of the matter. (Test. of Tawney; Ex. A2 at 3.)

12. In Inspector Tawney’s opinion, Mr. Bullard was very cooperative on August 8, 2014.

(Test. of Tawney.) Inspector Tawney noted the following in his investigative report:

[Mr.] Bullard accepted responsibility for allowing Nicholas Klotzbach to enter and remain on the premises. He correctly noted that he should have checked the identification of [Mr.] Klotzbach, but trusted the bands knew what they were doing.

(Ex. A2 at 3.) Mr. Tawney also noted in his report that “Licensee was at the premises, [and] had the opportunity to detect the minor[.]” (*Id.*) Mr. Tawney determined that there were no aggravating or mitigating circumstances with regard to Licensee’s violation of state liquor laws. (Test. of Tawney; Ex. A2 at 3.) In Mr. Tawney’s opinion, neither Mr. Mackey nor Mr. Bullard was “involved” in the liquor law violation that occurred on August 8, 2014. (Test. of Tawney.)

CONCLUSIONS OF LAW

1. On August 8, 2014, Licensee’s principals, Brian Bullard and John McKay, permitted minor Nicholas Klotzbach to be on the licensed premises, in violation of OAR 845-006-0335(3)(b).

2. The appropriate sanction for the established violation is a seven-day license suspension or a \$1,550 civil penalty.

OPINION

1. Alleged Violation

Commission staff contends that on August 8, 2014, Licensee violated OAR 845-006-0335(3)(b) by permitting minor Nicholas Klotzbach to be on the licensed premises. As the proponent of that position, the Commission bears the burden of proof. ORS 183.450(2); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position). However, as to any of Licensee’s alleged defenses to the violation, Licensee bears the burden of proof.

OAR 845-006-0335(3)(b) provides, in pertinent part, that “[n]o licensee, permittee, or licensee’s employee will permit a minor * * * [t]o be on licensed premises or an area of the licensed premises prohibited to minors, except as provided in ORS 471.430, 471.480, 471.482, and this rule.”

In *Lava Lanes of Medford* (OLCC Final Order, 04-V-007, February 2005) the Commission set out the test for “permitting” in the context of OAR 845-006-0335(3)(b):

“Permitting” is proved by establishing that the licensee or permittee had knowledge of or had sufficient time and opportunity to detect and determine the minor’s presence at the premises. * * *. It is not necessary to show that the licensee had knowledge of the presence of the minor on the premises; the licensee also permits a minor to remain if the licensee had sufficient time and opportunity

to detect the minor.

Final Order at 6 (internal citation omitted).

Here, Licensee has a Number I Minor Posting, which prohibits minors from being anywhere on the premises. As explained in OAR 845-006-0340(5)(a), “[t]he Commission assigns this posting to an entire premises where there is a drinking environment or drinking alcohol does or is likely to predominate most of the time.”

The evidence establishes that minor Nicholas Klotzbach accessed the premises on August 8, 2014 to collect cover charges on behalf of the performing band, that he was inside the premises for approximately one hour, and that he reasonably appeared 20 years of age at the time. Corporate principal Mackey knew that the band was providing its own representative to collect cover charges at the door of the premises that evening. Both Mr. Mackey and corporate principal Bullard were working that evening – Mr. Mackey in the bar area and Mr. Bullard in the kitchen. The Commission is persuaded, more likely than not, Mr. Mackey and Mr. Bullard had sufficient time and opportunity to detect and determine Mr. Klotzbach’s presence at the premises. *See Lava Lanes*, Final Order at 7 (finding that the server had sufficient time and opportunity to detect a minor when the minor was sitting in an area prohibited to minors for at least 30 minutes); *Murphy’s Oyster Bar and Grill* (OLCC Final Order at 4-6, 85-V-046, December 1985) (finding that 15 to 20 minutes provided “ample time” for the licensee’s employees to detect a minor in the lounge of the premises, and noting that the premises being busy was not a mitigating factor because a licensee has the responsibility to maintain adequate staff to ensure compliance with liquor laws); *Sugar Pine Inn* (OLCC Final Order, 02-V-052, July 2003) (finding a violation where the minor looked his true age of 20 and he had only been in the prohibited portion of the licensed premises for a short period of time); *Lucky Jade Chinese Restaurant* (OLCC Final Order, 09-V-055, April 2010) (finding a violation where a minor was only inside the premises for a few minutes, but the employee was aware of the minor’s presence). The record establishes that Licensee permitted a minor to be on the licensed premises, in violation of OAR 845-006-0335(3)(b).

Licensee contends, however, that Mr. Klotzbach’s accessing of the premises on August 8, 2014 did not violate OAR 845-006-0335(3)(b) because Mr. Klotzbach had a legitimate business purpose for being on the premises. Citing to OAR 845-006-0335(5), Licensee contends that minor Klotzbach was a “contractor” who, under this rule, was permitted on the premises despite the premises’ Number I Minor Posting. OAR 845-006-0335(5) provides:

Minor Vendor or Contractor. A minor, other than a licensee’s employee, who has a legitimate business purpose, may be in the area of the licensed premises normally prohibited to minors. (For example, a minor who is a plumber may repair the plumbing in a prohibited area).

Only a few Commission cases have interpreted this provision and its interplay with OAR 845-006-0335(3)(b). In *Beer Nutz* (OLCC Final Order, 92-V-003, May 1992), the Commission held that a minor entering a prohibited area for the purpose of arranging employment is a legitimate business purpose that is not prohibited by Commission rule or precedent. There, the Commission found no violation where a minor entertainer, who was an independent contractor and not an

employee of the licensee, accessed an area prohibited to minors on one occasion, for approximately 20 minutes, to discuss her work schedule with the licensee. The Commission explained as follows:

The record in this case shows that [the minor entertainer] used the premises' rest room, held several brief conversations with two patrons, and ate a corn dog while she waited to speak with Licensee. These activities were incidental to the business nature of the visit. The Commission concludes that the brevity and business focus of [the minor entertainer's] visit did not require her to restrict her presence on the premises to the premises' dressing room.

Final Order at 11.

Thereafter, in *Boogie Woogies/Stars Cabaret* (OLCC Final Order, 01-V-051, September 2002), the Commission held that the exception in OAR 845-006-0335(5) did not apply to minor entertainers, but rather to visits by contractors, persons who remain on the premises only briefly and for a specific purpose unrelated to the licensee's core business:

The exception in OAR 845-006-0335(5) is intended to apply to visits by contractors, such as plumbers, and only for as long as necessary to complete the contracting task. The plumber would not be allowed under this section to remain in the prohibited area to solicit further work. * * * OAR 845-006-0335(5) does not cover the minor dancers' regular and repeated work at Licensees' premises because [ORS 471.482(3)] talks about the minor not remaining longer than necessary.¹ This section contemplates short visits by contractors who were not involved in the Licensees' core business, such as plumbers and other contractors who are on the premises for short periods and *for reasons not related to Licensees' core business*.

Final Order at 16 (emphasis added).

More recently, in *Silver Dollar Pizza* (OLCC Final Order, 13-V-020/13-L-005, November 2014), the Commission stated the following:

While the [exception in OAR 845-006-0335(5)] is not limited solely to the stated example (a minor who is a plumber repairing the plumbing in a prohibited area), it is limited to a situation in which a minor needs to access a prohibited area for a short period of time to perform a discrete task on the licensee's behalf, such as equipment installation or repair, building construction or remodel, or a meeting or interview with the licensee.

Final Order at 13. In concluding that the exception in OAR 845-006-0335(5) did not apply to the minors in *Silver Dollar Pizza*, the Commission considered that the minors had accessed the

¹ The authorizing legislation, ORS 471.482(3), states: "The commission by rule may permit access to prohibited areas by any minor for nonalcoholic liquor employment purposes as long as the minor does not remain longer than is necessary to perform the duties."

premises for their own purposes, rather than to perform a discrete task on behalf of the licensee, and that they had accessed the premises for purposes related to the preparation and sale of food – one of licensee’s core business functions. *Id.* at 13.

Here, despite Licensee’s contention, the exception in OAR 845-006-0335(5) does not apply to Mr. Klotzbach’s presence at the Dublin Pub on August 8, 2014. First, Mr. Klotzbach was not on the premises that evening for the Licensee’s benefit. Instead, he was there to collect cover charges on behalf of the band because the band preferred to have its own representative handle its money. Second, Mr. Klotzbach was on the premises for reasons related to one of Licensee’s core business functions. The Dublin Pub is a drinking establishment that hosts musical events. Live music is one of Licensee’s core business functions, and collecting cover charges from patrons is a task related to that core function. As previously stated, Mr. Klotzbach’s purpose in accessing the premises on August 8, 2014 was to collect such cover charges. For the above reasons, OAR 845-006-0335(5) does not insulate Licensee from the violation of OAR 845-006-0335(3)(b).

2. Sanction

The violation of OAR 845-006-0335(3)(b) is a Category IV violation, for which the standard sanction for a first violation of this type in a two-year period is a seven-day license suspension or a \$1,550 civil penalty. *See* OAR 845-006-0335(8), OAR 845-006-0500(7)(a)(F), (b), and Exhibit 1 to OAR 845-006-0500(7). Under OAR 845-006-0500(7)(c), the Commission may assess a greater or lesser sanction, as follows:

[I]f the Commission finds aggravating or mitigating circumstances, it may assess a greater or lesser sanction. Some of the reasons the Commission may mitigate a sanction are: good faith effort to prevent a violation; and extraordinary cooperation in the violation investigation that shows the licensee or permittee accepts responsibility. Some of the reasons the Commission may aggravate a sanction are: a prior warning about compliance problems; repeated failure to comply with laws; failure to use age verification equipment which was purchased as an offset to a previous penalty; efforts to conceal a violation; intentional violations; the violation involved more than one patron or employee; the violation involved a juvenile; and the violation resulted in injury or death. The Commission may always increase or decrease a sanction to prevent inequity or to take account of particular circumstances in the case.

By case precedent, the Commission has also found a basis for aggravation where the licensee “personally committed” the violation. *See, e.g., P-Mart* (OLCC Final Order at 7, OLCC-92-V-098, April 1993).

By past practice and case precedent, the Commission has determined that for each aggravating factor, two days shall be added to the suspension, or \$330 added to the civil penalty. Similarly, for each mitigating factor, the Commission has determined that two days shall be deducted from the suspension, or \$330 deducted from the civil penalty. *See, e.g., Parilla Grill* (OLCC Final Order, 01-V-082, August 2002).

Here, OLCC staff seeks to add six days, or \$990, to the standard sanction, for a total sanction of 13 days' suspension or a \$2,145 civil penalty. Staff asserts that aggravation is warranted because two employees (*i.e.* Mackey and Bullard), both of whom are corporate principals, were involved in the violation. Licensee, on the other hand, contends that Mackey and Bullard were not involved in, and did not personally commit, the violation. Licensee further contends that mitigation is warranted for its favorable compliance history and for its full cooperation with OLCC.

A. Aggravation

OLCC staff contends that corporate principals Mackey and Bullard were both involved in the violation because they were on duty at the premises when the violation occurred. Licensee disputes that they were personally involved, and asserts that aggravation on that basis is not appropriate. To determine whether Mackey and Bullard were "involved" in the violation, it is helpful to review Commission precedent regarding this issue.

1. Cases finding direct/personal involvement

In *P-Mart*, the Commission found that the licensee "personally" committed the violation when the licensee (as opposed to one of his employees) knowingly sold beer to a minor without requesting or checking for proof of age.

In *Lotsa Luck Bar & Grill* (OLCC Final Order, 13-V-015/015A, February 2014), the Commission held that the licensee's managing member was "personally involved" in a service permit violation because the managing member was working as a bartender with an expired server's permit.

In *Sugar Pine Inn*, (OLCC Final Order, 02-V-038, July 2003), the Commission determined that the corporate principal was "directly involved" in a violation of failing to check the identification of two minors because the corporate principal was managing the bar where the minors were present for two hours, the minors were openly visible to the principal, and the principal had direct contact with the minors.

In *Bing's Restaurant* (OLCC Final Order, 08-V-057/A/B/C/D, April 2009), the Commission determined that the licensee was personally involved in a violation of failing to admit police onto the premises because he had personally refused a police request to enter the premises.

In *Clancy's* (OLCC Final Order, 14-V-017, -017A, March 2015), the Commission concluded that two employees were "involved" in the sale of alcohol to a minor, even though only one employee rang the sale into the register and actually delivered the alcohol to the minor. The Commission stated, in part:

[B]y taking the minor's drink order and directing the server [employee #2] to deliver the beer to the table, employee [#1] was involved in the sale. While he did not take money from the minor or ring the sale into the register,

he was nevertheless involved in the sale because his acceptance of her alcoholic beverage order constituted an implicit agreement to sell, an essential component of a sale.

Because employee [#1] failed to verify [the minor's] * * * age before he told employee [#2] to deliver an alcoholic beverage to her, he was in fact "involved in the violation" for purposes of OAR 845-009-0135(3)(g) and OAR 845-009-500(7)(c).

Final Order at 7.

2. *Cases finding no direct/personal involvement*

In *Jammers* (OLCC Final Order, 10-V-016, July 2011), the Commission found no basis to aggravate a sanction where a patron consumed alcohol on the premises after 2:30 a.m., even though the licensee and two other employees were on duty at the premises when the violation occurred. The Commission determined that regardless of their presence, the employees and the licensee did not "facilitat[e] the offense through actions other than keeping the premises open."² Final Order at 5.

In *Undefeated Sports Bar & Grill* (OLCC Final Order, 14-V-013, -013A, August 2014), the Commission concluded that the licensee was not "involved" in a violation of minors on the premises, even though the licensee was present when the violation occurred, because the licensee did not intend to perform acts on behalf of the licensee that evening and he considered himself "off duty" when the violation occurred. Final Order at 12.

3. *Mackey and Bullard*

It is reasonable to conclude from Commission precedent that for an individual licensee to be considered directly or personally "involved" in a violation, he or she must have engaged in some type of direct conduct that resulted in the violation. For example, the licensee must have sold or served alcohol to a minor, refused entry to an officer, failed to ask for proof of age from a minor with whom he or she had visual or verbal contact, served alcohol to a patron after 2:30 a.m., or worked without a valid service permit.

In the present matter, corporate principal Mackey was working behind the bar on August 8, 2014, when the violation occurred, and he had no known direct contact with minor Klotzbach until OLCC Investigator Tawney and OSP Detective Neubauer brought the violation to his attention. Similarly, corporate principal Bullard was working in the kitchen during the relevant time period, and had no known direct contact with minor Klotzbach prior to learning that the violation had occurred. Although, as previously discussed, Mr. Mackey and Mr. Bullard "permitted" the minor on the premises because they had sufficient time and opportunity to detect and determine his presence, a finding that they "permitted" the activity is not synonymous with

² The patron consumed beer from a bottle he had hidden from the licensee and the employees. *Jammers*, Final Order at 3.

being directly or personally involved in the violation.³ The Commission has not established that corporate principals Mackey and Bullard were personally involved in the violation, and aggravation of the penalty on that basis is therefore inappropriate.

B. Mitigation

First, Licensee contends that it has a good history of compliance with Oregon's liquor control laws, and that such history should serve as mitigation to the current sanction. Historically, the Commission considered a licensee's compliance history as a potential basis for mitigation. *See, e.g., Six Corners Chevron*, (OLCC Final Order, OLCC-08-V-004/004A/004B, June 2008). However, effective May 2009, the Commission removed compliance history as a basis for mitigation from its administrative rule. *See Cabaret Lounge*, (OLCC Final Order, 08-V-061/064/097, October 2009). In effect, the Commission's current penalty structure takes into account a licensee's past history of violations, or a lack thereof, by starting sanctions at a lower level for licensees with no prior violations of the type involved, and then raising the level of sanctions if there is a prior history of such violations. No further mitigation is available on this basis.

Second, Licensee contends that mitigation is warranted because corporate principals Mackey and Bullard fully cooperated with the OLCC inspector on August 8, 2014. As previously noted, under OAR 845-006-0500(7)(c), the Commission may mitigate a sanction for "extraordinary cooperation in the violation investigation that shows the licensee * * * accepts responsibility."

Commission staff contends that "extraordinary cooperation," as that term is used in the rule, requires cooperation that is above and beyond what is expected, and indeed required, in the normal course of an OLCC investigation. The Commission has found, for example, that a licensee demonstrated extraordinary cooperation when the licensee self-reported a violation to the OLCC or a law enforcement entity. *See, e.g., The Red Carpet* (OLCC Final Order, 14-V-008, -008A, March 2015); *The Grove Restaurant & Bar* (OLCC Final Order, 13-V-025, July 2014); *Main Street Texaco & Mini Market* (OLCC Final Order, 00-V-069, October 2001).

On the other hand, in *Tommy's Too* (OLCC Final Order, 09-V-024, October 2009), the Commission declined to find that the licensee demonstrated extraordinary cooperation in the investigation, even though the licensee appeared to be truthful and cooperative when speaking to an OLCC inspector. The Commission stated, in part:

The fact that the corporate principal of Tommy's Too was truthful with inspectors and did not attempt to conceal information does not rise to the level of extraordinary cooperation; this basic compliance is expected of all licensees. As a result, mitigation of the penalty for this circumstance is not warranted.

³ The distinction between "permitting" and having personal involvement is particularly illuminated when one considers that, in the permitting context, both the knowledge and the conduct (*i.e.* the failure to take reasonable steps to prevent or control the unlawful activity) may be imputed to a licensee.

Final Order at 8. The Commission has also held that a licensee's admission of a violation to an OLCC inspector does not rise to the level of "extraordinary cooperation." See, e.g., *Synthia Smith & Teresa Oakes* (OLCC Final Order, 03-V-012, October 2003); *The New Market* (OLCC Final Order, 04-V-016, January 2005).

In the present case, the record demonstrates that corporate principals Mackey and Bullard cooperated with Investigator Tawney and Detective Neubauer during their interactions on August 8, 2014. However, there is no evidence that such cooperation went beyond that which was reasonably expected of a licensee under similar circumstances, or that the situation was such that there was even the opportunity to display "extraordinary cooperation". Consequently, Licensee has not established that mitigation is warranted on this basis.

C. Conclusion

The appropriate penalty for the established violation of OAR 845-006-0335(3)(b) is a seven-day suspension or a \$1,155 civil penalty.

FINAL ORDER

The Commission orders that for the violation of OAR 845-006-0335(3)(b), the Full On-Premises Sales License held by Dublin Pub, Ltd.; Brian Bullard, President; John Mackey, Vice President; and Kathryn Bullard, Secretary/Treasurer shall be **SUSPENDED** for seven days, or a \$1,155 **CIVIL PENALTY** shall be imposed in lieu of suspension.

If you choose to pay the fine, it must be paid within ten (10) days of the date of this Order; otherwise, the suspension must be served.

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

Dated this 8th day of July, 2015

/s/Steven Marks
Steven Marks
Executive Director
OREGON LIQUOR CONTROL COMMISSION

Mailed this 9th day of July, 2015

THIS ORDER IS EFFECTIVE ON THE DATE MAILED. Any monetary fine or civil penalty set out in the order shall be due and payable 10 days after the date of mailing.

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.