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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1895 January 20, 1970

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ITEM

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1. APPELLATE DECISIONS - CRANER & PILON v. PATERSON
#3388

John A. Craner & Raymond Pilon, t/a Muggsy's Friendly Tavern, Appellants,	)	On Appeal
v.	)	
Board of Alcoholic Beverage Control for the City of Paterson, Respondent.	)	CONCLUSIONS AND ORDER

John A. Craner, Esq., Attorney for Appellants
Joseph L. Conn, Esq., by Robert A. Pine, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellants (the holders of a plenary retail consumption license for premises 839 Main Street, Paterson) were found guilty in disciplinary proceedings conducted by respondent of five charges which may be briefly summarized as follows:

(1) Permitting premises to be conducted in such manner as to become a nuisance by permitting a brawl to take place on their licensed premises on December 8, 1968, between the appellant Raymond Pilon and a local police detective, in violation of Rule 5 of State Regulation No. 20.

(2) Hindering and delaying a police officer in the performance of his duty on the said date, in violation of Rule 35 of State Regulation No. 20.

(3) Selling and serving alcoholic beverages after hours, in violation of local ordinance.

(4) Failing to have their premises closed between the hours of 3:00 a.m. and 3:35 a.m. on the said date, in violation of local ordinance.

(5) Permitting said Raymond Pilon (a member of the licensed partnership) to work in the said licensed premises while actually or apparently intoxicated, in violation of Rule 24 of State Regulation No. 20.

Respondent (hereinafter Board) ordered the suspension of said license for a period of seventy-five days effective March 24, 1969. Upon the filing of this appeal challenging such action, an order was entered by the Director on March 20, 1969, staying the Board's order of suspension pending determination of the appeal.

In their petition of appeal, appellants allege that the Board's action was erroneous because the Board was "prejudiced, biased and incompetent to conduct such hearing;" that appellants were denied due process because they were denied a trial by jury; that the Board showed partiality in favor of a police officer testifying on behalf of the Board.

The Board denies the substantive allegations of the said petition and sets forth in a separate defense that it acted in an unbiased, unprejudiced and competent manner, and, further, that the appellants were given a fair hearing in accordance with the applicable statute and the rules and regulations of this Division.

The matter was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony under oath and cross-examine witnesses. The Board relied at this plenary de novo hearing upon the stenographic transcript of the proceedings held before the Board, which was admitted into evidence pursuant to Rule 8 of State Regulation No. 15. Additional testimony was presented at this hearing on behalf of appellants.

The record reflects the following in support of the charges: Emil Peri (a local police detective) while on routine duty on the early morning of December 8, observed at 3:35 a.m. (3:00 a.m. being the closing hour) that the licensed premises were still open, the lights were on, and patrons were entering and exiting therefrom. Upon entering the tavern, he noted that there were twenty to thirty patrons inside, many of whom were consuming alcoholic beverages. He approached the bartender (identified as Raymond Pilon, one of the appellants), identified himself, and advised him of the violation. Pilon became very abusive and refused to "cooperate". The officer further observed that Pilon was intoxicated and he sought to have some of the patrons urge Pilon to cooperate with him. At this point Pilon "came over from behind the bar, grabbed me, pushed me, assaulted me also, so that I had no witnesses to say that he was open after hours, or nothing that I could do about it." During the course of assaulting the police officer, Pilon knocked the identification out of his hand while another patron (later identified as John Seager) jumped on the police officer and held his arms behind his back. Police Officer Peri requested one of the patrons to call for assistance and soon thereafter Pilon and Seager were placed under arrest.

On cross examination, this witness stated that he looked at his watch, which reflected the time as 3:35 a.m., just prior to entering the tavern. He remained in the tavern for about fifteen or twenty minutes. He further stated that when he attempted to show him his wallet with his identification, Pilon would not look at it, and immediately started to abuse and assault him. There was no doubt in his mind, from smelling Pilon's breath and noting his unsteady gait as he walked, that he was definitely intoxicated.

When Pilon was being questioned at police headquarters, he apologized to this witness for his action and stated that "if he wasn't drinking this wouldn't have happened." Also, Seager admitted upon his arraignment in the Municipal Court that he grabbed the police officer and prevented him from defending himself while being assaulted by Pilon. Pilon was arraigned in the Municipal Court and pleaded guilty to the charge of being drunk

and creating a disturbance in violation of State statute.

Steven Meintzinger, testifying on behalf of appellants, stated that he was employed as a bartender on the date set forth in the charges. At 2:45 a.m. he told everyone to get their money off the bar, that it was their last drink, and he opened the door to let patrons out of the premises. At that time the police officer came in, identified himself, stated that he was looking for someone. Peri then stated that everyone would have to leave, and Pilon "came from behind the bar and there was a little scuffle down by the door."

He described the scuffle as follows: The police officer tried to put handcuffs on Pilon and struck Pilon on the hand, but he was unable to put the handcuffs on him. He insisted that it was three o'clock at that time because the clock in the tavern registered 3:15 a.m. but was always fifteen minutes fast.

On cross examination, he stated that he was merely a part-time employee, had been employed for two months prior to the date herein charged, and in fact was not paid for his work on that occasion. Pilon was behind the bar taking the cash receipts from the register and was not serving any of the patrons who were then seated at the bar. He explained Pilon's actions by saying that Pilon thought the police officer was "somebody coming in that was drunk." He admitted that there was some pushing on the part of both Pilon and Peri. Finally, he admitted that Pilon had more than five drinks of whiskey that night and that during the scuffle he did not make any effort to intercede because "I'm not getting involved."

Raymond Pilon testified that on the date charged herein, he was in the premises but was not performing any duties as a bartender. When Peri walked into the premises and identified himself as a police officer, he stated, "There was a lot of phonies coming in. I'm sick and tired of it," whereupon the police officer attempted to put handcuffs on him. "With that, I grappled with him trying to pull away from him. With that Mr. Seager thought that the guy, the police officer, which we didn't know, was trying to get me, grabbed me or more or less he was trying to help me out, and then I pulled away from him and then he says, then I heard somebody holler to everybody he was a police officer." He denied that drinks were served to any patrons at 3:35 a.m. or that any drinks were served after 3:00 a.m. He admitted that he had had five or six drinks of Scotch whisky but that he was not intoxicated.

On cross examination, he admitted pleading guilty in the Municipal Court to assaulting a police officer, interfering with a police officer and being drunk, disorderly and creating a disturbance in a public place or private property while under the influence of liquor. He insisted that the last sale of alcoholic beverages was made to patrons at 2:45 a.m. but he did not know what time the last patron left the said premises.

George Morgan (a patron in the premises on the date charged herein) stated that when Pilon came from behind the bar and engaged in an argument with the police officer which culminated in a scuffle, he "turned around and walked out the back door." He did not see anyone grab the police officer. He was, however, certain that this occurrence took place before 3:00 a.m.

On cross examination, the witness stated that he left the bar at about 2:50 a.m., although the clock on the wall stated that it was five after three. He did not have a watch and the time fixed was based upon the tavern clock.

At the hearing herein, Morgan testified that about twenty-five minutes elapsed between the time Detective Peri entered the tavern and the time he was taken to headquarters in the police wagon. When he left the tavern, he went across the street to a parking lot, entered his friend's motor vehicle and remained in his friend's car for about twenty minutes. The reason he sat in the car for this time was that he saw people congregating in front of the tavern and he wanted to see what was happening. He then added that after Pilon was arrested, he went to police headquarters because "If he needed help, I believe I would help him out." He was then asked:

"The Hearer: Did you go over to find out what the trouble was when you saw the paddy wagon come up?

The Witness: No. We stayed right in the car.

The Hearer: If you thought he needed help, why didn't you go up there and find out what the trouble was?

The Witness: What could I do? Nothing. If I went over there to find out the trouble, it wouldn't have done no good anyway."

Robert Powers (another patron) testified below that on the date charged herein, he was in the tavern and heard somebody say "police officer". He remained there a few minutes and then walked out the back door. He saw no struggle or fight take place. On cross examination, he stated that he left the tavern at 2:50 a.m. and at that time Pilon was behind the bar at the cash register. Immediately upon leaving he "got in my car and went down the street."

In his supplemental testimony at this hearing, he stated that approximately a half-hour elapsed from the time the police officer entered the tavern and the time the police patrol wagon arrived at the premises. He fixed that time at approximately 3:30 a.m. He now testified on cross examination that when he left the premises, he remained on the outside thereof for about a half-hour. Asked whether he did not in fact testify at the hearing before respondent that he left the vicinity immediately upon leaving the tavern, he could not remember his prior testimony and maintained that he walked across the street and remained on the sidewalk for about a half-hour. After Pilon's arrest, he proceeded to police headquarters because he was a friend of his and felt that he could be of some help to him.

Captain Joseph J. Dworak was called by appellants at the hearing herein and testified that he is in charge of police activities in this area. He produced a police log which showed that the call to police headquarters was made at 3:23 a.m. He did not know of his own personal knowledge of the accuracy of the contents of the said log.

Before evaluating the factual merits, I shall consider certain challenges to these proceedings raised in the petition

of appeal. Appellants allege that they were denied due process of law; that these proceedings were quasi-criminal in nature and that they were denied a trial by jury and also the benefit of a judge to rule on objections and legal matters brought before the Board.

It is quite apparent that appellants misconceive the scope and purport of these proceedings before the Board. Disciplinary proceedings instituted against appellants are authorized by R.S. 33:1-31 and are proceedings in rem (against the license) and not in personam (against the licensee), albeit the licensee must be noticed and afforded opportunity to be heard. Re Meehan, Bulletin 1841, Item 5. These proceedings are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). There is no provision in the Alcoholic Beverage Law for a trial by jury, and the contention that appellants were denied due process is frivolous. The Board was required to establish its case only by a fair preponderance of the credible evidence. In other words, the finding must be based upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

Appellants also assert that they are entitled to a trial de novo in accordance with Rule 6 of State Regulation No. 15. By this I assume they mean that all the witnesses who testified before the Board are required to testify again at this hearing. However, Rule 6 provides only for a hearing de novo, and is to be read in conjunction with Rule 8 which permits the introduction of a stenographic transcript of testimony of any witness or witnesses in the proceedings before the issuing authority in lieu of producing the said witness or witnesses at the hearing of the appeal. The rule states further that, in such event, "any opposing party may subpoena such witness or witnesses to appear personally..."

Appellants contend that they were denied due process because the Board "was prejudiced, biased and incompetent to conduct such hearing" and, further, that it showed "partiality" toward the "charging witness who was a police officer." The latter part quoted is obviously an erroneous statement since the police officer is not a charging witness. He is merely a witness called on behalf of the Board.

My examination of his testimony and of the entire record does not indicate that there was any bias or prejudice shown. In fact, the Board leaned over backwards to permit wide latitude in cross examination of the police officer by appellants' attorney, who also appeared pro se as a co-licensee. The Board, however, or at least one member thereof, frankly stated that he believed in the truthfulness of the police officer's testimony.

My evaluation of the testimony of the police officer, who was not called upon or subpoenaed to testify at the hearing herein, compels the conviction that his account of what transpired was forthright, credible and accurately depicted the situation. It is entirely consistent with human experience that this police officer was more concerned with the exact time when he entered the tavern than were appellants' witnesses, who obviously were not concerned therewith. It is illogical to believe that this officer would have entered the tavern fifteen minutes prior to the 3:00 a.m. closing time to order the premises

closed because the same were being operated after closing hours. I believe his testimony to the effect that he entered the premises long after the closing hour prescribed by the local ordinance and, in the course of performing his lawful duty, was assaulted by Pilon.

I find great difficulty in ascribing credibility to the account given by Pilon. His testimony was contradictory, unconvincing and unbelievable. One example might suffice: At the hearing before this Division, he insisted that he was not intoxicated although by his own admission he had consumed at least five or six drinks of whiskey that evening. He admitted that he pleaded guilty in the Municipal Court to being drunk and creating a disturbance as a result of this incident.

The police officer testified that not only was Pilon intoxicated but, at police headquarters, he apologized for his conduct and stated that if he had not been intoxicated, he would not have acted in the manner that he did. In view of his intoxicated state, it strains credulity to believe that he knew the exact times when the officer entered the premises or when the alleged incident took place.

The testimony of the other witnesses appeared to me to be equally contradictory and incredible. Morgan testified that about one-half minute after the police officer entered the premises, he walked out and nothing happened while he was there. He further stated that he went to the parking lot and sat in his friend's car for about twenty minutes because "we wanted to see what was happening." Powers testified before the Board that when he left the tavern, he got into his car and left the vicinity. However, in his testimony at the hearing herein, he stated that when he left the tavern, he walked across the street and remained there for twenty-five minutes to a half-hour.

Since there was a sharp conflict in the testimony adduced before the Board, it became the function of the Board to evaluate the testimony, after observing the demeanor of the witnesses and giving weight to such testimony as it found credible. It is axiomatic that evidence, to be believed, must not only proceed from the mouths of credible witnesses but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). It is apparent that the Board found the testimony of the police officer to be believable in the circumstances.

I find nothing in the record to suggest any bias or prejudice on the part of the Board. My analysis of the transcript and the evidence produced before me convinces me that the Board acted properly, and that the testimony before the Board preponderates in support of its determination. I am persuaded that the record on the whole supports the decision reached by the Board. Cf. 1 Greenleaf Evidence, sec. 13-a; cf. Wyatt v. Curry, 77 N.J. Super. 1.

The burden of establishing that the Board acted erroneously, and in an abuse of its discretion, is upon appellants. The ultimate test in these matters is one of reasonableness on the part of the Board. Or, to put it another way: could the members of the Board, as reasonable men, acting reasonably, have come to their determination based upon the evidence presented.

The Director should not reverse unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the Board. Cf. Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502; cf. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957).

My examination of the facts and the applicable law generates no doubt that all of the charges were established by a preponderance of the believable evidence, indeed by substantial evidence. I conclude, therefore, that appellants have failed to sustain the burden of establishing that respondent's action was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15.

It is further recommended that an order be entered affirming the Board's action, dismissing the appeal, and fixing the effective dates for the suspension of license imposed by the Board.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, written exceptions to the Hearer's report and argument in support thereof were filed by the attorney for appellants.

No answer to the exceptions was filed by respondent.

I have carefully analyzed the exceptions and find that they have either been satisfactorily answered in the Hearer's report or are lacking in merit.

Having carefully considered the entire record herein, including the transcript of testimony, the exhibits, the Hearer's report and the exceptions filed thereto, I concur in the conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 4th day of December 1969,

ORDERED that Plenary Retail Consumption License C-224, issued by the Board of Alcoholic Beverage Control for the City of Paterson to John A. Craner & Raymond Pilon, t/a Muggsy's Friendly Tavern, for premises 839 Main Street, Paterson, be and the same is hereby suspended for seventy-five (75) days, commencing at 3 a.m. Thursday, December 11, 1969, and terminating at 3 a.m. Tuesday, February 24, 1970.

JOSEPH M. KEEGAN
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN LICENSE APPLICATION - FRONT - CRIMINALLY DISQUALIFIED EMPLOYEE - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 105 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against The 331 Broad Ave. Corp. 331 Broad Avenue Palisades Park, N. J., Holder of Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Palisades Park.	CONCLUSIONS and ORDER

Walsh, Siegel and Clarke, Esqs., by John K. Walsh, Esq., Attorneys for Licensee
Louis F. Treole, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to the following charges:

"1. In your application filed May 23, 1968 with the Mayor and Council of the Borough of Palisades Park, and upon which you obtained your current plenary retail consumption license, in answer to Question No. 21, you listed Althea Marttine, Florence Marttine and Edward Higgins as the holders of 8%, 1% and 1%, respectively, of your issued and outstanding stock, and falsely stated 'No' in answer to Question No. 22, which asks: 'Has any corporation, partnership, association or individual other than the stockholders hereinbefore set forth any beneficial interest, directly or indirectly, in the stock held by said stockholders?', whereas in truth and fact said Florence Marttine and Edward Higgins did not have any beneficial interest, directly or indirectly, in the shares of stock listed in their names and Rocci Marttine had such an interest in that he was real and beneficial owner of 50% of your issued and outstanding stock; said false statements, misrepresentation, evasion and suppression of material facts being in violation of R.S. 33:1-25.

"2. In your aforesaid application, you falsely stated 'No' in answer to Question No. 24, which asks: 'Does the individual signing this application on behalf of said corporation know or have any reason whatsoever to believe or suspect, that any of the officers or directors of said corporation or any holder, directly or indirectly, by any device or subterfuge whatsoever, of more than ten (10) per cent in beneficial interest of the capitol stock of said corporation would fail to qualify as an individual applicant for the license hereby applied for in any respect?', whereas in truth and fact Althea Marttine, who signed such application, knew or had reason to know that Rocci Marttine, who indirectly was the holder of 50% of your issued and outstanding stock as aforesaid would fail to qualify as an individual applicant for the license by reason of the fact that the said Rocci Marttine

had been convicted on or about November 3, 1967 in the County of Bergen, New Jersey, of a crime involving moral turpitude, to wit: maintaining a gambling resort in violation of N.J.S. 2A:112-3; all being in violation of R.S. 33:1-25.

"3. In your aforementioned application, you falsely stated 'No' in answer to Question No. 29, which asks: 'Has any individual, partnership, corporation or association, other than the applicant any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact the aforementioned Rocci Marttine had such an interest in that he indirectly, through the said Althea Marttine, as aforesaid, had a 50% interest in the license applied for and in the business to be conducted under said license; said false statements, misrepresentation, evasion and suppression being in violation of R.S. 33:1-25.

"4. In your aforesaid application, you falsely stated 'No' in answer to Question No. 30, which asks: 'Has the applicant agreed to permit any person to receive, or agreed to pay to any employee or other person (by way of rent, salary or otherwise) all or any portion or percentage of the gross or net profits or income derived from the business to be conducted under the license applied for?', whereas in truth and fact you had agreed to permit the said Rocci Marttine to retain 50% of the profits and income derived from your licensed business; said false statement, misrepresentation, evasion and suppression being in violation of R.S. 33:1-25.

"5. From on or about May 23, 1968 until the present, you employed and had connected with you in a business capacity, Rocci Marttine, a person who had been convicted of a crime involving moral turpitude, viz., on or about November 3, 1967 in the County of Bergen, New Jersey, of maintaining a gambling resort; in violation of Rule 1 of State Regulation No. 13.

"6. In your aforementioned application, you falsely stated 'No' in answer to Question No. 35, which asks: 'Has the applicant or has any person mentioned in this application having a beneficial interest in the license applied for or in the business to be conducted under said license ever had any interest, directly or indirectly, in any alcoholic beverage license or permit in New Jersey or any other state which was surrendered, suspended, revoked or cancelled?', whereas in truth and fact plenary retail consumption license held by you for these premises had been suspended by the Director of the Division of Alcoholic Beverage Control for ten days, effective August 14, 1967, for possession of alcoholic beverages which bore labels which did not truly describe contents; such false answer, statement, evasion and suppression being in violation of R.S. 33:1-25.

"7. From on or about March 14, 1967 until the present time, you knowingly aided and abetted said Rocci

Marttine to exercise, contrary to R.S. 33:1-26, the rights and privileges of your plenary retail consumption licenses; in violation of R.S. 33:1-52."

The facts are sufficiently set forth in the quoted charges.

By affidavit dated November 21, 1969, signed by Althea Marttine (president of the corporate licensee) it appears that a correction of the unlawful situation set forth in charges 1, 2, 3, 4, 5 and 7 has been accomplished and that, with respect to charge 6, licensee's answer to Question No. 35 in its current license application on file with the municipal license issuing authority has been amended to show the prior license suspension stated therein.

Licensee has a previous record of suspension of license by the Director for ten days, effective August 14, 1967, for possession of alcoholic beverages in bottles bearing labels which did not truly describe their contents (Re The 331 Broad Ave. Corp., Bulletin 1755, Item 4), non-disclosure of which being the subject of charge 6.

The license will be suspended on charges 1, 2, 3, 4, 5 and 7 for ninety days (Re Mack's In-Crowd Bar, Inc., Bulletin 1810, Item 3) and on charge 6 for ten days (Re Edgewood Inn, Inc., Bulletin 1883, Item 6), to which will be added five days by reason of the record of suspension of license for dissimilar violation within the past five years (Re Harrington & Burns, Inc., Bulletin 1882, Item 5), or a total of one hundred five days, with remission of five days for the plea entered, leaving a net suspension of one hundred days.

Accordingly, it is, on this 23rd day of December 1969,

ORDERED that Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Palisades Park to The 331 Broad Ave. Corp., for premises 331 Broad Avenue, Palisades Park, be and the same is hereby suspended for one hundred (100) days, commencing at 3 a.m. Monday, January 5, 1970, and terminating at 3 a.m. Wednesday, April 15, 1970.

JOSEPH M. KEEGAN
DIRECTOR

3. MORAL TURPITUDE - ON REMAND - CONVICTION OF WILLFUL FAILURE TO FILE INCOME TAX RETURNS HEREIN - HELD TO INVOLVE MORAL TURPITUDE.

Re: Eligibility #746

Applicant seeks a supplementary advisory opinion as to whether or not he is eligible to be associated with the alcoholic beverage industry in this State in view of his conviction of crime, based upon remand to this Division by the Appellate Division in Vitiello v. Keegan (App. Div. 1969), not officially reported, recorded in Bulletin 1873, Item 1.

The applicant originally sought an opinion with respect to his eligibility in 1965, wherein it was ruled that he was ineligible in Re Elig. No. 746, Bulletin 1652, Item 7. It was there set forth that on January 19, 1963, a criminal information was filed by the United States Attorney for the District of New Jersey against the applicant alleging that in 1958 and 1959 he had gross incomes of $11,800 and $24,316.70, respectively, and that he willfully and knowingly failed to file his income tax returns for said years, in violation of Section 7203, Internal Revenue Code; 26 U.S.C., sec. 7203. On January 19, 1965, following a verdict of guilty by a jury, the applicant was sentenced to prison.

Since a conviction of the crime of failure to file an income tax return in violation of the aforesaid section may or may not involve the element of moral turpitude (Re Case No. 1794), Director was authorized to determine whether or not the instant case included the element of willfulness so as to involve that element.

The Director ruled that, under the circumstances, in his opinion the crime in question involved moral turpitude and pointed out that the Alcoholic Beverage Law (R.S. 33:1-25) provides that no license of any class shall be issued to a person convicted of a crime involving moral turpitude and that R.S. 33:1-26 and Rule 1 of State Regulation No. 13 provide that no licensee shall employ or have connected with him in any business capacity whatsoever a person so disqualified.

An appeal from the Director's ruling was taken to the Appellate Division of the Superior Court, and the following questions were presented: (1) whether the willful and knowing failure to file federal income tax returns (26 U.S.C., sec. 7203) is a crime involving moral turpitude per se, and thus disqualifies or renders ineligible the perpetrator of the offense from associating himself with the alcoholic beverage industry in this State (see R.S. 33:1-25), and (2) whether the applicant was entitled to a hearing upon request to the Director to examine the underlying facts to determine whether there existed moral turpitude in the absence of a conclusive presumption that the crime itself involved moral turpitude per se.

The applicant appealed his conviction in the United States District Court to the United States Circuit Court of Appeals, and that conviction was reversed for error in the charge and remanded to the United States District Court for retrial. U.S. v. Vitiello, 363 F. 2d 240 (3d Cir. 1965). Thereafter the applicant pleaded nolo contendere to the 1959

offense. On motion of the government, the charge relating to the 1958 failure to file was dismissed. During the pendency of this said appeal, the applicant sought the advisory opinion from the Director as to his eligibility and then appealed from an adverse opinion of the Director to the Appellate Division.

The Appellate Division in remanding the matter to this Division stated in its majority opinion the following:

> "We are of the view that the case is controlled by State of N.J., Div. of Alcoh. Bev. Cont. v. McNally, 91 N.J. Super. 513 (App. Div. 1966), certif. denied 48 N.J. 351 (1966). In that case we held that when a convicted individual requests the Department [Division] to look at the underlying facts to determine whether there existed moral turpitude, the Department [Division] must do so, unless the crime is of such a nature that moral turpitude, or its absence, must be conclusively presumed. We cannot say that a conviction of willful and knowing failure to file an income tax return, as distinguished from a conviction of evasion of income tax, conclusively establishes moral turpitude. It may, or it may not, depending upon the circumstances leading to and surrounding the admitted violation. Accordingly, we reverse and remand the matter to the Department [Division] for a hearing of such relevant evidence as either appellant or the State desires to introduce, and a determination thereon of whether or not moral turpitude was involved in the violation."

The Appellate Division did not retain jurisdiction.

In accordance with the imperative of the remand, a hearing was granted applicant at which he gave the following account: He admits that he did not file income tax returns for the years 1958 and 1959. The reason he did not file an income tax return for the year 1959 (in which year he admits that the criminal complaint charged that he received an income of approximately $35,000) was that withholding taxes were taken from his salary by companies which had subsequently "gone broke". After much negotiation the applicant, through his attorney Mr. Seymour Gelzer, made a settlement on account of the amount due and owing for the 1959 tax in the sum of $1590-odd dollars. However, no amount was ever paid on account of the amount owed for these years to the Internal Revenue Service. The applicant states that the reason he did not pay was that, although he was employed until January 1969, he had no funds. He was questioned on cross examination with respect to a settlement of $100,000 made with an insurance company on the death of his son who was killed in 1964. He insisted that this money went to his wife and none of it was retained by him.

Applicant argues that he entered a plea of nolo contendere to the criminal charge relating to his failure to file an income tax return for 1959 because he has a cardiac condition and did not want to undergo the strain of another trial. He added that his attorney advised the court of that fact. He then testified as follows:

"Q Did the court direct any remarks to you with respect to the entry of this plea?
A I believe the court asked me if I realized the nature of the plea and I said yes.
Q Was anything said by either you or Mr. Gelzer to the court at that time about the reason that you ascribe now for entering the plea of nolo contendere?
A Nothing was said by me. What may have been said by Mr. Gelzer I don't know, because he was closer to the bench that I, I was 7 or 8 feet behind him.
Q In any event, you did not tell the court that you were entering this plea because you were a cardiac?
A Absolutely not sir.
Q And you did not hear Mr. Gelzer say anything to that effect at that time?
A I don't recall."

Finally he added that it was his belief that there was nothing owed to the government besides what was withheld from his salary for the year 1959.

It is clear from the testimony and facts herein that the applicant understandingly entered a plea of nolo contendere (which is equivalent to a plea of guilty) to count 2 of the Amended Information; that during the calendar year 1959 he received a gross income of $24,316.70; that, by reason of such income, he was required by law, after the close of the calendar year 1959 and on or before April 15, 1960, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of New Jersey, at Newark, District of New Jersey, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that, well knowing all of the foregoing facts, he did willfully and knowingly fail to make said income tax return to the said Director of Internal Revenue, or to any other proper officer of the United States, in violation of Section 7203, Internal Revenue Code; 26 U.S.C., sec. 7203.

It is a matter of common knowledge and regular routine that, before accepting such plea, the District Court Judge inquires of a defendant as to whether he fully understands the nature of the plea. I am persuaded that this was done in this case, and in fact this is not denied by the applicant. Thus, in my opinion it is impermissible to collaterally attack the said action of the United States District Court. Therefore, it is unnecessary to look behind the plea to the facts of the case. The critical issue is whether the crime to which he has pleaded involves the element of willfulness.

I am convinced that, upon examination of the underlying facts herein, the applicant's course and pattern of conduct in failing to file returns for the years 1958 and 1959 constituted a factor in establishing that he willfully failed to file. See U.S. v. Johnson, 386 F. 2d 630, 631 (3d Cir. 1967). Further, I find that such willfulness contains the element of moral turpitude. Additionally, as noted above, the fact that the applicant knowingly pleaded nolo contendere to the said charge of willfully failing to file an income tax return for the year 1959 makesit unnecessary to consider the facts of the said case.

I find nothing in the testimony adduced herein, or in the record, to show any unusual circumstances leading to and surrounding the admitted violation which would mitigate against a finding that the said crime involves moral turpitude. On the contrary, the facts and circumstances herein clearly manifest willfulness, that is, that his act was both intentional and reprehensible, attended by knowledge of legal obligation and purpose to prevent the government from getting that which it lawfully requires. U.S. v. Vitiello, 363 F. 2d 240, 242 (3rd Cir. 1965); U.S. v. Johnson, supra, dissenting opinion by Kolodner, J., referring to "the specific evil motive necessary to constitute wilfulness" under U.S.C. sec. 7203.

I find much of the applicant's testimony to be contradictory, incredible, contrary to common experience and lacking in probity, and I find nothing therein which would divest the crime of the element of moral turpitude.

Accordingly, I recommend that there be a finding that the crime in question involves moral turpitude and that the applicant be advised that the Alcoholic Beverage Law (R.S. 33:1-25) provides that no license of any class shall be issued to a person convicted of a crime involving moral turpitude and that, since the applicant is so disqualified, no licensee shall employ or have connected with him in any business capacity whatsoever the said applicant under R.S. 33:1-26 and Rule 1 of State Regulation No. 13.

JOSEPH H. LERNER,
DEPUTY DIRECTOR

Approved:

Joseph M. Keegan,
Director

Dated: December 16, 1969.

NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1969 TO DECEMBER 31, 1969 AS REPORTED TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19 (INCLUDING 53 ISSUED BY THE DIRECTOR PURSUANT TO R.S. 33:1-20)

C L A S S I F I C A T I O N O F L I C E N S E S

County	PLENARY Retail Consumption No. Issued	PLENARY Retail Consumption Fees Paid	PLENARY Retail Distribution No. Issued	PLENARY Retail Distribution Fees Paid	Club No. Issued	Club Fees Paid	Limited Retail Distribution No. Issued	Limited Retail Distribution Fees Paid	Seasonal Retail Consumption No. Issued	Seasonal Retail Consumption Fees Paid	Licenses Surr. Revoked Retired	Number Licenses in Effect	Total Fees Paid
Atlantic	485	$ 209,085.80	74	$ 26,621.00	29	$ 2,565.00						588	$ 238,271.80
Bergen	812	357,231.40	301	97,072.20	167	15,546.43	44	$2,106.50	5	$1,398.75		1329	473,355.28
Burlington	201	96,697.00	43	15,189.00	57	7,550.00	1	50.00				302	119,486.00
Camden	448	244,354.22	86	40,553.00	81	9,223.35			1	450.00	1	615	294,580.57
Cape May	142	83,000.00	13	4,920.00	19	2,350.00						174	90,270.00
Cumberland	81	43,600.00	15	4,450.00	33	4,453.97						129	52,503.97
Essex	1190	769,482.00	334	221,270.00	93	12,900.00	23	1,150.00			1	1639	1,004,802.00
Gloucester	108	40,770.00	16	4,460.00	26	2,394.00						150	47,624.00
Hudson	1363	630,795.00	295	122,600.00	76	8,900.00	58	2,450.00			1	1791	764,745.00
Hunterdon	80	35,017.00	16	10,841.00	19	2,300.00						115	48,158.00
Mercer	398	287,363.99	51	28,190.00	66	9,775.48						515	325,329.47
Middlesex	632	324,490.00	89	31,045.00	144	11,715.55	4	200.00				869	367,450.55
Monmouth	545	291,788.26	128	46,837.00	67	7,695.29	10	492.00	18	11,007.90		768	357,820.45
Morris	357	157,247.00	105	46,351.00	72	7,072.50	13	650.00	5	1,560.00		552	212,880.50
Ocean	196	114,835.11	52	24,483.00	52	5,840.00						300	145,158.11
Passaic	773	333,084.00	167	53,520.00	51	5,950.00	6	300.00				997	392,854.00
Salem	50	19,410.00	8	1,590.00	21	1,900.00						79	22,900.00
Somerset	191	95,240.00	41	13,770.00	41	4,990.00						273	114,000.00
Sussex	166	45,335.00	21	4,400.00	14	980.00	1	50.00	1	225.00		203	50,990.00
Union	543	332,140.88	144	75,905.00	93	10,254.38	25	1,193.00				805	419,493.26
Warren	145	45,060.00	22	5,940.00	33	3,475.00			1	225.00		201	54,700.00
Totals	8906	$4,556,026.66	2021	$880,007.20	1254	$137,830.95	185	$8,641.50	31	$14,866.65	3	12394	$5,597,372.96

During period September 30, 1969 to December 31, 1969:

3 "C" issued under hardship
4 "C" new licenses
2 "C" issued - Previously operating under appeal
1 "D" late renewal
13"CB" new licenses
All seasonals have expired

Joseph M. Keegan
Director

5. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
William H. Kahlert t/a Hazlet Lunch 3248 Hwy. #35 Hazlet, N. J.	)	CONCLUSIONS and ORDER
Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Hazlet.	)	

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Goldman, Goldman and Caprio, Esqs., Attorneys for Licensee.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to charge alleging that on November 15, 1969 he sold drinks of alcoholic beverages to a minor, age 20, in violation of Rule 1 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for two days, effective November 9, 1949, for permitting a mislabeled beer tap on the licensed premises. Re Kahlert, Bulletin 859, Item 6.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Richard's Liquor Store, Inc., Bulletin 1855, Item 9.

Accordingly, it is, on this 23rd day of December, 1969,

ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Hazlet to William H. Kahlert, t/a Hazlet Lunch, for premises 3248 Hwy. #35, Hazlet, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, January 5, 1970, and terminating at 2:00 a.m. Saturday, January 10, 1970.

Joseph M. Keegan
Director