

ADMINISTRATIVE HEARINGS DIVISION

January 18, 2024

STIPULATED SETTLEMENT AGREEMENTS - LIQUOR VIOLATION CASES

1. El Herradero, LLC
David Arceo Gonzalez, Managing Mbr.
dba THE 41 CLUB (F-COM)
2129 2nd St
Baker City, OR 97814

ORS 471.315(1)(c) – There is a history of serious and persistent problems involving disturbances, unlawful activities or noise either in the licensed premises at 2129 2nd Street, Baker City, Oregon, or involving patrons of the establishment in the immediate vicinity of the premises. The problems occurred from March 20, 2021 to December 3, 2022.

(Category I)

ORS 471.360(1)(a) and (b) - From about September 10, 2021 to March 23, 2022, Licensee permitted its employee, agent, or representative Leah Goodale to mix, sell, or serve alcoholic beverages, or supervise those who do, without a valid service permit issued by the Commission.

(1st Level Category III)

Note: Licensee was charged with these violations by Notice dated January 11, 2023. The standard sanction is license cancellation. Licensee requested a hearing and now wishes to enter into this settlement agreement.

AGGRAVATION

Staff proposed aggravating the penalty because Violation Number One involved injury or death and Violation Number Two because an employee worked without a service permit for more than six months.

SYNOPSIS: The History of Serious and Persistent Problem violation includes 19 incidents from March 2021 through December 2022 with 9 of those incidents involving violence. Most of the incidents involved patrons driving under the influence after leaving the premises or intoxicated patrons engaging in physical altercations at the premises. Licensee has agreed to the restrictions in the proposed settlement including having employees complete a training by OLCC staff or if the training is not completed, serve a longer suspension. The proposed restrictions limit the hours of service, limit the amount of alcohol that is made available to patrons at one time, and require surveillance of the licensed premises. The terms of the settlement provide the Licensee an opportunity for the business to be both safe and successful.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violations as set out in the Notice. Violation Number One was Licensee’s first Category I violation. Violation Number Two was Licensee’s first Category III violation within two years. Any subsequent Category III violation within the same two years will be charged starting at the second level. These violations will become a permanent part of each licensee’s Commission file and may be considered in any future application for any license or permit by that licensee.
2. The standard sanction for the Category I violation is license cancellation. The standard sanction for a first-level Category III violation is 10-day license suspension or \$1,650.00 civil penalty. Commission staff proposed aggravating the penalty because Violation Number One involved injury or death and Violation Number Two because an employee worked without a service permit for more than six months.

(continue **THE 41 CLUB**)

3. Commission staff originally proposed for these violations the standard sanction of license cancellation.
4. The Commission will reduce the sanction for Violation Number One to a 32-day license suspension, with the option to pay a \$4,950.00 civil penalty in lieu of 30 days, and the remaining two days mandatory; plus the imposition of restrictions on this license as stated in paragraph 9 below.
5. The Commission will reduce the sanction for Violation Number Two by three days.
6. No later than 5:00 PM on February 7, 2024, Licensee will require that all premises employees and representatives engaged in the mix, sale, or service of alcohol, or management of persons engaged in the mix, sale, service of alcohol, participate in and complete an OLCC led training. Such training will be provided by OLCC at no cost to the Licensee or employees, at the licensed premises, at a mutually agreed-upon time not later than 5:00 PM on February 9, 2024. OLCC Inspectors may grant an excused absence upon a showing of illness or other good cause, subject to the option to require a later make-up session by the excused employee. By 5:00 PM on February 9, 2024, an OLCC Inspector shall certify whether or not Licensee and its employees and representatives have substantially complied with this training requirement.
7. In the event that OLCC's Inspector certifies substantial compliance with the training requirement in accordance with paragraph 6, Licensee will either pay a \$6,435.00 civil penalty before 5:00 PM on February 15, 2024 and serve a two-day license suspension from 7:00 AM on February 22, 2024 to 7:00 AM on February 24, 2024 **OR** serve a 41-day license suspension beginning at 7:00 AM on February 22, 2024 and ending at 7:00 AM on April 3, 2024.
8. In the event that OLCC's Inspector does not certify substantial compliance with the training requirement in accordance with paragraph 6, Licensee will serve a 41-day license suspension beginning at 7:00 AM on February 22, 2024 and ending at 7:00 AM on April 3, 2024.
9. The Commission will impose restrictions on the license which become effective on the effective date of the Final Order Incorporating Settlement Agreement.
 - (1) The sale and service of alcohol is prohibited from 12:00 am to 7:00 am.
 - (2) The premises must be closed to the public no later than 12:30 am to 7:00 am on the succeeding calendar day.
 - (3) Patron entry and reentry is prohibited from 12:00 am to 7:00 am.
 - (4) Staff shall not sell or serve to a patron, and a patron may not possess, more than one container of alcohol at one time, and each container of alcohol will contain no more than 16 ounces of malt beverage, 16 ounces of cider, six ounces of wine, or two ounces of distilled spirits.
 - (5) Licensee's alcohol servers will use a one-ounce jigger or one-ounce measured liquor bottle pourer to measure pours of distilled spirits.
 - (6) Licensee's employees, agents, or representatives will immediately report any violent or illegal activity observed within or outside the premises to law enforcement, and document the activity in the bar log within 12 hours of its occurrence.

(continue **THE 41 CLUB**)

- (7) Licensee will maintain a security video surveillance system with digital video recording capabilities sufficient to capture clear and specific images of all areas controlled by Licensee, including the outdoor areas adjacent to the licensed building, the licensed patio, and the parking lots. Licensee must keep all recordings for a minimum of 45 calendar days, with the date and time embedded on all surveillance recordings without significantly obscuring the picture. Licensee must make complete unaltered video surveillance footage available within 72 hours of any request, to an OLCC inspector or law enforcement officer.
10. Violation of a restriction is a Category I violation, subject to license cancellation. OAR 845-005-0355(5).
11. Licensee withdraws the request for a hearing.
12. If a licensee's interest in the license expires or is transferred before the Commission issues a final order on these charges, the licensee agrees to accept a Letter of Reprimand for the violations charged in the Notice. This reprimand will become a permanent part of the licensee's Commission file and may be considered in any future application for any license by the licensee.
13. This agreement is conditioned upon final approval of the Commission and will be reviewed by the Commissioners at their January 2024 Commission Meeting. If the agreement is not accepted and approved in its entirety by the Commission it is deemed null and void and Licensee's hearing rights, if any, will be restored. If the agreement is accepted and approved in its entirety by the Commission, Licensee waives any and all rights to a contested case hearing under the Administrative Procedures Act (ORS Chapter 183) and to judicial review, or to otherwise challenge this agreement and the final order.

2. MMH Time Corporation
Michael Peng, Pres/Stockholder
dba **CRACKER BOX TAVERN (L)**
6420 NE Portland Hwy
Portland, OR 97218

OAR 845-006-0345(7) – On or about July 2, 2022, Licensee had or permitted alcoholic liquor on the licensed premises, which its Limited On-Premises Sales License does not allow the licensee to sell or serve, other than for purposes of “for cooking only,” when OLCC Inspectors G. Welp and J. Welp discovered a 750mL bottle of Jim Beam whiskey, a distilled spirit, near the cash register of the premises.

(1st Level Category V)

OAR 845-006-0345(12) - On or about July 2, 2022, Licensee Michael Peng mixed, dispensed or served alcoholic beverage(s) to himself for on-premises consumption, when Licensee Peng dispensed and served Jim Beam whiskey, a distilled spirit to himself for on-premises consumption.

(1st Level Category III)

Note: Licensee was charged with these violations by Amended Notice dated December 19, 2023. The total proposed penalty was a 17-day license suspension or a \$2,805.00 civil penalty. Licensee requested a hearing and now wishes to enter into this settlement agreement.

AGGRAVATION

Commission staff added two days aggravation to each violation because the violations were committed by Licensee Michael Peng.

SYNOPSIS: Licensee held a Limited On-Premises Sales License. OLCC received an anonymous complaint that Licensee Michael Peng was serving distilled spirits to select patrons late at night. When inspectors arrived to investigate, they found a bottle of whiskey near the premises register. Mr. Peng denied offering the distilled spirit for sale, stating that it was for him to drink while he was counting money and finishing up. On January 2, 2024, MMH Time Corporation completed a change of ownership to a new licensee. If ratified by the Commissioners, the stipulated settlement contemplates that, as a result of the change of ownership, MMH Time Corporation agrees to receive a Letter of Reprimand for these violations.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violations as set out in the Notice. Violation Number One was Licensee’s first Category V violation within two years. Violation Number Two was Licensee’s first Category III violation within two years. Any subsequent Category V or Category III violation(s) within the same two years will be charged starting at the second level. These violations will become a permanent part of each licensee’s Commission file and may be considered in any future application for any license or permit by the licensee.
2. The standard sanction for Violation Number One is a three-day suspension or a civil penalty of \$495.00. The standard sanction for Violation Number Two is a 10-day suspension or a civil penalty of \$1,650.00. Commission staff added two days aggravation to each violation because the violations were committed by Licensee Michael Peng. The total proposed penalty was a 17-day license suspension or a \$2,805.00 civil penalty.
3. The Commission will reduce the penalty by four days.
4. Licensee will either pay a \$2,145.00 civil penalty before 5:00 PM on February 15, 2024 **OR** serve a 13-day suspension beginning at 7:00 AM on February 22, 2024 and ending at 7:00 AM on March 6, 2024.

(continue **CRACKER BOX TAVERN**)

5. Licensee withdraws the request for hearing.
6. If a licensee's interest in the license expires or is transferred before the Commission issues a final order on this incident, the licensee agrees to accept a Letter of Reprimand for the violation. This reprimand will become a permanent part of the licensee's Commission file and may be considered in any future application for any license or permit by the licensee.
7. This agreement is conditioned upon final approval of the Commission and will be reviewed by the Commissioners at their January 2024 meeting. If the agreement is not accepted and approved in its entirety by the Commission it is deemed null and void and Licensee's hearing rights, if any, will be restored. If the agreement is accepted and approved in its entirety by the Commission, Licensee waives any and all rights to a contested case hearing under the Administrative Procedures Act (ORS Chapter 183) and to judicial review, or to otherwise challenge this agreement and the final order.