

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

In the Matter of the Full On-Premises Sales)	FINAL FINDINGS OF FACT
License held by)	CONCLUSIONS OF LAW
)	AND ORDER
LaVon Van)	OLCC-11-L-004
)	
dba: LV's Sports Bar Restaurant)	
and Lounge)	
3530 North Vancouver Ave.,)	
Portland, OR 97212)	

HISTORY OF THE CASE

On March 24, 2011, the Oregon Liquor Control Commission (OLCC or Commission) received a request from LaVon Van, dba LV's Sports Bar Restaurant & Lounge (Licensee) to remove two of four restrictions placed upon Licensee's license and to modify another license restriction. On June 16, 2011, the OLCC issued a Notice of Proposed Refusal to Remove/Modify Restrictions to Licensee. The OLCC found that serious problems continued to occur at the licensed premises and that the restrictions were necessary to prevent problems associated with the licensed premises.

Licensee made a timely request for hearing. The Commission referred the request to the Office of Administrative Hearings (OAH) on July 15, 2011. The case was assigned to John Mann, Senior Administrative Law Judge (ALJ).

On July 27, 2011, the OAH mailed a Notice of Hearing to the parties scheduling the hearing for 9:00 a.m. on September 22, 2011 at the OAH offices in Tualatin, Oregon. ALJ Mann convened the hearing as scheduled on September 22, 2011. Kelly Routt appeared on behalf of OLCC. Licensee did not appear for the hearing.¹ OLCC called Investigator Paul Rosenow to testify on the Commission's behalf. Licensee was declared in default, and the record closed at the conclusion of the hearing on September 22, 2011.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed November 4, 2011.

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

¹ During the hearing, a woman who identified herself as Frewin Kiros came into the hearing room on behalf of Licensee. Ms. Kiros stated that Licensee asked her to come to the hearing on his behalf because he had been subpoenaed to circuit court that day. Because Ms. Kiros was not an attorney, she was not allowed to represent Licensee and was not permitted to remain in the hearing room. Prior to the hearing, Licensee did not request that the hearing be postponed. Licensee did not contact the OAH at any time after the hearing to request that the hearing be rescheduled.

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 a default order adverse to Licensee is appropriate.
2. Whether Licensee's request to remove and/or modify license restrictions should be denied.

EVIDENTIARY RULING

Exhibits A1 through A4, offered by OLCC, were admitted into the record.

FINDINGS OF FACT

1. La Von Van, dba LV's Sports Bar Restaurant & Lounge, has held a Full On-Premises License at 3530 N. Vancouver, Portland, Oregon, since July 27, 2004. (Ex. A1.)

2. On January 7, 2009, the Commission issued a Notice of Proposed License Cancellation to Licensee alleging that the licensed premises had a history of serious and persistent problems in violation of ORS 471.315(1)(c). The Notice alleged that, between February 2007 and October 2008, the licensed premises had at least 29 incidents involving physical altercations, fighting, kicking, punching, slapping, guns being fired, the use of pepper spray, throwing objects and verbal assaults. The Notice alleged that patrons, police officers and premises staff sustained injuries as a result of some of the incidents and that some incidents resulted in property damage. The incidents were alleged to have occurred inside the premises, outside the premises in areas controlled by Licensee, and within the immediate vicinity of the licensed premises. The Notice also alleged incidents of public intoxication and drug possession in the immediate vicinity. (Ex. A3 at 2.)

3. On October 16, 2009, Licensee entered into a settlement agreement with the Commission whereby Licensee accepted responsibility for the violations and agreed that the OLCC could impose the following four restrictions on his license:

1. Licensee shall prohibit the sale, service, or consumption of alcoholic beverages between 1:30 a.m. and 2:30 a.m.
2. Licensee shall limit each patron to possessing no more than one container of alcohol at a time.
3. 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 two DPSST-certified security staff on duty on the premises between 8:00 PM and closing on Friday and Saturday nights to monitor patrons inside the premises and in the immediate vicinity adjacent to the premises.

(Ex. A3 at 1-2.)

4. On March 24, 2011, the Commission received a letter from Licensee, dated March 7, 2011, requesting that restriction No. 1 be modified to allow the sale, service, or consumption of alcohol until 2:00 a.m. Licensee also requested that restrictions Nos. 2 and 3 be removed entirely. (Ex. A2.) The letter stated, in part:

I am certain that the aforementioned restrictions do not prevent LV's Restaurant Sports Bar and Lounge from reaching its goal of a safe environment. Bartenders, Security and the Host have all been informed and will continue to be trained on how to prevent and support all patrons, including those who are visually intoxicated. I am confident that we can maintain a safe environment with the reversal of these restrictions.

5. The Commission assigned the matter to OLCC Inspector Paul Rosenow. (Test. of Rosenow.) As part of his investigation, Mr. Rosenow received records from the Portland Police Bureau reflecting 10 separate incidents in which police were called to the licensed premises between December 23, 2009 and March 26, 2011. The calls included reports of fights, unlawful possession of firearms, assault with mace, drug use, gang activity, and minors on the premises. (Ex. A4; Ex. A3 at 3-4.)

CONCLUSIONS OF LAW

1. A default order adverse to Licensee is appropriate.
2. Licensee's request to remove and/or modify license restrictions should be denied.

OPINION

Default Order

OAR 137-003-0670 provides, in relevant part:

(1) This rule applies when the agency issues a notice of proposed action that does not become final in the absence of a request for hearing. The agency or, if authorized, the administrative law judge may issue a final order by default:

(c) Except as provided in section (2) of this rule, when the agency or administrative law judge notified the party of the time and place of the hearing and the party fails to appear at the hearing[.]

(3)(a) An agency or administrative law judge may issue an order adverse to a party upon default under section (1) of this rule only upon a prima facie case made on the record. The agency or administrative law judge must find that the record contains evidence that persuades the agency or administrative law judge of the existence of facts necessary to support the order.

(c) If the agency determines that testimony or evidence is necessary to establish a prima facie case or if more than one party is before the agency and one party appears at the hearing, the administrative law judge shall conduct a hearing and, unless authorized to issue a final order without first issuing a proposed order, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645. The agency or, if authorized, the administrative law judge shall issue a final order by default in accordance with 137-003-0665.

OAR 845-003-0670(4) authorizes the ALJ to prepare and issue a final order by default where a party fails to appear at the time scheduled for the hearing “and the agency file constitutes the *sole* record.” (Emphasis added.) In this case, Licensee failed to appear for the hearing. However, in addition to the agency file, the OLCC presented testimony from a witness. Because the agency file does not constitute the sole record in this case, the OLCC Administrator, and not the ALJ, has the authority to prepare and issue a Final Order by Default. OAR 845-003-0670(3). Therefore the ALJ issued a Proposed Order on Default for consideration by the OLCC Administrator.

OAR 137-003-0075(3) allows an agency to issue a final order adverse to a party by default only after making a prima facie case on the record. The ALJ reviewed the agency file and considered the testimony presented at the hearing and finds that the OLCC presented a prima facie case sufficient to support an order adverse to Licensee.

Request to Remove and/or Modify License Restrictions

On March 24, 2011, the OLCC received a letter from Licensee requesting that two previously imposed license restrictions be removed, and a third restriction be modified to allow an additional half-hour of liquor sales. OAR 845-005-0355(6) provides:

A restriction remains in effect until the Commission removes it. The licensee or permittee may ask the Commission to remove or modify a restriction. The written request must explain why the licensee or permittee believes the Commission should remove or modify the restriction. The Commission will notify the licensee or permittee, in writing, of its decision to approve or deny the request and the basis for its decision. If the Commission denies the request, the licensee or permittee has the right to a hearing under the procedures in ORS Chapter 183; OAR chapter 137, division 003; and chapter 845, division 003.

Licensee's letter does not explain why the Commission should remove or modify the current restrictions. Rather, the letter merely asserts that removing and modifying the restrictions would not "prevent" Licensee from "reaching its goal of a safe environment."

In previous cases, the Commission has held that after a restriction has been imposed, the Licensee has the burden to demonstrate that the reasons for establishing the restriction no longer exist or are less compelling. *Café Thivu*, (OLCC Final Order, 02-L-005, October 2002); *Peacock Tavern*, (OLCC Final Order, 95-L-024, August 1996.)

In this case, Licensee did not appear for the hearing and thus offered no evidence or explanation as to why the restrictions should be removed or modified. Furthermore, the OLCC presented evidence, in the form of police reports, that suggest that the licensed premises continues to have incidents of violence and unlawful behavior similar to those that led the Commission to impose the restrictions in 2009. Thus, the record does not establish that the reasons for imposing the restrictions no longer exist or are less compelling. Licensee's request to remove and/or modify the restrictions must therefore be denied.

FINAL ORDER

The Commission orders that the Licensee's March 24, 2011 request to remove and/or modify license restrictions be denied.

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

Dated this 30th day of November 2011.

/s/ Stephen A Pharo
Stephen A. Pharo
Executive Director
OREGON LIQUOR CONTROL COMMISSION

Mailed this 30th day of November 2011.

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.