

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

In the Matter of the Off-Premises Sales) FINAL FINDINGS OF FACT
License Held by:) CONCLUSIONS OF LAW
) AND ORDER
)
88 Market, LLC) OLCC-12-V-032
Phan Ngo, Managing Member)
To Phuong Ngo-Hong, Managing Member)
dba 88 MARKET)
9004 SE Woodstock Boulevard)
Portland, Oregon 97266)

HISTORY OF THE CASE

On June 27, 2012 the Oregon Liquor Control Commission (OLCC or Commission) issued a Notice of Proposed License Suspension/Civil Penalty to 88 Market, LLC, Phan Ngo and Phuong Ngo-Hong, Managing Members, dba 88 Market (Licensee). The notice alleged that Mr. Ngo failed to verify the age of a minor, Mariah Calvin, before allowing the minor to buy an alcoholic beverage, when the minor reasonably appeared to be under 26 years of age, in violation of OAR 845-006-0335(1)(a), (b), and (c). The Commission proposed to suspend Licensee's license for 14 days or assess a \$2,310 civil penalty.

Licensee timely requested an administrative hearing. On July 25, 2012, the OLCC referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned the matter to Senior Administrative Law Judge Jennifer H. Rackstraw. A hearing was scheduled for December 18, 2012.

On November 15, 2012, Licensee, through attorney Allen Peters, filed a Motion for Order to Reset Hearing Date. Licensee requested the reset to allow time to depose Mariah Calvin and Miranda Calvin. By letter dated November 16, 2012, Adriana Ortega of the OLCC's Administrative Policy & Process Division informed Mr. Peters that the OLCC would not authorize Mr. Peters to depose Miranda and Mariah Calvin. Also on November 16, 2012, Ms. Ortega informed ALJ Rackstraw, via email, that the OLCC objected to Licensee's motion to reset the December 18, 2012 hearing. On November 21, 2012, ALJ Rackstraw denied Licensee's motion.

On December 10, 2012, the OLCC requested a prehearing conference. On December 12, 2012, ALJ Rackstraw convened a telephone prehearing conference. Mr. Peters represented Licensee. Ms. Ortega represented the OLCC. The parties discussed the OLCC's denial of Licensee's request to depose Miranda and Mariah Calvin and Licensee's objections to certain OLCC exhibits. OLCC advised that it had issued subpoenas to Mariah, Miranda, and Rick Calvin to appear at the upcoming hearing.

On December 18, 2012, ALJ Rackstraw convened a contested case hearing in Tualatin, Oregon. Mr. Peters represented Licensee. Adriana Ortega represented the OLCC. The following persons testified: OLCC Inspector Hector Caballero; Phuong Ngo-Hong; and Phan Ngo.¹ Phung Nguyen, a qualified Vietnamese interpreter, interpreted for Ms. Ngo-Hong. Becky Voelkel of the OLCC observed the hearing but did not participate. The record closed on January 2, 2013, after the receipt of written closing arguments.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed February 25, 2013.

No Exceptions to the Proposed Order were filed within the 25-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:

EVIDENTIARY RULINGS

The OLCC offered Exhibits A1 through A8. Licensee objected to Exhibits A3 through A6. Those objections were overruled, and Exhibits A1 through A8 were admitted into the record.

Licensee offered Exhibits R1 through R10. The OLCC objected to each of those exhibits. The objections to R1 through R7 and R10 were overruled and those exhibits were admitted into the record. The objections to Exhibits R8 and R9 were sustained, and those exhibits were not admitted.

ISSUES

1. Did the OLCC establish, by a preponderance of the evidence, that on January 27, 2012, Phan Ngo failed to verify the age of a minor, Mariah Calvin, before allowing her to buy an alcoholic beverage when she reasonably appeared to be under 26 years of age, in violation of OAR 845-006-0335(1)(a), (b), and (c)?

2. If so, what is the appropriate penalty?

FINDINGS OF FACT

1. During all times relevant to this action, 88 Market, LLC and Phan Ngo and Phuong Ngo-Hong, Managing Members, dba 88 Market (Licensee), have held an Off-Premises Sales license for the premises located at 9004 SE Woodstock Boulevard in Portland, Oregon. The OLCC issued the sales license to Licensee in January 2005. (Exs. A1, A2 at 1-2; test. of Caballero.) Licensee has no previous disciplinary history with the OLCC. (Test. of Caballero.)

¹ The OLCC did not actually subpoena Miranda, Mariah, and Rick Calvin and they did not appear at the hearing.

2. Mr. Ngo (born in 1953) and Ms. Ngo-Hong (born in 1955) are from Vietnam. They have been in the United States since 1979. Mr. Ngo works full-time at 88 Market. Ms. Ngo-Hong works there approximately six hours per week. They have no employees. (Test. of Ngo-Hong.) Mr. Ngo could reasonably be considered to look like an “older Asian guy.” (See Ex. A6.)

3. 88 Market has an in-store video monitor with a recorder. Licensee has seven video tapes—one for each day of the week—for recording purposes. The tapes are recorded over and re-used each week. The recorder was operational in January and February 2012. In March 2012, the recorder broke. A relative in California subsequently repaired the recorder, and it was operational again by late May 2012. (Test. of Ngo, Ngo-Hong; see Exs. R1 through R5.)

4. Mr. Ngo’s typical practice is to request identification from any person who appears under the age of 30 who attempts to purchase alcoholic beverages. On more than one occasion, he has refused to sell alcoholic beverages to persons without valid identification. (Test. of Ngo.)

5. At approximately 7:55 p.m. on January 27, 2012, Portland Police responded to a report of an intoxicated, underage female causing a public disturbance in downtown Portland. Once the police arrived at the scene, they witnessed a screaming and stumbling female who they identified as Mariah Calvin (date of birth January 28, 1994); she was 17 years old at the time. Police initially released Mariah to her mother, Tina Calvin. However, after Mariah attacked Tina, the police placed Mariah back into police custody and waited for Mariah’s father, Rick Calvin to arrive. After Mariah vomited and then became more responsive, the police released her to Mr. Calvin. (Ex. R10 at 1-3.)

6. On January 31, 2012, Mr. Calvin called the OLCC and left a voice mail complaint, alleging that a store had sold alcohol to his underage daughters. OLCC Inspector Hector Caballero received the complaint and called Mr. Calvin the same day. During that phone call, Mr. Calvin informed Inspector Caballero that he believed his two daughters, Mariah and Miranda, had gone to 88 Market with a friend and purchased two 4LOKOS, alcoholic beverages, from a store employee. Mr. Calvin stated that later that same evening, Portland Police called him to report that Mariah was very intoxicated. Inspector Caballero asked Mr. Calvin to provide a written statement. (Exs. A2 at 3, A7 at 1; test. of Caballero.)

7. On February 1, 2012, Inspector Caballero left Tina Calvin a voice mail message requesting a return phone call. On February 2, 2012, Inspector Caballero spoke with Tina and she agreed to bring her daughters to the OLCC for a meeting on February 3, 2012 at 8:00 p.m. Tina and her daughters did not show up for the meeting. On February 8 and 21, 2012, Inspector Caballero left voice mail messages for Mr. Calvin. (Ex. A7 at 1; test. of Caballero.)

8. On the evening of February 23, 2012, Mr. Calvin called Inspector Caballero and reported that Miranda was with him. Inspector Caballero went to Mr. Calvin’s home and interviewed Mr. Calvin and Miranda that same evening. (Exs. A2 at 3, A7 at 1; test. of Caballero.)

9. On February 23, 2012, Miranda, in the presence of her father, informed Inspector Caballero that she, Mariah, and a friend went to 88 Market at approximately 3:00 p.m. on January 27, 2012. Once there, Miranda stated that Mariah grabbed two 4LOKOS, they all walked up to the register, Mariah placed the beverages on the counter, an older Asian man rang up the purchase and placed the beverages in a bag, and Mariah paid with cash. Miranda told Inspector Caballero that the man did not card Mariah and that Mariah does not have a fake I.D. (Ex. A2 at 3-4; test. of Caballero.) Miranda also informed Inspector Caballero that Mariah would not talk to Inspector Caballero because if she talked to him “she feels she will not be able to buy alcohol at the store anymore.” (*Id.* at 4.) Similarly, Miranda told Inspector Caballero that the friend who was with them at 88 Market on the night in question would not talk to him because the friend “also buys alcohol at this store.” (*Id.*)

10. On February 23, 2012, Inspector Caballero obtained an unsigned handwritten statement from Miranda Calvin, which stated, in part:

On January 27th, 2012 me, my sister Mariah, and our friend went to 88 market store so Mariah could buy two four lokos and even though she was only 17 years old the worker there sold the two four lokos to her and didn't card her or anything. He was an older Asian guy. * * *. Mariah has told me that she has bought alcohol from that store before that night and the same guy was the one to sell them to her. There was [*sic*] only us three in the store at the time when the man sold my sister the alcohol.

(Ex. A3.)

11. On February 23, 2012, Mr. Calvin informed Inspector Caballero that Mariah probably would not speak with Inspector Caballero because she purchases alcoholic beverages at 88 Market and she does not want the store to get into trouble. Mr. Calvin also told Inspector Caballero that he did not know the identity of the friend who was with Miranda and Mariah on January 27, 2012. (Ex. A2 at 3-4.)

12. On February 23, 2012, Inspector Caballero obtained a signed handwritten statement from Rick Calvin, which stated, in part:

At 8:20 p.m. on Friday, Jan. 27th 2012, I received a call from * * * 911 dispatch, asking me to call Portland Police[.] When I called Portland Police, they had told that they had my daughter Mariah in custody due to public intoxication. * * * * *. When I arrived, the police took Mariah out of their car and released her to me. She th[e]n began to vomit so Officer Thurman called for an ambulance to come check her out. * * * * *. I had never seen my daughter like this before and she was definitely not the girl we know. * * * * *. The next morning when she woke up, she told me she didn't know how she got to my house and she couldn't remember anything from the night before[.]

(Ex. A4 at 1-2.)

13. On February 28, 2012, Inspector Caballero attempted to call Tina Calvin, but he received a message that the phone was not in service. On February 29, 2012, Mr. Calvin called Inspector Caballero and provided him with another phone number for Tina. On February 29, 2012, Inspector Caballero spoke with Tina via phone and Tina agreed to provide him with a written statement concerning the events of January 27, 2012. Tina also informed Inspector Caballero that Mariah was with Mr. Calvin at the moment. Several minutes after speaking with Tina, Inspector Caballero called Mr. Calvin and left him a voice mail message. (Ex. A7 at 1.)

14. On April 11, 2012, Inspector Caballero called Mr. Calvin. On April 12, 2012, Inspector Caballero called Tina Calvin's phone number three times, and he received a busy signal each time. (Ex. A7 at 1.)

15. On April 17, 2012, Inspector Caballero called Tina Calvin with the intention of speaking with Mariah. Tina handed the phone to Mariah. Mariah told Inspector Caballero that she was busy and that he should call back in 20 minutes. Inspector Caballero called back as instructed and Tina answered. She informed Inspector Caballero that Mariah was busy and could not talk to him. She also told Inspector Caballero that Mariah was avoiding speaking with him and that Mariah likely would not talk to him about the 88 Market incident. (Exs. A2 at 5, A7 at 1; test. of Caballero.) On April 18, 2012, Inspector Caballero called Tina's number but there was no answer. (Ex. A7 at 1.)

16. On May 10, 2012, Inspector Caballero went to 88 Market and spoke with Phan Ngo. Inspector Caballero told Mr. Ngo that two underage girls alleged that they purchased two 4LOKOS from 88 Market on January 27, 2012. Mr. Ngo informed Inspector Caballero that he did not remember selling alcohol to the girls and that he always checks identification of customers purchasing alcohol that look younger than 30 years of age. Mr. Ngo also stated that he and his wife are the only people who work at the store. During the conversation, Mr. Ngo became upset and raised his voice. Inspector Caballero questioned Mr. Ngo about a monitor on the wall in the store. Mr. Ngo told him that the monitor was not hooked up to a recording system and that he just used the monitor to view different areas of the store. (Ex. A2 at 5; test. of Caballero.)

17. On or about May 22, 2012, Inspector Caballero made the following conclusion, based on his investigation:

 Mariah Calvin has refused to speak with me and has been un-cooperative since the beginning of this investigation. I was un-able [to] get a picture of Mariah to determine if she looked underage at the time she purchased the two 4LOKOS from 88 Market. The store has surveillance cameras but does not maintain a recording system. At this time an NVT is appropriate due to another minor, Miranda Calvin, witnessing the transaction of the two 4LOKOS between minor Mariah Calvin and Licensee Phan Ngo.

(Ex. A2 at 5.)

18. On June 27, 2012, the OLCC issued a Notice of Proposed License Suspension/Civil Penalty to Licensee, asserting that on January 27, 2012, Mr. Ngo failed to verify the age of a minor in violation of ORS 845-006-0335(1)(a), (b), and (c). The OLCC proposed either a 14-day license suspension or a \$2,310 civil penalty. (Notice of Proposed License Suspension/Civil Penalty.)

19. On August 31, 2012 and September 5, 13, 19, 20, and 21, 2012, Inspector Caballero tried to call Mr. Calvin, but got no answer. Inspector Caballero left messages for Mr. Calvin on two of those occasions. On September 28, 2012, Inspector Caballero left a business card at Mr. Calvin's home and requested that Mr. Calvin call him. On November 21, 2012, Inspector Caballero attempted to call Mr. Calvin twice. (Ex. A7 at 2.)

20. On November 29, 2012, Inspector Caballero spoke with Mr. Calvin via telephone. Mr. Calvin indicated that he had been out of state for the past one and one-half months. Mr. Calvin provided Inspector Caballero with Tina Calvin's new phone number but informed Inspector Caballero that Mariah would not speak with Inspector Caballero because she was married and did not want her husband to know about the incidents of January 27, 2012. (Ex. A7 at 2.)

21. Inspector Caballero called Mr. Calvin a second time on November 29, 2012 to remind Mr. Calvin that he had subpoenas for him. Inspector Caballero was unable to reach Mr. Calvin, so he left him a message. (Ex. A7 at 2.)

22. On December 6, 2012, Inspector Caballero twice tried to contact Tina Calvin by phone. Each time, he received a message indicating that the phone number had been disconnected or was no longer in service. (Ex. A7 at 2.)

23. On December 13, 2012, Inspector Caballero left a voice mail message for Mr. Calvin, requesting that Mr. Calvin call him. (Ex. A7 at 2.)

24. The OLCC prepared subpoenas for Richard Calvin, Miranda Calvin, and Mariah Calvin to appear at the hearing held on December 18, 2012. (Ex. A8.) However, the OLCC never served the subpoenas. (Test. of Caballero.)

25. The OLCC obtained Department of Motor Vehicles (DMV) records that include a photograph of Mariah Calvin taken on October 2, 2012. In the photograph, she has unlined, youthful facial features and she reasonably appears 26 years of age or younger. The DMV records show an address for Mariah in Sandy, Oregon. (See Ex. A5.)

/ / / /

/ / / /

/ / / /

/ / / /

CONCLUSIONS OF LAW

1. The OLCC did not establish, by a preponderance of the evidence, that on January 27, 2012, Phan Ngo failed to verify the age of a minor, Mariah Calvin, before allowing her to buy an alcoholic beverage when she reasonably appeared to be under 26 years of age, in violation of OAR 845-006-0335(1)(a), (b), and (c).
2. No penalty is appropriate.

OPINION

A. Alleged Violation

OLCC staff asserts that on January 27, 2012, Mr. Ngo violated OAR 845-006-0335(1)(a), (b), and (c) when he failed to verify the age of minor Mariah Calvin before allowing her to buy an alcoholic beverage when she reasonably appeared to be under 26 years of age. The OLCC must prove its allegations by a preponderance of the evidence. *See* ORS 183.450(2) (“The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position”); *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); *Metcalf v. AFSD*, 65 Or App 761, 765 (1983) (in the absence of legislation specifying a different standard, the standard of proof in an administrative hearing is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

OAR 845-006-0335(1) pertains to age verification, and provides:

- (a) ORS 471.130 requires a licensee or permittee to verify the age of a person who wants to buy or be served alcoholic beverages when there is “any reasonable doubt” that the person is at least 21 years old. The Commission requires a licensee or permittee to verify the age of anyone who wants to drink alcoholic beverages, or is in an area prohibited to minors, if there is reasonable doubt that the person is at least 21 years old. “Reasonable doubt” exists if the person appears to be under the age of 26;
- (b) Whenever a licensee or permittee verifies age, he/she must verify it as ORS 471.130 requires (statement of age card or the specified items of identification) and must reject any obviously altered document or one which obviously does not identify the person offering it;
- (c) Licensees must require all their employees who sell, serve, oversee or control the sale or service of alcoholic beverages to verify age as subsection (a) of this section requires.

The record establishes that Mariah Calvin was 17 years old when the alleged incident occurred on January 27, 2012. The record further establishes that Mariah appeared less than 26 years of age in a photograph taken on October 2, 2012. It is therefore reasonable to infer that more than eight months earlier—on January 27, 2012—reasonable doubt existed as to whether she was at least 21 years old. The only remaining issue is whether Mr. Ngo sold alcoholic beverages to Mariah on January 27, 2012 without verifying her age.

The OLCC contends that it has met its burden of proving that Mr. Ngo sold alcohol to Mariah without verifying her age. Licensee contends that OLCC’s factual conclusions are not supported by a preponderance of the evidence.

The OLCC has relied exclusively on hearsay evidence (written statements from Miranda and Mr. Calvin and their verbal statements to Inspector Caballero) to support its allegations. There is nothing in the record aside from that hearsay evidence that directly links Mariah to the purchase of alcohol at 88 Market on January 27, 2012. Under the Administrative Procedures Act (APA), hearsay evidence is generally admissible unless there is some reason to find it unreliable. *See* ORS 183.450(1), 183.482(8)(c);² *Cole/Dinsmore v. DMV*, 336 Or 565 (2004). Whether an agency decision may rest entirely on hearsay evidence depends on whether the hearsay is sufficiently reliable to constitute substantial evidence. The Oregon Supreme Court has articulated a “nonexclusive list of five factors” to consider when determining whether hearsay is substantial evidence:

1. [T]he alternative to relying on the hearsay evidence;
2. the importance of the facts sought to be proved by the hearsay statements to the outcome of the proceeding and considerations of economy;
3. the state of the supporting or opposing evidence, if any;
4. the degree of lack of efficacy of cross-examination with respect to the particular hearsay statements; and
5. the consequences of the decision either way.

Cole/Dinsmore, 336 Or at 570, *citing Reguero v. TSPC*, 312 Or 402, 418 (1991).

² ORS 183.450(1) states:

Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude agency action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible.

ORS 183.482(8)(c) states:

The [Court of Appeals] shall set aside or remand the order if the court finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding.

During his investigation, Inspector Caballero made repeated efforts to speak with Miranda, Mariah, Mr. Calvin, and Tina Calvin. Miranda and Mr. Calvin were somewhat cooperative, and Mariah and Tina Calvin were wholly uncooperative. At hearing, Inspector Caballero acknowledged that OLCC could have sought to compel Mariah (or other relevant individuals) to cooperate with the investigation, but that it is not OLCC's customary procedure to compel cooperation during an investigation. During the time period leading up to the December 18, 2012 hearing, OLCC represented to both Licensee and this administrative law judge that OLCC was serving subpoenas on Mariah, Miranda, and Mr. Calvin to compel their appearance at hearing. Licensee, through counsel, made it explicitly clear during the prehearing time period that cross-examination of those witnesses was of paramount importance to Licensee's case. Indeed, OLCC denied Licensee's request to depose Mariah and Miranda prior to hearing on the ground that Licensee would have the opportunity to conduct cross-examination of them at hearing. Ultimately, however, the OLCC did not serve subpoenas on Mariah, Miranda, and Mr. Calvin and they did not appear for the hearing. Thus, Licensee was never afforded an opportunity to cross-examine those individuals. I am persuaded that the OLCC could have served subpoenas on those individuals in an attempt to compel their appearance at hearing.³ Thus, an alternative likely existed to relying exclusively on hearsay to establish that Mr. Ngo sold alcohol to Mariah on January 27, 2012 without verifying her age.

The hearsay statements from Miranda that an "older Asian guy" at 88 Market sold Mariah alcoholic beverages on January 27, 2012, and that Mariah had previously purchased alcohol at that store, are of critical importance in this matter. The OLCC's case is entirely predicated on Miranda's hearsay statements and Mr. Calvin's multiple-level hearsay statements (regarding what Miranda and Mariah told him). Thus, this factor weighs heavily against the hearsay statements being substantial evidence.

There is no supporting evidence for the hearsay statements of Miranda and Mr. Calvin. The opposing evidence consists of Mr. Ngo's denial that he sold alcoholic beverages to Mariah, and his assertion that he follows a strict practice of requesting identification from anyone attempting to purchase alcohol who appears younger than 30 years of age. This factor weighs against the hearsay statements constituting substantial evidence.

As noted in *Cole/Dinsmore*, when unsworn hearsay constitutes the major support for an agency decision, the importance of providing the adversary with the opportunity to test on cross-examination each of the available declarants' perception, memory, narration, and veracity is undeniable. *Cole/Dinsmore*, 336 Or at 571, citing *Reguero*, 312 Or at 421. There is nothing to suggest that Licensee would have been unable to effectively cross-examine Mariah, Miranda, and Mr. Calvin regarding Mariah's alleged purchase of alcohol at 88 Market on January 27, 2012. Therefore, this factor weighs against the hearsay statements constituting substantial evidence.

³ Inspector Caballero knew Mr. Calvin's address because he had previously met with Mr. Calvin and Miranda there. Moreover, DMV records obtained by the OLCC show an address for Mariah in Sandy, Oregon. OLCC staff could have presumably tried to serve the relevant individuals at those addresses.

Licensee argues that, as a small market that relies heavily on alcohol sales for its revenue, even a 14-day suspension of its ability to sell alcohol will cause a substantial hardship. I conclude that although a \$2,310 civil penalty (which has been proposed) or a 14-day suspension are not negligible sanctions, they are also not excessively burdensome. Thus, this factor is neutral.

Considering the above five factors, I conclude that without other evidence to corroborate the written and verbal statements from Miranda and Mr. Calvin, the hearsay evidence is not sufficiently reliable to constitute substantial evidence on which to base a finding that Mr. Ngo sold alcohol to Mariah on January 27, 2012 without verifying her age. *See, e.g., The Rainbow Market* (OLCC Final Order, 08-V-124, October 2009) (relying on *Cole/Dinsmore* and concluding that a vague hearsay statement of a person not called as a witness offered to prove a fact crucial to the outcome of the hearing was not, in itself, substantial evidence to support the fact); *CS Convenient Services* (OLCC Final Order, 09-V-059, June 2010). Consequently, in determining whether Licensee violated OAR 845-006-0335(1)(a), (b), and (c), the OLCC's uncorroborated hearsay evidence is accorded little, if any, weight.

Mr. Ngo insists that he did not sell alcohol to Mariah on January 27, 2012 without verifying her age, and that he has a consistent practice of checking identification for anyone who looks younger than 30 years of age who seeks to purchase alcohol from his store. Mr. Ngo's testimony appeared credible.⁴

On balance, the hearsay statements of Miranda and Rick Calvin are not sufficiently reliable to support a determination that Mr. Ngo sold alcohol to Miranda on January 27, 2012 without verifying her age. On this record, the OLCC has not proven, by a preponderance of the evidence, that Licensee violated OAR 845-006-0335(1)(a), (b), and (c).

B. Penalty

Because the OLCC did not establish that a violation occurred, no penalty is appropriate.

///

///

///

///

⁴ In its written closing statement, the OLCC asserts that Mr. Ngo is not credible because he told Inspector Caballero on May 10, 2012 that he only used the video monitor for viewing areas of his store, yet he testified at hearing that a recorder was hooked up to the monitor and had been recording on January 27, 2012. I find that Mr. Ngo adequately explained this apparent discrepancy at hearing when he testified that the recorder was broken on May 10, 2012 (and had been since March 2012) and that it was in the process of being repaired in California. Thus, at the time Inspector Caballero visited 88 Market, Mr. Ngo had no video recorder in place and he was just using the monitor for viewing purposes.

FINAL ORDER

The Commission orders that the Oregon Liquor Control Commission's charge that 88 Market, LLC, Phan Ngo and Phuong Ngo-Hong, Managing Members, dba 88 Market violated OAR 845-006-0335(1)(a), (b), and (c) be dismissed.

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

Dated this 1st day of April 2013

/s/ Merle Lindsey

Merle Lindsey

Interim Executive Director

OREGON LIQUOR CONTROL COMMISSION

Mailed this 1st day of April 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.