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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)
Proposed Suspension of the)
Wholesale Malt Beverage & Wine (WMBW))
License held by:)

Echanis Distributing Co.)
ECHANIS DISTRIBUTING CO.)
215 SE First)
Ontario, Oregon 97914)
- - - - -)
Malheur County)

FINAL
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

A hearing in the above matter was held on the 2nd day of February, 1984, in Ontario, Oregon, before Hearings Examiner Allen R. Scott. The Licensee appeared in person and was represented by William Van Atta, Attorney at Law, Ontario. The Commission was not represented by legal counsel.

The Hearings Examiner, having considered the record of the hearing, the applicable law and regulations and being fully advised, issued a Proposed Order dated April 17, 1984.

No Exceptions were filed to the Proposed Order within the fifteen (15) day period specified in OAR 845-03-050.

RECORD OF PREVIOUS VIOLATIONS

NONE.

Now, therefore, the Commission hereby adopts the Proposed Order of the Hearings Examiner as the Final Order of the Commission, and enters the following:

FINDINGS OF FACT

1. Licensee has held a Wholesale Malt Beverage and Wine (WMBW) license at all times relevant to these findings of fact.

2. Licensee has been charged with violation of ORS 471.465(2) and (4) (gave financial assistance in the form of credit and equipment to a retail licensee).

3. On June 10 and 11, 1983, the Downtown Merchants Association of Ontario held a festival in the city park to commemorate the centennial of Ontario. The Association obtained a Special Retail Beer license for this function.

4. Some days before the celebration, Edith Wheeler, a representative of the Downtown Merchants Association, ordered beer from the Echanis Distributing Company to be sold at the festival.

5. On June 10, 1983, John Echanis, a partner in the Echanis Distributing Company, drove a truck containing a keg of beer to the park where the celebration was to be held. Upon arrival, he was unable to find Ms. Wheeler or any other representative of the Downtown Merchants Association to obtain payment for the beer. He left the truck and beer at the park for the use of the SRB licensee.

6. Mr. Echanis retrieved the truck and remaining beer later on June 10, but returned them to the park on June 11. Again, he found no one to pay for the beer and left it and the truck at the park for a period of time for the use of the SRB licensee.

7. On June 13, Carmelo Echanis, a partner in the Echanis Distributing Company, went to the Ontario Chamber of Commerce

to report that his company had not been paid for the beer upon delivery.

8. Later on June 13, Edith Wheeler came to Echanis Distributing Company and paid for the keg of beer.

9. Licensee made no charge for the use of the truck. The normal charge is about \$10.00 per day.

10. Licensee has been cooperative with OLCC personnel since licensed in approximately 1968 or 1969, and was cooperative during the investigation of this matter.

11. Licensee has had no citations from the Commission since obtaining the license.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. No manufacturer or wholesaler of alcoholic liquor, no officer, director, substantial stockholder, agent or employee of any such manufacturer or wholesaler shall, directly or indirectly, give, loan, furnish or supply, other than merchandise sold in the usual course of trade, to any licensee authorized to sell alcoholic liquors at retail:

Any finances, money, credit, discounts or rebates. ORS 471.465(2)

The evidence establishes that Licensee provided credit to a Special Retail Beer Licensee on June 10-11, 1983, by delivering beer without obtaining payment for the beer at the time of delivery.

Licensee points out that the circumstances were unusual and not likely to occur again.

2. No manufacturer or wholesaler of alcoholic liquor, no officer, director, substantial stockholder, agent or employee of any such manufacturer/wholesaler shall, directly or indirectly, give, loan, furnish or supply, other than merchandise sold in the usual course of trade, to any licensee authorized to sell alcoholic liquors at retail:

Any equipment other than advertising and point of sale materials and other items of nominal value supplied to all retail licensees without discrimination. ORS 471.465(4).

The evidence establishes that Licensee provided to the retail licensee, without charge, a truck for the dispensing of beer on two days. Licensee argues, however, that this act does not violate the Commission's regulations regarding financial assistance, OAR 845-06-070. Licensee points out that (1)(h) of that rule does not prohibit wholesale licensees from offering to Retail Licensee "miscellaneous gifts not exceeding \$25 fair market value per licensee per calendar year." As the total value of the use of the truck would be about \$20, the gift of the rental would thus not violate the regulation.

The Commission notes, however, that (1)(d) of that rule states that the following act is not considered financial assistance:

"Furnishing equipment or services (e.g., refrigerated van or trailer, refrigerated draught beer systems, employee services) to holders of Special Retail Beer and Special Retail Wine licenses, provided that a reasonable rental or service fee, and not just a nominal fee, is charged."

This provision of the rule is much more specifically related to the facts involved in this case than is (1)(h). The Commission concludes that where both a general provision and a specific provision appear to apply, the specific provision governs. Davis v. Wasco Intermediate Ed. Dist, 286 Or 261, 593 P2d 1152 (1978), Stovall v. Perius, 61 Or. App. 751, 659 P2d 393 (1983). Thus, the specific provision making it a violation to provide a truck without charge controls. Licensee was therefore in violation by furnishing the free use of the truck, although the normal charge would have been less than \$25.

ULTIMATE CONCLUSIONS OF LAW

The Commission may cancel or suspend any license, or impose a monetary penalty in lieu of or in addition to suspension as provided by ORS 471.322, if it finds or has reasonable ground to believe that the licensee has violated any provision of this chapter or any rule of the Commission adopted pursuant thereto. ORS 471.315(1)(a).

The Commission concludes that Licensee violated ORS 471.465(2) and (4) (providing financial assistance in the form of credit and equipment to a retail licensee).

The Commission concludes that Licensee's good record and the fact that the violation was not planned and resulted from unusual circumstances not likely to occur again indicate that the penalty should be mitigated.

FINAL ORDER

It is hereby ordered that Echanis Distributing Company, doing business as Echanis Distributing Company, 215 SE First, Ontario, Oregon 97914, receive a LETTER OF REPRIMAND.

It is further ordered that due notice of such action, stating the reasons therefor, be given as provided by law.

Dated this 7th day of May, 1984.



Allen R. Scott
Hearings Examiner
Hearings Division



C. Dean Smith
Administrator
OREGON LIQUOR CONTROL COMMISSION

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