

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1559

May 13, 1964

TABLE OF CONTENTSITEM

1. APPELLATE DECISIONS - MELSTAN CORPORATION V. RANDOLPH.
2. DISCIPLINARY PROCEEDINGS (Sayreville) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 25 DAYS.
3. STATUTORY AUTOMATIC SUSPENSION (Bernardsville) - ORDER LIFTING SUSPENSION.
4. ACTIVITY REPORT FOR MARCH 1964.
5. MORAL TURPITUDE - CONVICTION OF BRIBERY OF LABOR REPRESENTATIVE HELD TO INVOLVE MORAL TURPITUDE.
6. DISQUALIFICATION REMOVAL PROCEEDINGS - LARCENY AND BURGLARY - CONVICTION AS DISORDERLY PERSON WITHIN PAST 5 YEARS - ORDER REMOVING DISQUALIFICATION.

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1. APPELLATE DECISIONS - MELSTAN CORPORATION v. RANDOLPH.

MELSTAN CORPORATION)
t/a THE SALEM)

Appellant,)

v.)

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF RANDOLPH,)

Respondent.)

ON APPEAL
ORDER

Paul Colvin, Esq., Attorney for Appellant.
Young and Sears, Esqs., by Harry L. Sears, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

Appellant appeals from suspension of its license for premises So. Salem Street, Randolph Township, by the respondent for seventy days effective January 6, 1964.

At the hearing of the appeal appellant's attorney stated that the appeal was withdrawn in anticipation of possible reconsideration of the extent of the penalty to be reimposed by respondent.

No reason appearing to the contrary, it is, on this 24th day of March 1964,

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the order heretofore entered herein staying the effect of respondent's order of suspension pending determination of the appeal is hereby vacated to permit reconsideration and reimposition of penalty.

JOSEPH P. LORDI
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against

JOHN HENRY DiBIASE AND NICK P. DiBIASE t/a CONNIES BAR & GRILL 304-6-8-10 Highway #35, Morgan Sayreville PO South Amboy, N. J.

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-44, issued by the Borough Council of the Borough of Sayreville.

Kolodziej and Opdyke, Esqs., by Edwin A. Kolodziej, Esq., Attorneys for Licensees. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensees plead not guilty to the following charges:

"1. On Friday, August 2, 1963, at about 10:10 p.m. and again at about 10:20 p.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages at retail in their original containers for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38.

"2. On Friday, August 2, and Saturday, August 3, 1963, while Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey were conducting an investigation, inspection and examination at your licensed premises, you failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation, inspection and examination; in violation of R.S. 33:1-35."

The factual setting for the Division's case was developed through the testimony of two ABC agents. In the course of an investigation initiated upon a specific assignment to investigate alleged sales of alcoholic beverages at retail in their original containers for consumption off the licensed premises, two ABC investigators visited the licensed premises on August 2, 1963, at about 9:50 p.m. They seated themselves at opposite ends of the bar and noted that there were approximately thirty-five patrons in the place. The premises consist of a barroom with a half-oval shape bar along the left wall; to the left of this wall there is an entrance into a storage room which also has an outside entrance; to the right

of the barroom there is a "sitting area with numerous tables, pool table, telephone booth, to the rear is a kitchen."

John DiBiase (a co-licensee) was tending bar at this time. At 10:10 p.m. a female (later identified as Mrs. Emilia Cameron) entered the barroom and spoke to the bartender. As a result of their conversation he handed her a brown paper bag and told one of the patrons to obtain for her two six-packs of beer. This individual (later identified as Harry Douglas) went to the storage room, obtained two six-packs, placed them in the brown paper bag and brought them out to the barroom. Mrs. Cameron paid the sum of \$2.30 upon ordering same, which DiBiase rang up on a cash register.

In the meantime another individual entered the premises and, at about 10:20 p.m., DiBiase was seen placing two bottles of soda and a bottle of whiskey in a brown paper bag which he then handed to this individual. The person (later identified as Frank Hendershot, Jr.) left the premises and proceeded toward his automobile. The two agents immediately left the premises, accosted Hendershot, identified themselves "with our badges and told him 'State ABC' and asked for the bottle of whiskey." Agent S reached for the bag and, when Hendershot pulled the bag away, part of it ripped. The contents of the bag became clearly visible to the agents, revealing a quart bottle of Seagram's 7 Crown whiskey and two bottles of soda. They then requested that Hendershot surrender the whiskey to them. This he refused to do. He also refused to identify himself, and told them that, unless they had a search warrant, he was not going to turn over the whiskey. It was then suggested that the Police Department should be summoned, but Hendershot refused to wait. They then questioned him as to his residence, and he said "You want to find out who I am or where I live you can go with me." Agent T started to get into Hendershot's car. At that point Hendershot started the car and said to the agent "Get the hell out of my car" and fled into the night at a high rate of speed.

The agents thereupon returned to the tavern at about 10:30 p.m. and questioned DiBiase with respect to the identity of Hendershot. DiBiase denied knowing him and stated in fact that he had never seen this individual before. He also denied selling any whiskey to him and selling any beer to anybody after 10 p.m. The agents thereupon made an inspection of the premises and observed that the back bar contained numerous cards with names on them. DiBiase informed the agents that they were the names of persons to whom credit has been extended or monies loaned over a period of time. The agents then seized the cash register tape which reflected the sale of beer at \$2.30. This was shown to DiBiase and he still denied that any such sale had been made.

The agents returned the following morning at about 11:30 a.m. and spoke to the co-licensee Nick DiBiase. After identifying themselves they made a re-inspection of the premises and requested the further inspection of the cards. Nick informed them that his brother had taken them home the preceding night and that he was off for the week-end and he could not deliver those to the agent. In fact, the cards were not produced to the agents at that time or at this hearing.

DiBiase acknowledged that Hendershot had been well known to both licensees and had been a customer of long standing. He also admitted that he knew Mrs. Cameron and that she also was

a patron at these premises. DiBiase further stated that, after the agents had left the premises on the previous night, Hendershot returned to the premises and stated that he would have "given us what we wanted if we had not mishandled him outside." Both agents vigorously denied that they had handled or even touched Hendershot except that, in the course of touching the paper bag, it ripped and the contents then became clearly visible.

On cross examination both agents reiterated their direct testimony that, prior to entering the premises, they checked the time on their own wrist watches so that their testimony as to the times stated by them on which the sale and delivery of the alcoholic beverages in the original containers were made is accurate.

Considerable time was spent in cross examining the agents with respect to the exact description of the Seagram's 7 Crown whiskey. The agents described in great detail the said bottle and the circumstances of their discovery as hereinabove described. Agent C was particularly cross examined with respect to the incident on the outside of the premises, and he elaborated as follows: When they first accosted Hendershot they identified themselves and, speaking in a normal tone of voice, requested him to hand over the bag. He replied "This is my personal possession. If you want it you will have to get a search warrant." The agent then said "We don't need a search warrant. We will give you a receipt for it," whereupon Hendershot said "The only way you are going to get this is arrest me and take me to police headquarters." There was then a general discussion and the suggestion that he wait around for the police. Hendershot then said "You want this bottle you are both going to have to fight me for it, and then I will have you arrested for assault and battery." Another request was made for the bag and for his identity. He refused to hand over the bag or to identify himself and, as stated hereinabove, the side of the bag was ripped and the quart bottle of whiskey became clearly visible and identifiable.

Both agents admitted that Nick DiBiase was fully cooperative with them on their visit of August 4. They did, however, feel that John DiBiase did not facilitate and did in fact hinder and delay their investigation by failing or refusing to identify the alleged purchasers of these alcoholic beverages when they questioned him upon their return to the tavern on August 2.

The licensees both testified in defense of these charges and, in addition, produced both alleged purchasers and four other witnesses to support their denial of these charges.

Frank Hendershot, Jr. testified that he left his home at approximately 9:30 o'clock although he was not sure of the exact time since he does not have a watch. He arrived at the tavern at about 9:35 p.m. and parked "quite a bit down the road." After he entered the tavern he ordered a glass of beer and a shot of whiskey for which he paid the sum of \$1.20. He then ordered two bottles of 7-Up which were handed to him in a brown bag. Thereupon he left the tavern and, when he was almost to the back of his car, he was approached by the two agents who identified themselves by saying "We are ABC men." He further insisted that they grabbed him and also grabbed the bag. This aroused him so that he cursed them and refused to either give them the bag or

exhibit its contents, saying "You have no right to search me. Show me a search warrant." He also insisted that they should get a police officer but he then refused to wait around and proceeded to his car. He continued that he arrived home at about 10:12 p.m.

On cross examination he admitted that he had been a frequent patron at these premises and had a charge account on the date in question with the licensees. However, he did not charge the soda purchases but paid for them in cash. It was further developed that, although this witness was a former Major in the Army, he refused to accede to the request of the agent because "They had no right to grab or demand anything the way they did." He further recalled that he returned to the tavern later that evening out of curiosity to find what had developed.

Emilia Cameron, testifying as a witness on behalf of the licensees, stated that she lives in a marina nearby; that she left her home at twenty minutes to ten and came to the tavern; purchased two six-packs of beer; then left the tavern at ten or five minutes to ten. She further states that she was back home by ten o'clock. On cross examination she insisted that she checked the time on her wrist watch and was therefore certain of the time. However, she admitted that she did not verify its correctness.

Harry Douglas testified that he was in the subject licensed premises at the time in question and he too specifically checked the time on his watch at the time of these transactions. He was requested by the licensee on duty at the time to obtain the two six-packs of beer from the storage room and he did so. He recalls that Hendershot left the premises about five or six minutes after he had delivered the beer to Mrs. Cameron.

On cross examination it was developed that he did not remember when the ABC agents came into the tavern nor did he check the time when he delivered the beer to Mrs. Cameron. He further admitted that he is a regular patron of this tavern and occasionally relieves the bartender; he has been doing so for the past six months. He further insisted that, when he was requested by DiBiase to obtain the beer for Mrs. Cameron, he checked his watch and found that it was 9:50 p.m. and that the barroom clock had the time of 10:12 p.m.

James Nuzzie testified that he too looked at his watch at the time of the Cameron purchase and that she left the tavern at about "ten minutes or eight minutes to ten." He did not know exactly what time Hendershot came in but he did note that DiBiase picked up two bottles of soda and placed them in a bag which was on the floor. He did not see any whiskey placed in that bag. His estimate was that Hendershot left the tavern at two minutes before ten. On cross examination he admitted that he has been a friend of the licensees for the past fourteen years and visits the premises at least three, four or five times a week. He also insisted that he checked his watch during all of these occurrences.

Frank McMahon arrived at the tavern at either two or three minutes prior to or after 10 p.m. and he did not see either Hendershot or Mrs. Cameron in the premises at the time. However, around 10:30 p.m. the agents returned and he noted that DiBiase was a little nervous at that time. He also admitted that he could not state with any measure of accuracy whether Mrs. Cameron or Hendershot were in the tavern when he arrived, except that he didn't see them.

Nick DiBiase testified that he has a half-interest with his brother in this license and has been operating his tavern since 1947 or 1948. He received a call from his brother on the night of August 2 and arrived at the tavern at 10:30 p.m. When he got there Agent C was examining the drawer and the back bar, and his brother "seemed nervous." On the following day, at about 11:45 a.m., he was visited by the agents and extended the fullest cooperation to them. He offered to take the agents to the race track but they declined.

On cross examination he admitted that he did not have the credit cards available to the agents on the date of August 3 because his brother had taken them with him on the previous night, and his brother was away for the week-end.

John DiBiase, the co-licensee, testified that he was tending bar on the night of August 2; that the clock in the premises was set ahead fifteen to seventeen or eighteen minutes fast. He further asserts that he sold the two six-packs of beer to Mrs. Cameron at ten minutes of ten, and is certain of that fact because he checked it with his own watch. Then Hendershot came in about five minutes of ten and ordered a shot and a beer. After he consumed the drink he asked for two bottles of 7-Up which DiBiase sold him. Hendershot left within a few minutes thereafter. After paying \$1.20 for this purchase he noted that the \$1.20 on the tape was the ninth transaction after the transaction in the sum of \$2.30 recorded as reflecting the purchase of the beer by Mrs. Cameron. He further insists that, when the agents returned to the tavern after their confrontation with Hendershot, he cooperated with them fully although he was quite upset and nervous. He did, however, deny that he had made any sales after hours.

On cross examination he was asked the following questions:

"Q You didn't tell the agents the name of the man to whom you made the sale was Mr. Hendershot, did you?"

A They asked me if I knew the man I sold the bottle of 7 Crown to. I said, 'I don't know anybody I sold 7 Crown to.'

Q You knew who they were talking about, didn't you?"

A I was never asked, 'Did I sell two bottles of Seven-Up?'

Q You knew who they were talking about, didn't you?"

A I didn't want them to entrap me in any way."

And further:

"Q You knew who they were talking about, didn't you?"

A I knew they were referring to me. I didn't sell no bottle--

* * * *

Q You also knew they were referring to Mr. Hendershot, didn't you?"

A Most likely they probably were.

* * * * *

Q You didn't give Mr. Hendershot's name?

A No.

Q Why not?

A I was never asked the right question. They were telling me, 'Who is the guy you sold the 7 Crown to?'

Q Didn't you say, 'I didn't sell him 7 Crown. I sold him two bottles of soda'? And they said, 'What is the man's name?' You said, 'I don't know. I never saw him before. I don't know who he is'?

A I thought they were referring to the question 7 Crown."

He was questioned about the time and the manner in which he rings up sales. He stated that Mrs. Cameron paid him as soon as she ordered the beer at ten minutes to ten, and that he rang up the transaction with Hendershot in the sum of \$1.20 about five minutes after that. It was then developed that there were eight items between the first transaction referred to and the second. His best estimate was that it would take somewhere between five and ten minutes to serve the customers and ring up eight sales.

He further admitted that the agents returned about twenty-five minutes after they left, so that it was approximately 10:30 p.m.

I have detailed much of the testimony of both the witnesses for the Division and of the licensees in order to develop an objective perspective of the facts upon which the charges herein are based. My careful analysis and evaluation of the testimony, together with my observation of the demeanor of the witnesses as they testified at the hearing, lead me to the considered conviction that the version as presented by the agents of what occurred on the dates in question is a credible, forthright and true version.

I am persuaded that the agents had no reason to conspire against the licensees nor did they in fact conspire, and they were merely fulfilling their obligation and the performance of their duties in developing an investigation of these premises. There is not the slightest scintilla of evidence of any bias or prejudice against the licensees by these agents.

There is one fact, however, which should be particularly noted. These agents went to the premises in furtherance of an investigation of alleged illegal after-hours sales. Accuracy of time became the essence and crux of this investigation. Both agents testified that they checked their watches as to accuracy with their auto radios; observed their watches during their stay at the tavern, and made written notations thereof at the conclusion of their visit. On the other hand, none of the witnesses for the licensees made any written notations of the time in which the purchases were made. Nor is it probable that they would have done so. These witnesses were patrons who frequented this tavern either for purchases of alcoholic beverages for off-premises

consumption or for socializing and engaging in actual consumption on the premises. It taxes credulity to believe that every one of these witnesses carefully noted the time on his or her watch on this night. The similarity of testimony on this point makes such testimony suspect, in my view. However, several of the witnesses, including the licensee who was on duty on that night, testified that the agents returned to the tavern after their confrontation with Hendershot, at about 10:30 p.m. Since the testimony makes it clear that the said encounter with Hendershot took only a few minutes, it follows that the time as stated by the agents was the exact time. The empiric evidence and the defense testimony support that conclusion.

With further reference to the time lapse between the transactions involving Mrs. Cameron and Hendershot, it is significant that the register tape admitted into evidence reflects eight transactions rung up on the tape between those two sales. I do not believe that these took place in just a few minutes because the physical service of eight separate sales and the recording of same on the register would take more than the few minutes as asserted by DiBiase. All of these facts satisfy me that the sale to Hendershot took place at approximately 10:20 p.m. as the agents testified.

The conduct of Hendershot upon confrontation outside the premises has considerable significance in the totality of the circumstances on that evening. It is logical to believe that, if Hendershot only had two bottles of 7-Up in that paper bag, he would have been quite amenable to exhibiting such contents. Human experience suggests that a guilty feeling motivated his violent resistance to an examination of the contents of that bag. When he talks about getting a search warrant or the right of agents (who had admittedly identified themselves) to search him and the bag, his insistence upon calling a police officer and then refusing to wait, indeed fleeing from the scene before the agents had an opportunity to take such action, imperatively fortify the version as presented by the agents.

Both agents saw and identified the Seagram's 7 Crown whiskey. The argument of counsel that this was an unlawful search and seizure must be rejected because there was no search, nor was there a seizure. I might add parenthetically that the return to the premises later that evening by Hendershot lends added force to my conclusion with respect to the contents of the bag and the alleged sale as herein charged.

After reviewing the evidence, the exhibits and the argument of counsel, I conclude that the Division has established the truth of the first charge by a fair preponderance of the believable evidence. I recommend that the licensees be found guilty of the said charge.

With respect to the second charge, which alleges that the licensees hindered, delayed and failed to facilitate the investigation herein, the attorney for the Division has conceded that there is no affirmative testimony with respect to that part of the charge which alleges that the licensees hindered, delayed and failed to facilitate the investigation herein on August 3, 1963. Thus the allegation is limited to the activity after the return of the agents to the licensed premises at about 10:30 p.m. on August 2.

The Division bases the gravamen of its charge upon the allegation that, when the agents returned to the premises and requested the name of the person (Hendershot) to whom the co-licensee had allegedly sold whiskey and two bottles of soda after 10 p.m. on that evening, the licensee denied ever having seen this person before and denied having sold any whiskey to anybody at that time. He also denied knowing the name of the woman (Mrs. Cameron) to whom the two six-packs of beer were sold and delivered before the above referred to transaction.

The testimony hereinabove quoted emphasized with abundant clarity the co-licensee's awareness of the subject of the interrogation, and equally reflects his willful and deliberate refusal to reveal such information. There is not the slightest doubt that, when the agents questioned him about the person who had just made a purchase, the licensee knew that Hendershot was the person to whom they were referring. He also admitted at this hearing that Hendershot was a patron to whom he extended credit over a period of years. His refusal to reveal Hendershot's identity caused the agents of this Division considerable difficulty and delay in their investigation of this alleged violation because it became necessary for them to trace the license number of the motor vehicle, interview Hendershot's employer, and spend considerable time in furtherance thereof. All of this could have been eliminated by the co-licensee's cooperation at the time of the interrogation that night.

DiBiase states that he denied making such sale because he did not want to "entrap" or "incriminate" himself. This argument was framed in licensee's summation as follows:

"he (DiBiase) in response to the questions was asked trap questions, quite frankly. He chose to answer in what is characterized in a little bit of a wise guy way. 'I don't know anybody I sold anything to. I didn't sell after hours.'"

This is refuted by DiBiase's testimony wherein he states that the agents "probably were" referring to Mr. Hendershot when they questioned him that night, but "I was never asked the right question." If he was convinced that he had not sold any alcoholic beverages after hours and had not acted improperly, it would have been very simple for him to have given them the name of Hendershot and told them that he was the person to whom bottles of soda were sold but that he did not sell any whiskey. There would have been nothing entrapping or incriminating in that statement, if that were the fact.

Agents of this Division, in the performance of their lawful duties, require full cooperation and facilitation by licensees or their employees, and should not be subjected to evasion or "wise guy" remarks.

There is substantial evidence, therefore, to support a finding that the licensees did not do everything in their power to facilitate such investigation, in violation of N.J.S.A. 33:1-35, which provides in pertinent part that:

"... every licensee ... shall, on demand, exhibit to the director ... or to his ... deputies or investigators, or inspectors, or agents all of the matters and things which the director of the division ... is hereby authorized or empowered to investigate,

inspect or examine, and to facilitate, as far as may be in their power so to do, in any such investigation, examination or inspection, and they shall not in any way hinder or delay or cause the hindrance or delay of same, in any manner whatsoever." (Emphasis supplied.)

Cf. Vogellus v. Division of Alcoholic Beverage Control (App.Div. 1963), not officially reported, reprinted in Bulletin 1537, Item 1.

Counsel further advocates that the finding to support the second charge herein must be proved beyond a reasonable doubt. This, of course, is not the law. Disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373, 378 (1956); Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501, 503. This principle was restated in the recent case of Howard Tavern, Inc. v. Division of Alcoholic Beverage Control (App.Div. 1963), not officially reported, reprinted in Bulletin 1491, Item 1, where the court said:

"The truth of charges in a proceeding before an administrative agency need be established only by a preponderance of the believable evidence, not beyond a reasonable doubt. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962)."

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32 C.J.S. Evidence, sec. 1042.

I am satisfied that this charge has been proved by a fair preponderance of the credible evidence, indeed, by substantial evidence.

My evaluation and consideration of the testimony lead me to recommend that the licensees be found guilty as charged.

The licensees have no prior adjudicated record. It is further recommended that an order be entered suspending the license on the first charge for fifteen days (Re 677 Ocean Avenue Corporation, Bulletin 1531, Item 5) and on the second charge for ten days (cf. Re Burke's Tavern, Inc., Bulletin 1539, Item 3), making a total suspension of twenty-five days.

Conclusions and Order

Pursuant to Rule 6 of State Regulation No. 16, exceptions to the Hearer's Report and written argument thereto were filed with me by the attorneys for the licensees.

Having carefully considered the entire record herein, including the exhibits, the Hearer's Report, each of the exceptions and written argument thereto, I concur in the conclusions of the Hearer and adopt them as my conclusions herein. Hence I find the licensees guilty as charged.

Accordingly, it is, on this 30th day of March, 1964,

ORDERED that Plenary Retail Consumption License C-44, issued by the Borough Council of the Borough of Sayreville to John Henry DiBiase and Nick P. DiBiase, t/a Connie's Bar & Grill, for premises 304-6-8-10 Highway #35, Sayreville, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. Monday, April 6, 1964, and terminating at 3:00 a.m. Friday, May 1, 1964.

JOSEPH P. LORDI
DIRECTOR

3. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto.Susp. #245)	
In the Matter of a Petition to Lift)	
the Automatic Suspension of Plenary)	
Retail Consumption License C-1,)	
issued by the Common Council of the)	ON PETITION
Borough of Bernardsville to)	ORDER
)	
SIDNEY FLORIO)	
t/a Colonial Tavern)	
71 and 75 Mine Brook Road)	
Bernardsville, N. J.)	

Samuel Chiaravalli, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on March 13, 1964, the licensee-petitioner was fined \$50 in the Bernardsville Municipal Court after pleading guilty to a charge of sale of alcoholic beverages to a minor during the first and third weeks of January 1964, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of the license for the balance of its term. R.S. 33:1-31.1. The suspension has not been effectuated because of the pendency of this proceeding.

It further appears that the municipal issuing authority has suspended the license for five days effective 1:00 a.m. Monday, March 23, 1964, after confessional plea to a charge in disciplinary proceedings alleging the same sale to the minor. Hence, I shall lift the automatic suspension in anticipation of the service of the currently effective municipal suspension. Re Hillman, Bulletin 1512, Item 5.

Accordingly, it is, on this 24th day of March, 1964,

ORDERED that the statutory automatic suspension of said license C-1 be and the same is hereby lifted, effective 1:00 a.m. Saturday, March 28, 1964.

JOSEPH P. LORDI
DIRECTOR

4.

ACTIVITY REPORT FOR MARCH 1964

ARRESTS:		
Total number of persons arrested	-----	24
Licensees and employees	22	
Bootleggers	2	
SEIZURES:		
Distilled alcoholic beverages - gallons	-----	10,315
Wine - gallons	-----	1,180
Brewed malt alcoholic beverages - gallons	-----	17,640
RETAIL LICENSEES:		
Premises inspected	-----	789
Premises where alcoholic beverages were gauged	-----	421
Bottles gauged	-----	6,543
Premises where violations were found	-----	82
Violations found	-----	97
Unqualified employees	26	Other mercantile business 5
Reg. #38 sign not posted	22	Disposal permit necessary 3
Application copy not available	14	Improper beer taps 2
Prohibited signs	5	Other violations 20
STATE LICENSEES:		
Premises inspected	-----	18
License applications investigated	-----	11
COMPLAINTS:		
Complaints assigned for investigation	-----	323
Investigations completed	-----	387
Investigations pending	-----	131
LABORATORY:		
Analyses made	-----	100
Refills from licensed premises - bottles	-----	34
Bottles from unlicensed premises	-----	1
IDENTIFICATION:		
Criminal fingerprint identifications made	-----	5
Persons fingerprinted for non-criminal purposes	-----	264
Identification contacts made with other enforcement agencies	-----	174
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities	-----	13
Violations involved	-----	15
Sale during prohibited hours	8	Employing female bartender (local reg.) 1
Sale to minors	4	Failure to close prem. dur. proh. hrs. 1
Unqualified employee	1	
Cases instituted at Division	-----	18
Violations involved	-----	25
Possessing liquor not truly labeled	6	Conducting business as a nuisance 1
Sale below filed price	3	Sale from vehicle 1
Fraud in application	2	Delivery w/o bona fide invoice 1
Sale outside scope of license	2	Fraud and front 1
Sale during prohibited hours	2	Rebottling by retailer 1
Sale to minors	2	Hindering investigation 1
Beverage Tax Law non-compliance	1	Sale to intoxicated person 1
Cases brought by municipalities on own initiative and reported to Division	-----	31
Violations involved	-----	39
Sale to minors	16	Violation of special condition 1
Failure to close prem. dur. proh. hrs.	5	Employee working while intoxicated 1
Sale during prohibited hours	5	Permitting minors to congregate on premises (local reg.) 1
Permitting brawls on premises	3	Conducting business as a nuisance 1
Permitting lottery activity (numbers) on premises	3	Licensee working while intoxicated 1
Hindering investigation	2	
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-----	33
Appeals	7	Seizures 6
Disciplinary proceedings	11	Tax revocations 1
Eligibility	8	
STATE LICENSES AND PERMITS ISSUED:		
Total number issued	-----	1,009
Licensees	3	Social Affair Permits 371
Solicitors' Permits	53	Miscellaneous Permits 95
Employment Permits	162	Transit insignia 252
Disposal Permits	57	Transit certificates 10
Wine Permits	6	
OFFICE OF AMUSEMENT GAMES CONTROL:		
Licenses issued	207	

JOSEPH P. LORDI
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: April 6, 1964

5. MORAL TURPITUDE - CONVICTION OF BRIBERY OF LABOR REPRESENTATIVE HELD TO INVOLVE MORAL TURPITUDE.

March 23, 1964

RE: ELIGIBILITY NO. 723

Applicant seeks an 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 a crime.

Applicant's criminal record discloses that on December 6, 1963, he was convicted in a federal court on a three-count indictment charging him in the first count with unlawfully, wilfully and knowingly conspiring to bribe a labor representative, in the second count with unlawfully, wilfully and knowingly requesting and demanding a labor bribe, and in the third count with unlawfully, wilfully and knowingly receiving and accepting a labor bribe, in violation of Section 371 of Title 18 and Section 186(b) of Title 29, United States Code. As a result thereof he was placed on probation for two years and adjudged to pay a fine of \$10,000, payable during the probationary period.

The crime of bribery in the second and third counts of the indictment in my opinion per se involves the element of moral turpitude because it corrupts one in a position of trust. See United States ex rel. Sollazzo v. Esperdy, 285 F. 2d 341, 342 (1961), cert. denied 366 U.S. 905, involving the bribery of a participant in an amateur sport in violation of New York Penal Code, wherein the court held:

"There can be no question but that any crime of bribery involves moral turpitude, and so a New York court has held in another context, In re McNally, 1st Dept., 252 App.Div. 550, 300 N.Y.S. 459 (disbarment of attorneys for soliciting and giving bribes in commercial situation). Bribery in essence is an attempt to influence another to disregard his duty while continuing to appear devoted to it or to repay trust with disloyalty. It is not too much to say that the basic assumption of a morally healthy nation is that its citizens will reject such temptation and strive to give their best, their undivided, and their loyal efforts in response to trust and in order to retain self-respect. It is equally a challenge to that assumption and equally heinous to subvert the integrity of an amateur athlete as it is to corrupt the loyalty of employee to employer or the loyalty of a public servant to the people. Cf. Glickfield v. State, 1953, 203 Md. 400, 101 A. 2d 229. That the criminal law dealt with the bribery of public officials and even employees long before it proscribed the bribery of amateur athletes and that some jurisdictions still do not have a statute analogous to Sec. 382(1), does not show that the conduct proscribed therein is not immoral but simply that only recently has it seemed necessary to make such conduct criminal. Criminal or not, our tradition has been that it is morally base to corrupt another in his duty or loyalty. Where the people have declared particular aspects of such reprehensible conduct to be a crime, as in New York and some other states they have declared the bribery of amateur athletes, there can be no doubt that the crime involves moral turpitude."

See also N.J.S. 2A:93-7 making bribery of a labor representative a misdemeanor.

Inasmuch as the substantive offense involved in the conspiracy per se involves moral turpitude, the conspiracy to commit such crime must necessarily involve the element of moral turpitude. Re Case No. 1682, Bulletin 1451, Item 6.

At the hearing held herein, copies of the indictment and judgment of conviction were placed in evidence, and applicant (63 years old) admitted that on October 3, 1963, a jury returned a verdict of guilty against him on the indictment and that on December 6, 1963, based on said verdict the court placed him on probation for two years and ordered him to pay a fine of \$10,000, payable over the probationary period. Applicant further testified that he is married and living with his wife; that for the past nine years he has lived in the same area where he presently resides, and that for more than twenty-eight years last past he has held solicitors' permits issued by this Division authorizing him to solicit the purchase and sale of alcoholic beverages on behalf of New Jersey wholesalers.

The attorney for the applicant urges that, in deciding whether aforesaid convictions involve moral turpitude, I go behind the convictions and explore the evidence, the circumstances surrounding applicant's convictions and the part played by the applicant resulting in his convictions.

In view of the crimes here involved, we do not have to probe beyond the statutory elements thereof. See Weinstein v. Div. of Alcoholic Beverage Control, 70 N.J. Super. 164 (App. Div. 1961); Raphalides v. N.J. Dept. of Civil Service, 80 N.J. Super. 407 (App. Div. 1963); Severini v. Div. of Alcoholic Beverage Control, 82 N.J. Super. 1 (App. Div. 1963). Cf. State Board of Medical Examiners v. Weiner, 68 N.J. Super. 468 (App. Div. 1961).

Under the circumstances, I recommend that applicant be advised that (1) in the opinion of the Director he has been convicted of crimes involving moral turpitude; (2) the Alcoholic Beverage Law of this State (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 (3) 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.

I. EDWARD AMADA,
ATTORNEY

Approved:

(sd) Joseph P. Lordi

Joseph P. Lordi,
Director

6. DISQUALIFICATION REMOVAL PROCEEDINGS - LARCENY AND BURGLARY - CONVICTION AS DISORDERLY PERSON WITHIN PAST 5 YEARS - ORDER REMOVING DISQUALIFICATION.

In the Matter of an Application)
to Remove Disqualification) CONCLUSIONS
because of a Conviction, pursuant) AND ORDER
to R.S. 33:1-31.2)

Case No. 1808

Joseph A. D'Alessio, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

On December 9, 1953, when nineteen years of age, petitioner was convicted of larceny of an automobile, as a result of which he was sentenced to ninety days in a county jail. Thereafter, on June 1, 1954, petitioner, on a charge of burglary, was sentenced to sixty days in a county jail. The operation of the sentence was suspended, and petitioner was placed on probation for a period of three years. On March 19, 1956, petitioner was sentenced to thirty days in jail for operating a motor vehicle after his driver's license had been revoked. Again, on September 9, 1963, petitioner was adjudged a disorderly person after being involved in a fist fight which resulted in a fine of \$100.

The crimes of larceny and burglary, of which petitioner was convicted on December 9, 1953 and June 1, 1954, involve the element of moral turpitude (Re Case No. 454, Bulletin 679, Item 12; Re Case No. 1161, Bulletin 1025, Item 2), and hence petitioner is ineligible to be engaged in the alcoholic beverage industry in this State. See R.S. 33:1-25, 26. The other convictions aforementioned are not convictions of crime.

Petitioner testified that he has been living in New Jersey for five years and is a proprietor of a heating firm for that period of time. Furthermore, he testified that he has never been associated in this State with the alcoholic beverage industry.

Petitioner has produced three character witnesses (an owner of a heating company and two salesmen) who testified that they have known petitioner for five or more years and that he bears a good reputation for being a law-abiding person in the community in which he resides. The Police Department of the community in which petitioner lives has also reported that there is no pending investigation or complaint relative to petitioner.

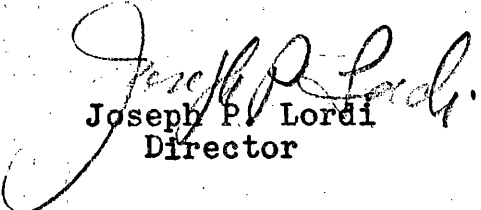
The only hesitation I have to grant the relief sought is that the petitioner during the past five years has been adjudged guilty of being a disorderly person. According to the petitioner's testimony, he and another person were involved in a fist fight and, when both were summoned to court, each was fined \$100 by the municipal magistrate. Although the conviction in question does not constitute conviction of a crime (Re Case No. 1009, Bulletin 950, Item 8), it is to be considered on the general question whether petitioner may be viewed as having successfully rehabilitated himself and as having been conducting himself in a law-abiding manner during the last five years. On this issue it

would appear, without excusing petitioner's "disorderly conduct", that the instance discloses poor judgment rather than showing an unregenerate or lawless or immoral frame of mind. Therefore I do not believe that petitioner's being adjudged a disorderly person should overcome petitioner's otherwise clear record since 1956 and the favorable testimony of his character witnesses.
Re Case No. 1008, Bulletin 956, Item 8.

I therefore conclude from the evidence before me that petitioner has been conducting himself in a law-abiding manner for at least five years and that his association with the alcoholic beverage industry in New Jersey will not be contrary to public interest.

Accordingly, it is, on this 17th day of March 1964,

ORDERED that petitioner's statutory disqualification because of the convictions of crimes described herein be and the same is hereby removed, in accordance with the provisions of R.S. 33:1-31.2.


Joseph P. Lordi
Director