

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

In the Matter of the Full On-Premises)	FINAL FINDINGS OF FACT
)	CONCLUSIONS OF LAW
Sales License Held by:)	AND ORDER
)	
L& J Rondone LLC)	OLCC-13-V-001
Linda L. Rondone, Managing Member)	OLCC-13-V-001A
Joseph A. Rondone, Member)	OLCC-13-V-001B
)	
dba RELAX SPORTS PUB)	
1350 Plaza Blvd. E)	
Central Point, OR 97502)	

HISTORY OF THE CASE

On December 3, 2012, the Oregon Liquor Control Commission (OLCC or Commission) issued a Notice of Proposed License Suspension/Civil Penalty to L & J Rondone LLC, Linda L. Rondone, Managing Member and Joseph A. Rondone, Member (collectively Licensee), dba Relax Sports Pub, located at 1350 Plaza Blvd. E, Central Point, Oregon. The Notice charged Licensee with a violation of ORS 471.360(1)(b) (permitting an employee to mix, sell or serve alcoholic beverages without a valid service permit) or in the alternative, a violation of OAR 845-009-0015(1)(2)(3)(4) (failing to verify that an employee had a valid service permit or pending application). Licensee timely requested a hearing.

The Commission referred Licensee’s hearing request to the Office of Administrative Hearings on December 14, 2012. The OAH assigned the case to Senior Administrative Law Judge (ALJ) Alison Greene Webster.

On June 17, 2013, the Commission issued an Amended Notice of Proposed License Suspension/Civil Penalty to Licensee, alleging an additional violation. The Amended Notice charged Licensee with a violation of OAR 845-006-0335(1)(a), (b) and (c) (failing to verify the age of a minor before allowing the minor to buy or be served when the minor reasonably appeared to be under 26 years of age).

A hearing scheduled for June 25, 2013 was postponed on Licensee’s request. The hearing was rescheduled for July 30, 2013.

On July 30, 2013, ALJ Webster presided over the contested case hearing in Medford, Oregon. Attorney Andrew Wilson represented the Licensee. Adriana Ortega presented the case for the OLCC.

OLCC Inspector Matt Roberts testified on the Commission’s behalf. Licensee called Charles Liedtke as its only witness. The record closed on July 30, 2013, 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 August 20, 2013. Staff filed Comments on the Proposed Order on September 17, 2013. The Administrative Law Judge responded to Staff's Comments on October 16, 2013.

On December 12, 2013, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Administrative Law Judge, Staff's Comments on the Proposed Order and the Administrative Law Judge's Response to Staff's Comments. Based on this review and the preponderance of the evidence, the Commission enters the following:

ISSUES

1. Whether, from approximately July 10, 2012 to August 11, 2012, Licensee permitted employee Crystal DeDonno to mix, sell or serve alcoholic beverages without a valid service permit issued by the Commission in violation of ORS 471.360(1)(b).

Alternatively, whether from approximately July 10, 2012 to about August 11, 2012, Licensee failed to verify that Crystal DeDonno had a valid service permit or pending application, and/or failed to personally deliver a completed service permit application to the Commission in violation of OAR 845-009-0015(1)(2)(3)(4).

2. Whether, on March 20, 2013, Licensee's employee Brianna Miller failed to verify the age of minor Nicole Hodson before allowing the minor to buy or be served 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).

3. If one or more of the above violations occurred, what is the proper sanction?

EVIDENTIARY RULINGS

OLCC Exhibits A1 through A7 and Licensee's Exhibits P1 through P6 were admitted at hearing without objection.

FINDINGS OF FACT

1. On September 1, 2006, the Commission issued a Full On-Premises Sales license to L & J Rondone LLC, Linda L. Rondone, Managing Member and Joseph A. Rondone, Member, dba Relax Sports Pub, located at 1350 Plaza Blvd #E, Central Point, Oregon. (Ex. A1.)

2. From the time Licensee obtained the license in 2006 until approximately 2009, Licensee employed Jason Kennedy as the premises' manager. Mr. Kennedy was also listed as the manager/contact person in the OLCC's records. After Mr. Kennedy left Licensee's employ, Licensee rehired a former employee, Jason Weinagar, to manage the premises. Mr. Weinagar left Licensee's employ sometime after July 2012. Licensee did not notify the OLCC of these management changes. (Test. of Liedtke.)

3. For the last several years, the Rondones's son, Charles Liedtke, has also been involved in the management and operation of the business. At all times pertinent to this action, Mr. Liedtke functioned as a manager of Licensee's business. Currently, he keeps the books, pays the bills and purchases supplies. As a general rule, he is at the premises four mornings a week and occasionally in the afternoon. Mr. Liedtke is also involved in the hiring of new employees. (Test. of Liedtke.)

4. On or about July 10, 2012, Licensee hired Crystal DeDonno as a fill-in bartender.¹ Ms. DeDonno worked at the premises sporadically for the first few weeks and was out of town on vacation from approximately July 18 to 23, 2012. (Ex. P2.)

5. When Ms. DeDonno was hired, Mr. Liedtke inquired about her service permit. She told Mr. Liedtke that she had "gone on line and taken the test." She claimed to have paperwork in that regard, but she did not produce the paperwork or a valid service permit. (Test. of Liedtke.)

6. On the night of August 11, 2012, OLCC Inspector Matt Roberts was on duty and in the area of the licensed premises when he saw the lights of an emergency vehicle in the premises' parking lot. Inspector Roberts investigated, and learned that a patron leaving the premises had fallen on his face. The emergency responders advised Inspector Roberts that both the patron and a woman he was with were highly intoxicated, and that the patron's intoxication likely contributed to his fall in the parking lot. Inspector Roberts entered the premises to issue verbal instructions to the bartender on duty regarding service of visibly intoxicated persons. (Ex. A2; test. of Roberts.)

7. Upon entering the premises, Inspector Roberts saw Ms. DeDonno mixing, selling and/or serving alcoholic beverages. She was the only employee on duty. He identified himself and asked about the intoxicated patrons. Ms. DeDonno acknowledged serving them. She said they had been at the premises for several hours and had consumed a few drinks, but she did not think that they were visibly intoxicated. She offered to show Inspector Roberts their bar tab. Inspector Roberts reviewed the bar tab. He then instructed Ms. DeDonno on signs of visible intoxication and asked to see her service permit. (Ex. A2; test. of Roberts.)

8. Ms. DeDonno assured Inspector Roberts that she a valid service permit, but she was unable to produce a permit or a temporary permit form. She told Inspector Roberts that she had been working at the premises as a bartender for roughly one month. She looked around the bar and in the back office for her permit. She came back and advised Inspector Roberts that she could not find her "card." Based on Ms. DeDonno's demeanor in responding to questions about her service permit, Inspector Roberts suspected that she did not have a valid permit. He checked OLCC's service permit database, which indicated that Ms. DeDonno did not have a valid permit, a permit application on file and or a record of recently completing a server education course. (Ex. A2; test. of Roberts.)

¹ The record is not clear whether it was Mr. Weinegar or Mr. Liedtke who hired Ms. DeDonno.

9. That same night, Inspector Roberts issued Ms. DeDonno a citation for serving alcohol without a valid permit (ORS 471.360). (Ex. A2 at 5.) He told her that she could not continue mixing, selling or serving alcohol until she had taken the server education course and applied for a permit. Ms. DeDonno told Roberts that she understood. She called an off-duty staff member to relieve her of her bartending duties. (Ex. A2; test. of Roberts.)

10. The following day, August 12, 2012, Ms. DeDonno took and passed an on-line server education course. (Ex. A3.)

11. On Monday, August 13, 2012, Inspector Roberts called Jason Kennedy (the premises' manager/contact person according to the OLCC's records) regarding the service permit violation and left a voice mail on Mr. Kennedy's phone. Inspector Roberts later received a return telephone call from the premises' manager (who Inspector Roberts assumed was Mr. Kennedy). Inspector Roberts set up a meeting with the premises' manager for later in the week. (Test. of Roberts; Ex. A2.)

12. On Wednesday, August 15, 2012, OLCC received Ms. DeDonno's service permit application. (Ex. A3.) The application bore Ms. DeDonno's signature and the date "8-10-12." (Ex. P1.) In the Authorized Signature section, the application identified Relax Sports Pub as the business, and bore a signature of "Jason Kennedy" and the date "8-10-12." (*Id.*) The application did not indicate by check mark or other marking in what capacity under ORS 471.375 (*i.e.*, Licensee/Manager, Authorized Temporary Agency or Provider/Instructor) the signatory was authorized to sign the application. (*Id.*)

13. Mr. Liedtke signed Jason Kennedy's name to Ms. DeDonno's permit application as the Authorized Signature for Relax Sports Pub even though Mr. Kennedy had not worked for Licensee for several years. Mr. Liedtke signed Mr. Kennedy's name to the document instead of his own because, according to Licensee's filings with the OLCC, Mr. Kennedy was still listed as the manager/contact person and Mr. Liedtke was not. (Test. of Liedtke.)

14. On August 17, 2012, Mr. Liedtke met with Inspector Roberts. At the time, Inspector Roberts believed that he was meeting with Mr. Kennedy because he had called Mr. Kennedy to set up the meeting.² During the meeting, Inspector Roberts informed Mr. Liedtke of the service permit violation. Mr. Liedtke said he believed Ms. DeDonno had a valid service permit when she was hired, but he understood that she did not. Mr. Liedtke told Inspector Roberts that Ms. DeDonno began working as a fill-in bartender on approximately July 10, 2012. (Ex. A2; test. of Roberts.)

15. Also during their August 17, 2012 meeting Inspector Roberts advised Mr. Liedtke that he had searched the internet regarding Ms. DeDonno and had found posts from her Facebook page indicating that she was working at the premises and serving alcohol around that same time. The inspector advised that had printed copies of the Facebook postings, but he did not show them to Mr. Liedtke at that time. (Ex. A2; test. of Roberts.)

² Inspector Roberts did not learn until shortly before the hearing that he had met with Mr. Liedtke rather than Mr. Kennedy. (Test. of Roberts.)

16. On September 19, 2012, the OLCC issued a service permit to Ms. DeDonno. (Ex. A3.)

17. On March 20, 2013, Licensee's employee Brianna Renee Miller failed to verify the age of a minor, Nicole Hodson, before serving the minor an alcoholic beverage (a Bud Light beer). Minor Hodson was 18 years old at the time and reasonably appeared to be under 26 years of age. (Stipulation; Exs. A4 through A7.)

18. On September 30, 2013, the F-Com license issued to L & J Rondone, LLC, Linda L. Rondone, Managing Member and Joseph A. Rondone, Member, dba Relax Sports Pub, for the premises located at 1350 Plaza Boulevard E, Central Point, Oregon expired.³

CONCLUSIONS OF LAW

1. From approximately July 10, 2012 to August 11, 2012, Licensee permitted employee Crystal DeDonno to mix, sell or serve alcoholic beverages without a valid service permit issued by the Commission in violation of ORS 471.360(1)(b). The alternate charge under OAR 845-009-0015(1)(2)(3)(4) should be dismissed.

2. On March 20, 2013, Licensee's employee Brianna Miller failed to verify the age of minor Nicole Hodson before allowing the minor to buy or be served 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).

3. The proper sanction for the above violation is a 40 day license suspension, or a civil penalty totaling \$6,600.00 (in lieu 40 days suspension).⁴ However, because the license has expired, the sanction is a Letter of Reprimand.

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³ Pursuant to OAR 137-003-0615(4)(a), on November 13, 2013, the Commission gave notice to the (former) Licensee that it would take official notice from its licensing records of Finding of Fact 18. In its notice, the Commission recited Licensee's right under OAR 137-003-0615(4)(b) to object and/or rebut the facts officially noticed. Licensee did not object or request the opportunity to rebut within 10 calendar days of date of the notice. No response was received. On November 24, 2013 the Commission took official notice of the general facts within its specialized knowledge that are set forth in Finding of Fact 18.

⁴The Proposed Order found that aggravation of the penalty was appropriate due to Mr. Liedtke's efforts to conceal the service permit violation by submitting a falsified permit application to the Commission. In commenting on the Proposed Order, OLLC Staff noted that based on prior Commission case precedent, an employee's or agent's attempts to conceal a violation are not attributable to the licensee as a basis for aggravating the sanction. *H20 Martini Bar & Restaurant* (OLCC Final Order, 06-V-014, December 2006). In her Response to Staff Comments, the ALJ agreed that it is not appropriate to aggravate the sanction in this case based on Mr. Liedtke's deceptive conduct.

OPINION

1. Violations

A. *Ms. DeDonno's Lack of a Service Permit*

As set out above, the OLCC staff has charged Licensee with permitting Ms. DeDonno to mix, sell or serve alcohol in violation of ORS 471.360(1)(b). Alternatively, the OLCC staff has charged Licensee with violating OAR 845-009-0015(1)(2)(3)(4) by failing to verify that Ms. DeDonno had a valid service permit or pending application, and/or by failing to personally deliver a completed service permit application and continue to verify that Ms. DeDonno had taken and passed the server education course and been issued a service permit. As the proponent of these allegations, the Commission bears the burden of proof. ORS 83.450(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).

ORS 471.360(1)(a) provides as follows:

(1) Except as otherwise provided in ORS 471.375:

* * * * *

(b) No licensee of the commission shall permit any person to mix, sell or serve any alcoholic liquor for consumption on licensed premises unless such person has a valid service permit issued by the commission.

ORS 471.375⁵ sets out the service permit application requirements. Pursuant to

⁵ ORS 471.375 provides, in relevant part:

(1) Any person who has not had a permit refused or revoked or whose permit is not under suspension may mix, sell or serve alcoholic beverages for consumption on licensed premises if the person prepares in duplicate an application for a service permit prior to mixing, selling or serving any alcoholic beverage for consumption on licensed premises and the application is indorsed as required under subsection (2) of this section. A copy of the indorsed application must be kept on the licensed premises by any licensee for whom the person mixes, sells or serves alcoholic beverages and must be made available for immediate inspection by any inspector or investigator employed by the Oregon Liquor Control Commission or by any other peace officer until the applicant receives the service permit.

(2) An application for a service permit under subsection (1) of this section must be indorsed by one of the following persons:

(a) The licensee under whose license the applicant will mix, sell or serve alcoholic beverages. If a licensee indorses an application, the licensee must immediately transmit the application to the commission with the fee required by subsection (3) of this section.

subsection (2)(a), a service permit application must be endorsed by “[t]he licensee under whose license the applicant will mix, sell or serve alcoholic beverages.” The statute further requires that if a licensee endorses an application, “the licensee must immediately transmit the application to the commission with the fee * * *.” It is the licensee, and not the applicant, who is responsible for transmitting the application to the Commission. *See New Max’s Tavern* (OLCC Final Order, 91-V-087, December 1991).

To prove the violation, the Commission must show that Ms. DeDonno did not have a valid service permit from her July 2012 hire date through August 11, 2012, that she mixed, sold or served alcoholic beverages at the premises during this time and that Licensee permitted this activity. The Commission employs two tests to determine whether a licensee “permitted” the prohibited activity. A licensee may acquiesce by failing to prevent the employee from working without a permit. *See Cal Sport* (OLCC Final Order, 02-V-021, April 2003). In *Cal Sport*, the licensee failed for several months to verify whether an employee had a service permit. The Commission has also used a knowledge attribution analysis to find that a licensee permitted certain conduct. In this regard, “permitting” involves two elements: knowledge and the failure to take reasonable steps to prevent or control the prohibited activity. With respect to the knowledge element, the Commission imputes an employee’s knowledge to the licensee. In short, if a licensee fails to take reasonable steps to verify the existence of a permit or prevent the employee from serving without one, the licensee has violated ORS 471.360(1)(b). *Cal Sport*, Final Order at 5; *see also Tony’s Tavern* (OLCC Final Order, 06-V-012, August 18, 2006).

In contesting the violation, Licensee asserts that although Ms. DeDonno worked at the premises sporadically during July and the first part of August 10, 2012, she did not mix, sell or serve alcoholic beverages during that time. Licensee asserts that she worked as a cook instead, and that she was never the only employee on duty at the time. Licensee further contends that although Ms. DeDonno was bartending on the night of August 11, 2012, she had a temporary service permit by that time because her permit application was completed and placed in the mail the day before, on August 10, 2012.

For the reasons set out below, a preponderance of the evidence establishes that Ms. DeDonno did not have a valid service permit on August 11, 2012 (or during the preceding month), when she mixed, sold and/or served alcoholic beverages at the licensed premises. The evidence further shows that Licensee permitted this prohibited activity by failing to take reasonable steps to verify that Ms. DeDonno had a valid permit before allowing her to perform bartending duties at the licensed premises.

It is undisputed that when Inspector Roberts checked OLCC’s service permit database on August 11, 2012, the OLCC had no record of Ms. DeDonno having a valid permit, having recently completed a server education course or having recently applied for a permit. If, as Licensee contends, Ms. DeDonno had actually completed and signed a permit application on August 10, 2012, it is highly likely that she would have advised Inspector Roberts of that fact on the night of August 11th. Instead of insisting that she had a permit but could not find her “card,” she likely would have told the inspector that she had just completed an application the day before, that she did not have her copy of the temporary permit on hand, and/or that did not know where on the premises Licensee kept its copy of the temporary permit. Furthermore, had August

11, 2012 been the first time Ms. DeDonno tended bar at the premises (as opposed to working as the cook), it is highly likely she would have advised Inspector Roberts of this as well. Instead, she told the inspector that she had been working as a fill-in bartender for roughly one month.

Similarly, had Mr. Liedtke actually placed Ms. DeDonno's service permit application in the mail the evening before the inspector's August 11, 2012 visit, it is likely Mr. Liedtke would have told Inspector Roberts as much during their meeting on August 17, 2012. He would have said that he knew Ms. DeDonno had a temporary permit as of August 10th, because he had personally placed the application in the mail himself on that day. Instead, he told the inspector that he believed Ms. DeDonno had a valid permit but understood that she did not.

Further, had the night of August 11th been the first night that Ms. DeDonno tended bar at the premises, it is very likely that Mr. Liedtke would have mentioned that to Inspector Roberts during their meeting as well. Instead, consistent with Ms. DeDonno's earlier statements to Inspector Roberts, Mr. Liedtke indicated that Ms. DeDonno began working as a fill-in bartender on or about July 10, 2012.

An additional factor undermining Mr. Liedtke's credibility with regard to the date on which Ms. DeDonno's signed, and the date on which he mailed, her permit application is the fact that he forged the authorized person's signature on the application. That Mr. Liedtke had no qualms about falsifying the authorized signature suggests that he would also have no qualms about falsifying the date on which the application was signed and mailed.

Alternatively, even if Ms. DeDonno had completed and signed her permit application on August 10th and Mr. Liedtke had placed the application in the mail that same day, Ms. DeDonno still did not possess a valid temporary permit to mix, sell or serve alcoholic beverages on the night of August 11, 2012. Under ORS 471.375, in addition to the requirement that an applicant complete the application prior to mixing, selling or serving alcoholic beverages, the law also requires that the application be "indorsed as required under subsection (2) of this section" and that a copy of the indorsed application be kept on the licensed premises. Subsection (2) of the statute identifies the persons who are authorized to indorse the application, including "the licensee under whose license the applicant will mix, sell or serve alcoholic beverages." In this case, because Mr. Liedtke forged the authorized signature, Ms. DeDonno's service permit application was not validly indorsed by the licensee. Without a valid authorized signature, the application did not meet the requirements of ORS 471.375(2)(a).

To summarize, the evidence demonstrates that from the time of her hiring on or about July 10, 2012 through at least the evening of August 11, 2012, Ms. DeDonno did not have a valid service permit or a valid temporary permit authorizing her to mix, sell or serve alcoholic beverages at the licensed premises. The violation of ORS 471.360(1)(b) has been established.

Because the statutory violation has been proven, the alternative charge under OAR 845-009-0015 should be dismissed.

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B. *Service to a Minor*

The Commission has also charged Licensee with violating OAR 845-006-0335(1)(a), (b) and (c) when, on March 20, 2013, employee Brianna Miller failed to verify the age of minor Nicole Hodson before allowing her to be served an alcoholic beverage. OAR 845-006-0335(1) provides as follows:

(1) Age Verification:

(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.

Licensee conceded this violation at hearing.

2. Penalty

The Commission treats a violation of ORS 471.360(1)(b) (server without a service permit) as a Category III violation. The Commission also treats a violation of OAR 845-006-0335(1) (failure to verify age) as a Category III violation. The standard penalty for a first Category III violation is a 10-day suspension or a fine of \$1,650. The standard penalty for a second Category III violation within a two year period is a 30-day suspension or fine of \$4,950. OAR 845-006-0500(7), Exhibit 1.

The service permit violation found above is Licensee’s first Category III violation within two years. The failure to verify minor Hodson’s age on March 20, 2013 is Licensee’s second Category III violation within that same time period. Under the Commission’s penalty matrix, the sanction for these two violations amounts to a 40-day suspension (10 days + 30 days) or a civil penalty of \$6,600 (\$1,650 + \$4,950).

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