

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
RICHARD J. HUGHES JUSTICE COMPLEX - CN-087  
TRENTON, NEW JERSEY 08625-0087

BULLETIN 2447

OCTOBER 20, 1986

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1. AFFIRMATION - NEW JERSEY'S AFFIRMATION REGULATION [N.J.A.C. 13:2-24.5(a)3] UNCONSTITUTIONAL - AFFIRMATION STATEMENTS PURSUANT TO REGULATION NEED NOT BE FILED

An opinion has been rendered by the office of the Attorney General confirming that New Jersey's "Affirmation" regulation, N.J.A.C. 13:2-24.5(a)3, is an unconstitutional burden on interstate commerce. The regulation, which required both a retrospective and prospective affirmation by a manufacturer, supplier, importer, or blender and rectifier of distilled spirit alcoholic beverages that the prices charged to a New Jersey wholesaler or distributor were no higher than the lowest prices charged or offered to any other wholesaler or distributor in any other state of the United States or the District of Columbia, suffers the same infirmity as the New York statute which was stricken by the United States Supreme Court in Brown-Forman Distillers Corp. v. New York State Liquor Authority, 106 S.Ct. 2080, 90 L.Ed.2d 552, 54 U.S.L.W. 4567 (June 3, 1986).

Since the regulation has been determined to be unconstitutional as a result of the Supreme Court's opinion, the regulation will not be enforced and it is intended that it will be formally repealed as soon as practicable. If any supplier filed an affirmation statement for the August 1 filing date as was required by the regulation, it should have been returned since the filing was not necessary. Any supplier that did not file an affirmation statement in reliance upon the Supreme Court's opinion was correct in not doing so. Such suppliers will not hear from the Division regarding affirmation.

2. NOTICE TO RETAIL LICENSEES: PERMISSIBLE TO MAINTAIN LIST OF EMPLOYEES (E-141-A) IN COMPUTER OR BY COMPUTER PRINTOUT

Inquiry has been made of the Director as to the permissibility of maintaining the list of employees required by N.J.A.C. 13:2-23.13(a)3, commonly known as the "E-141-A" form, other than on the specific form prescribed by the Division. The particular inquiry addressed the use of a computerized listing or payroll printout.

It will henceforth be considered compliance with N.J.A.C. 13:2-23.13(a)3 if a retail licensee maintains a current and up-to-date employee list in a computer which is located on the licensed premises and is capable of immediately printing out such list upon request by anyone authorized to enforce the alcoholic beverage control laws, or by maintaining on the licensed premises an hardcopy computer printout which is current and up-to-date. In either case, the program should contain all of the information required on the "E-141-A" and in substantially the same format. A facsimile of the "E-141-A" form is found in the appendix to the "A.B.C. Handbook for Retail Licensees", which was distributed to all licensees in late 1985 or early 1986.

Actual "E-141-A" forms may be obtained from the Division by sending a self-addressed stamped business size envelope.

**3. NOTICE TO WHOLESALERS AND DISTRIBUTORS: DELIVERY OF ALCOHOLIC BEVERAGE ORDERS TO AREAS CONTROLLED OR DESIGNATED BY A RETAIL LICENSEE BUT WHICH ARE NOT PART OF THE RETAIL LICENSED PREMISES IS PROHIBITED.**

It has come to the attention of the Division that in the case of certain retailers, where the retail licensed premises is part of a larger (and generally not licensed) operation, deliveries of alcoholic beverage orders are often directed by the retailer to be made to a common loading dock or area which is away from and not a part of the premises licensed under the retail license. The retailer in such cases receives the alcoholic beverages at such non-licensed location and then either stores the beverages there or transports them to the licensed area. This is not permitted since receipt of deliveries represents a basic function under the license and the "... operation and effect of every license is confined to the licensed premises." N.J.S.A. 33:1-26. Deliveries must be made on the licensed premises.

If a retailer insists that deliveries be made to an area other than the licensed premises, the delivery should not be made and the goods should be returned to the wholesaler's warehouse. In such case the wholesaler or distributor should also notify the Division, to the attention of the Trade Practices Bureau, so that the retailer can be contacted and advised of the impermissibility of deliveries being made away from the licensed premises.

The only exceptions to the prohibition from making deliveries to the licensed premises of a purchasing retailer are:

- (1) Pre-function deliveries under a social affair permit issued pursuant to N.J.S.A. 33:1-74 and N.J.A.C. 13:2-5.1, et seq. to an approved location other than the location where the social affair is to be conducted;
- (2) Deliveries of a cooperative purchase order to another retailer in an approved cooperative for temporary storage of not more than 72 hours pursuant to N.J.A.C. 13:2-23.21;
- (3) Deliveries to a New Jersey Licensed Public Warehouse under N.J.S.A. 33:1-14 owned by the retail licensee, or rented by the retail licensee from an independent, non-supplier or non-wholesaler owned or controlled public warehouse licensee (see N.J.A.C. 13:2-23.21 and N.J.S.A. 33:1-43); and
- (4) Deliveries to other than normally retail licensed premises pursuant to a special permit issued by the Director under N.J.S.A. 33:1-74 for exigent circumstances.

**4. OPINION GIVEN TO BEER WHOLESALERS THAT THE FILING OF A PRICE FOR LESS THAN A FULL CALENDAR MONTH IS NOT PROHIBITED.**

The following inquiry was received by the Director under date of September 3, 1986, from a wholesaler of malt alcoholic beverages:

Dear Director Vassallo:

For the purposes of developing our marketing program for the month of October 1986, we would like a clarification on the running of our promotions on a less than 30-day basis.

Interpreting the regulation is somewhat difficult and I personally feel that one could assume that properly documented promotions could be scheduled within the calendar month on a less than 30-day basis.

I would appreciate your response as soon as possible in order to fulfill our requirement for the September 15, 1986 deadline.

Recognizing the unique characteristics of malt beverage products and the perishability of them, the Director rendered the following opinion letter to the inquirer under date of September 5, 1986. A copy was also furnished to the Executive Director of the Beer Wholesalers' Association of New Jersey because of the general applicability of the opinion to all wholesalers of malt alcoholic beverages:

I have received your letter of September 3, 1986, in which you ask for confirmation of your interpretation of regulations so as to permit properly documented promotions being scheduled within the calendar month on a less than 30-day basis.

Your interpretation is basically correct and there is nothing in any regulation that prohibits or prevents the filing of a price for less than a full calendar month, provided a price is also filed for the balance of the month or no sales are made during the time not covered by a filed price.

N.J.A.C. 13:2-24.6(a)3 requires a wholesaler to maintain a "Current Price List" containing "Prices, inclusive of all discounts, allowances and differentials and other terms of sale, at which all products are offered for sale to retailers during the calendar month following filing..." There is nothing that requires that there just be one price covering the entire month.

This practice of filing different prices for different periods of the month is what many wholesalers have in fact been doing by giving, for example, an additional allowance for a Monday delivery.

You are cautioned, however, that, because of the requirements in N.J.A.C. 13:2-24.6(a)4 through 6, the prices and specific dates covered by those prices in a calendar month must be filed with the Division by the 15th of the preceding month and thereafter they cannot be changed and they remain effective for the particular calendar month involved.

**5. NEW STATUTE: SPECIAL LEGISLATION ALLOWING THE BOROUGH OF FANWOOD TO ISSUE A NEW PLENARY RETAIL CONSUMPTION LICENSE TO A 65-ROOM HOTEL - INTERPRETATION OF STATUTE.**

On August 27, 1986, Governor Kean signed S-1955 into law as P.L. 1986, c. 95. This constitutes a special law which will allow the Borough of Fanwood in Union County to deviate from the general provisions of N.J.S.A. 33:1-12.20, which requires a 100-room hotel in order for a new plenary retail consumption license to be issued in excess of the number of licenses limited by N.J.S.A. 33:1-12.14 and based on the population. This special law will allow the Borough of Fanwood to issue a new license for a 70-room hotel provided it also has a restaurant with a capacity to seat at least 50 persons. Any such new license that is issued will thereafter have to be used in connection with a hotel/restaurant meeting the 70-room and 50-patron qualifications and will be subject to cancellation if it is not so used or if a transfer to a non-qualifying establishment is attempted.

It should be noted that P.L. 1986, c. 95 applies only to the Borough of Fanwood and has absolutely no application in any other municipality in New Jersey.

**6. DECISION AFFIRMED: INN AT WOODBRIDGE, INC. V. MUNICIPAL COUNCIL OF THE TOWNSHIP OF WOODBRIDGE, (AFFIRMING ACTION OF THE DIRECTOR REVERSING ACTION BELOW AND DIRECTING ISSUANCE OF LICENSE UNDER THE HOTEL/MOTEL EXCEPTION PROVISION OF N.J.S.A. 33:1-12.20).**

The Division's final action in Inn at Woodbridge, Inc. v. Municipal Council of the Township of Woodbridge, which opinion was published at Bulletin 2439, Item 1 (February 26, 1985), was appealed by the Respondent Issuing Authority to the New Jersey Superior Court, Appellate Division. The Appellate Division filed its "Per Curiam" opinion on May 8, 1986, affirming the December 24, 1984, order of the Director, and the Respondent thereafter filed a petition requesting that the New Jersey Supreme Court grant certification to allow the Respondent to appeal to that Court. The New Jersey Supreme Court entered its order denying such petition for certification on July 11, 1986.

The following information summarizes the operative facts and is for ease of reference purposes only. For precise information a reviewer should analyze the official documents of record.

The Appellant appealed to the Director from the denial by the Respondent Issuing Authority of its requested issuance of a new plenary retail consumption license under the hotel/motel exception contained in N.J.S.A. 33:1-12.20. At the hearing held before an Administrative Law Judge, it was determined that the Appellant had been developing its plans for approximately ten years, in coordination with the various agencies of the Respondent governing body, and that it had to that date expended over 15 million dollars in the hotel and restaurant complex. It was also found that the Appellant was fully qualified to hold a license, that the facility totally met all the conditions required by N.J.S.A. 33:1-12.20, that there were no objections to the issuance of the license raised

at the local hearing, and that the Respondent Issuing Authority was not unwilling to license the facility so long as it purchased an existing license rather than obtain one under the exemption.

Based upon the facts of record, both the Administrative Law Judge and the Director determined that the action of the Respondent Issuing Authority in denying issuance of a license under the statutory hotel/motel exemption provision was arbitrary. The Appellate Division, in an unpublished "Per Curiam" decision, affirmed the Director's order directing the Respondent Issuing Authority to issuance the new plenary retail consumption license under the hotel/motel exemption provision "substantially for the reasons expressed in the decision and order of the Director of Alcoholic Beverage Control".

Since the Supreme Court of New Jersey has denied the Respondent Issuing Authority's petition for certification, the Director's order of December 24, 1984, stands and the Respondent Issuing Authority has been required to issue the applied for license under the hotel/motel exemption provision (N.J.S.A. 33:1-12.20) upon the application filed and fees paid.

It is further noted that upon the issuance of such license, the Appellant licensee (Inn at Woodbridge, Inc.) had to contemporaneously deactivate the license which it had been compelled to purchase and which it had been utilizing pending the determination in this matter. Such deactivated license may be transferred by the Inn at Woodbridge, Inc., without jeopardizing its ability to conduct its retail alcoholic beverage activities under the license issued pursuant to the hotel/motel exception as ordered by the Director.

#### 7. STATE LICENSE TRANSACTIONS - JUNE 13, 1986 TO DATE.

The following transactions have taken place with reference to State-issued licenses since June 13, 1986:

Type of license:	License #:	Status:
Southern Jersey Airways, Inc. Cape May County Airport Rio Grande, NJ 08242 Plenary Retail Transit license	3401-13-403-001	New license iss eff: 6/13/86
Plenary Retail Transit license: Coastal Marine Transport Lines, Inc. 32 Inlet Terrace Belmar, NJ 07719	3401-13-404-001	New license iss eff: 6/13/86
Plenary Winery License C & C Cola 535 Dowd Avenue Elizabeth, NJ 07201	3401-21-406-001	New license iss. eff: 6/18/86
Annual State Permit The Fishermen's Daughter Spring Meadow Golf Course Box 395 Allaire Rd Farmingdale, Nj 07727	3401-14-405-001	New license iss. eff: 6/20/86
Plenary Wholesale licese Dreyfus Ashby & Co. 60 E. 42nd St Rm 1901 New York, NY 10165	3401-23-364-002	Corporate Structure Change eff: 6/25/86

Type of license:	License #:	Status:
Wine Wholesale license Domaine Imports Inc. 1094 Globe Avenue Mountainside, NJ 07092	3401-26-400-001	New license iss. eff: 7/1/86
Limited Wholesale license Atlantic Imports, Inc. 3900 Sunrise Highway Seaford, NY 11783	3401-25-402-001	New license iss. eff: 7/1/86
Public Warehouse Canal Realty, Co. Inc. 29-31-33 Mt. Ephraim Avenue Camden, NJ 08103	3401-28-407-001	New license iss. Eff: 7/1/86
Plenary Retail Transit license Wreck Raiders, Inc. Centre Street-West Avenue Beach Haven, NJ 08008	3401-13-408-001	New license iss eff: 7/1/86
Annual State Permit Creative Entertaining Inc. Midvale Rd Mountain Lakes, NJ 07046	3401-14-409-001	New license iss eff. 7/1/86
Annual State Permit Shepard Lake, Inc Skyline Manor, Ringwood State Park Ringwood, NJ 07456	3401-14-410-001	New license iss. eff: 7/1/86
Public Warehouse Alrich Trucking, Inc. 24-30- Mileed Way Avenel, NJ	3401-28-411-001	New license iss. eff: 7/1/86
Wine Wholesale License Quattro Corporation 560 Sylvan Avenue Englewood Cliffs, NJ 07632	3401-26-412-001	New license iss. eff. 7/1/86
Limited Wholesale license Atlantic Imports, Inc. 3900 Sunrise Highway Seaford, NY 11783	3401-25-402-001	New license iss. eff: 7/1/86
Public Warehouse Canal Realty, Co. Inc. 29-31-33 Mt. Ephraim Avenue Camden, NJ 08103	3401-28-407-001	New license iss. Eff: 7/1/86
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Wine Wholesale License Quattro Corporation 560 Sylvan Avenue Englewood Cliffs, NJ 07632	3401-26-412-001	New license iss. eff. 7/1/86
Limited Wholesale license The Wine Family, Inc. 65 Railroad Avenue Ridgefield, NJ 07657	3401-25-414-001	New license iss. eff. 7/1/86
Wine Wholesale license Nestor Imports Inc. 1901 E. Linden Avenue Suite 19 Linden, NJ 07036	3401-26-415-001	New license iss. eff. 7/1/86
Transportation license Robert Josko 296 Argyle Place Kearny, NJ 07032	3401-20-413-001	New license iss. eff. 7/11/86
Limited Wholesale license Princeton International Imports Inc. 64 North Mill Road Princeton Junction, NJ 08550	3401-25-416-001	New license iss. eff. 7/15/86
Annual State Permit Dean Muskewitz & John Genovesi Mountain View Golf Course West Trantton, NJ 08628	3401-14-417-001	New license iss. eff. 7/15/86
Plenary Wholesale license Universal Imported Foods, Inc. 2077 Route 9 Howell, NJ 07731	3401-23-418-001	New license iss. eff. 7/18/86
Annual State Permit Sass Corporation Penn Station 6-30 Raymond Plaza West Newark, NJ 07012	3401-14-419-001	New license iss. eff. 7/18/86
Additional Warehouse South Jersey Distributors, Corp 2732 Southwest Boulevard Vineland, NJ 08360	3401-24-420-001	New license iss. eff. 7/24/86
State Beverage Distributors Martin Francis Cohen 910 Summerfield Avenue Asbury, NJ 07712	3401-19-421-001	New license iss. eff. 7/25/86
Annual State Permit Betty Anderson Stable Area Cafe Monmouth Park, Route 35 Oceanport, NJ 07757	3401-14-422-001	New license iss. eff. 7/26/86
Plenary Retail Transit license Chris Garbacki & Dennis Garbacki Engleside and West Avenue Beach Haven, NJ 08008	3401-13-423-001	New license iss. eff. 7/25/86

Type of license:	License #:	Status:
Limited Wholesale license Heritage Vinters Imports Inc. 458 Packer Place Perth Amboy, NJ 08861	3401-25-424-001	New license iss. eff. 7/30/86
Plenary Retail Transit license World Yacht Limited Partnership Pier 62 W. 23 Street & Hudson River New York, NY 10011	3401-13-425-001	New license iss. eff. 8/1/86
Plenary Retail Transit license World Yacht Limited Partnership Pier 62 W. 23 Street & Hudson River New York, NY 10011	3401-13-426-001	New license iss. eff. 8/1/86
Plenary Retail Transit license World yacht limited Partnership Pier 62 W 23 St & Hudson River	3401-13-427-001	New license iss. eff. 8/1/86
Plenary Retail Transit license World Yacht Limited Partnership Pier 62 W 23 St Hudson River New York, NY 10011	3401-13-428-001	New license iss. eff. 8/1/86
State Beverage Distributors William Chapman 2732 South West Blvd Vineland, NJ 08360	3400-19-221-003	Person to Person Transfer iss. eff: 7/23/86
State Beverage Distributors Palmyra Beer Distributors Broad & Walnut Streets Palmyra, NJ 08065	3400-19-250-002	Corporate Structure Change eff: 7/23/86
Annual State Permit Trans-Serve Inc. Bey Lea Golf Course Bay Ave R.D. 1 Toms River, NJ 08753	3401-14-284-002	Corporate Structure Change iss. eff: 8/19/86
Annual State Permit Broadway Smoothie Penn Station Newark, NJ 07101	3401-14-430-001	New license iss. eff: 8/13/86
Transportation license Smith's Transfer Corp. 1601 W. Edgar Road Linden, NJ From: 21 Englehard Avenue Avenel, NJ	3400-20-519-003	Place to Place Transfer eff: 8/18/86
Public Warehouse & Transportation license Trumps Castle Hotel & Casino 561 Mill Rd Absecon NJ From: 750 Delilah Rd Pleasantville, NJ	3401-28-386-002 3401-20-387-002	Place to Place Transfer eff: 8/21/86
Transportation license Mack Transportation 8 Franklin Street Bloomfield NJ 07003  From: A.E. & E.M. Funk & Carl Brown	3400-20-691-001	Person to Person Transfer iss eff: 8/22/86

Type of license:	License #:	Status:
Transportation license Pioneer Transportation Systems Inc P.O. Box 800 Hurlock, Maryland 21643	3401-20-431-001	New license iss. eff: 8/22/86
Public Warehouse Mid State Warehouse Inc 600 N. Union Avenue Hillside, NJ 07205	3401-28-432-001	New license iss. eff: 8/25/86
Limited Wholesale license Atlas Imports Inc. 333 Sylvan Avenue Englewood Cliffs, NJ 07632	3401-25-434-001	New license iss. eff: 8/27/86
Morris L. Capristo 275 Bellevue Avenue Upper Montclair, NJ 07043	3401-14-433-001	New license eff: 8/27/86
Transportation license MD-Goldston, Inc. Hwy 135 P.O BOX 1059 Eden, NC 27288 From: MD Associates North East	3400-20-994-002	Person to Person Transfer eff: 8/29/86
Transportation license Pennsylvania Truck Lines, Inc. 308 E. Lancaster Avenue Wynnewood, PA 19096	3401-20-435-001	New license iss. eff: 8/29/86
Plenary Wholesale license Best Brands, Inc. 500 Milik Street Carteret, NJ 07088 From: 333 Rt 40 W. Fairfield, NJ	3401-23-046-003	Corporate Structure Change and Place to Place Transfer eff: 9/9/86
State Beverage Distributor Mitchell B. Fischer 225 Chambersbridge Rd Brickstown, NJ 08723 From: P & R Beer & Soda Dist Inc 903 Bay Avenue Manahawkin, NJ 08050	3400-19-249-003	Person to Person, Place to Place eff: 9/10/86
Additional Sales Premises Bucks Country Vineyards RFD 1 Rt 130 Bordentown, NJ 08505	3400-21-169-004	New premises iss. eff 9/22/86
Limited Wholesale license Grand Cru, Inc. 648 Broadway New York, NY 10012	3401-25-438-001	New license iss eff: 10/3/86
Public Warehouse license Hall's Warehouse Corp 330 Oaktree Rd South Plainfield, NJ 07080	3401-28-437-001	New license iss. eff: 10/6/86

Type of license:	License #:	Status:
Annual State Permit Sass Corp 6-30 Raymond Plaza West Newark, NJ 07102	3401-14-419-002	Corporate Structure Change eff: 10/6/86
Marie-S. Inc. Big Marie-S II #632959 20 Main Street Avon, NJ 07717	3401-13-440-001	New license eff: 10/7/86
Van Itallie Wine Imports, Inc. Park B Plaza W. One Saddle Brook, NJ 07662	3401-26-439-001	New license eff: 10/8/86

8. APPELLATE DECISION: STURCHIO V. MAYOR AND COUNCIL TOWN OF HARRISON (FINAL CONCLUSION AND ORDER AFFIRMING DENIAL OF PERSON-TO-PERSON TRANSFER APPLICATION BASED UPON UNFITNESS OF APPLICANT WHO HAD THREE PRIOR DISORDERLY PERSON CONVICTIONS)

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

APPEAL #5119	)	ON APPEAL
THOMAS STURCHIO	)	FINAL CONCLUSIONS AFFIRMING
(re: PRCL# 0904-33-060-003)	)	ACTION BELOW AND FINAL ORDER
APPELLANT-TRANSFEREE	)	DENYING PERSON-TO-PERSON TRANSFER
	)	OF LICENSE.
V.	)	
MAYOR AND COUNCIL OF THE	)	OAL DKT. NO. ABC 1222-86
TOWN OF HARRISON	)	
RESPONDENT	)	

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John Gero, Esq., Attorney for Appellant  
Maureen F. Vaskis, Esq., Legal Assistant, for Respondent

INITIAL DECISION BELOW

HONORABLE GERALD T. FOLEY, JR., ADMINISTRATIVE LAW JUDGE

Decided: May 7, 1986

Received: May 9, 1986

BY THE DIRECTOR:

No written Exceptions were filed by either party within the time required as is otherwise permitted pursuant to N.J.A.C. 13:2-17.14(d).

Appellant appealed from the action of the Respondent Issuing Authority which, by Resolution dated January 7, 1986, denied Appellant's application for a person-to-person transfer of the noted plenary retail consumption license. At the hearing before the Office of Administrative Law, both parties agreed that the matter would be decided upon two joint exhibits submitted into evidence. Upon review of such evidence, the Administrative Law Judge determined that the Appellant had been convicted of three disorderly persons offenses, which convictions were based upon pleas of guilty. One conviction was for simple assault, in violation of N.J.S.A. 2c:12-1a; a second was a conviction for criminal mischief or criminal damage, in violation of N.J.S.A. 2c:17-3a & b; and the third was a conviction for shoplifting, in violation of N.J.S.A. 2c:20-11b & c.

The Administrative Law Judge concluded that the Respondent Issuing Authority had exercised its judgment and discretion reasonably and properly in determining to deny Appellant the transfer of such license. The Judge stated that the Respondent

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" . . . determined that it did not wish as a liquor license holder within its territorial limits a shoplifter and a violent person. The case is as simple as that, and the issues petitioner ( i.e., Appellant) poses; namely, whether Respondent abused its discretion in denying the transfer in question and whether the Respondent acted arbitrarily, capriciously and reasonably (sic) in denying the transfer, are both answered in the negative." Initial Decision at 4.

I have reviewed the record as presented to me and I herein adopt the basic factual findings and conclusions of law contained therein. It must be recognized that the applicant bears the burden of proof with respect to establishing his fitness and qualifications for licensure. Lyons Farm Tavern v. Mun. Bd. of ABC, 68 N.J. 44 (1975). The fact that the Appellant was not convicted of a crime of moral turpitude does not mean he should, ipso facto, thereafter obtain the privilege of holding an alcoholic beverage dispensing license.

It has long been held that "it is competent for . . . issuing authorities to confine their selection of applicants to those who are clearly worthy." Speranzo v. Millburn, Bulletin 57, Item #8. It matters not that the applicant has no convictions against it. Speranzo, Id. It has been further held that "there is no 'must' in the alcoholic beverage law. Each case must be considered on its own merits based among other factors, upon the worthiness of the applicant." Barresi v. Ridgefield, Bulletin 1770, Item #2. Upon my review of this record, I do not find that the Appellant has established, by a preponderance of the credible evidence, that he is worthy and of proper repute to hold such a license. Cf., Narducci et al. v. Atlantic City, Bulletin 2305, Item #3, Aff'd per curiam ( App. Div., June 18, 1980, A-706-78) (unreported); In the Matter of George W. "Chip" Dunn, Bulletin 2435, Item #6.

Accordingly, it is on this 12<sup>th</sup> day of June, 1986

ORDERED that the action of the Local Issuing Authority below denying the requested person-to-person transfer of the said license be and the same is hereby affirmed and the appeal therefrom be and is hereby dismissed.

  
 \_\_\_\_\_  
 JOHN F. VASSALLO, JR.  
 DIRECTOR



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ABC 1222-86

AGENCY APPEAL NO. 5119

**THOMAS STURCHIO,**

Petitioner,

v.

**MAYOR AND COUNCIL OF**

**THE TOWN OF HARRISON,**

Respondent.

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John Gero, Esq., for petitioner

Maureen F. Vaskis, Esq., Legal Assistant, for respondent (Walter Kennedy, Town Counsel, attorney)

Record Closed: April 28, 1986

Decided: May 7, 1986

BEFORE GERALD T. FOLEY, JR., ALJ:

On March 31, 1986, a hearing was held on the appeal of petitioner to the Director of the Division of Alcoholic Beverage Control from a resolution of respondent, dated January 7, 1986, which denied petitioner's application for a person-to-person transfer of plenary retail consumption license number 0904-33-060-003 from Carl & Pat's Inc., for premises at 211 North Third Street, Harrison, New Jersey.

At the hearing, counsel agreed to submit the matter for initial decision on two joint exhibits together with their briefs in support of their positions. The stipulated issue was whether respondent abused its discretion when, by its resolution, it denied petitioner's

OAL DKT. NO. ABC 1222-86

application for a person-to-person transfer of the license on the ground that petitioner had been convicted of three disorderly persons offenses, which convictions were based on pleas of guilty. This was the sole issue, as no witnesses were presented by respondent on the issue of community sentiment. The sole witness who would have testified but who did not have to in view of the stipulation as to the issue, was Louis P. Saporito, Chief of Police of Harrison, who had been subpoenaed by petitioner.

The record was closed on April 28, 1986, with the simultaneous filing of the briefs of the parties.

In the instant matter, an appeal de novo, petitioner has the burden of proving by a preponderance of the believable evidence that the action of the respondent issuing authority was erroneous and should therefore be reversed, N.J.A.C. 13:2-17.6; Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). With the limited issue in mind, I have considered the joint exhibits and the arguments of counsel, and I CONCLUDE that the action of respondent was a reasonable exercise of its judgment and discretion.

At first glance, one might conclude that the municipal action was unreasonable and improperly grounded because, based on the investigation of petitioner by the Harrison Police Department, it was discovered that he had never been convicted of a crime involving moral turpitude which would bar any license being issued to him, N.J.S.A. 33:1-25. First, defendant was convicted of simple assault, N.J.S.A. 2C:12-1a. Simple assault is a disorderly persons offense unless committed in a fight entered into by mutual consent, in which case it is a petty disorderly persons offense. From the police record, it appears that petitioner and one Kalicki were engaged in a street fight by mutual consent, so this offense could well be considered a petty disorderly persons offense. Secondly, petitioner was convicted of criminal mischief or criminal damage, N.J.S.A. 2C:17-3a and b. This is a disorderly persons offense if the pecuniary loss is \$500 or less. The petitioner broke a window on a 1971 Dodge Van, property of the Hudson County Prosecutor, that was parked in the police yard in Harrison. It would certainly appear that the pecuniary loss was less than \$500, thus making petitioner's criminal mischief a disorderly persons offense. Finally, petitioner was convicted of shoplifting, N.J.S.A. 2C:20-11b and c, a disorderly persons offense.

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In my judgment, the inquiry on this de novo hearing of petitioner's appeal does not end with a mere finding that he has never been convicted of a crime involving moral turpitude and the conclusion that the action appealed from was erroneous and must be reversed. I must bear in mind that in a matter such as this it is my duty to abide by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable, Fanwood v. Rocco, 33 N.J. 404, 414 (1960). To this end, ABC Bulletin 1848, Item 1, April 15, 1969, is applicable and dispositive. In that bulletin, which was directed to all municipal license issuing authorities, the Director stated that

The Alcoholic Beverage Law (R.S. 33:1-25) prohibits the issuance of any retail license to any person "convicted of a crime involving moral turpitude" ... However, it should be noted that mere disorderly persons offenses and municipal ordinance violations are not deemed "crimes" within the meaning of the hereinabove mentioned section of the Alcoholic Beverage Law.

Of course, municipal issuing authorities should also be aware of the fact that the issuance of all licenses is discretionary with the issuing authority. The original issuance, transfer or renewal of a license may be denied, in the reasonable exercise of the issuing authority's discretion and subject to review on appeal to the Director of Alcoholic Beverage Control, where the applicant ..., although not having a record of a mandatorily disqualifying conviction of a crime involving moral turpitude, nevertheless has a record of convictions of other offenses, is a person of questionable character or ill-repute..., which affects the applicant's general fitness to hold a license. The fitness of all such applicants should therefore be thoroughly investigated by issuing authorities in order not only to screen out criminally disqualified persons from the industry, but other undesirable persons as well.

Pursuant to its duty to thoroughly investigate petitioner, respondent, through its Chief of Police and his Department, uncovered petitioner's three disorderly persons offenses. Petitioner did not contest his guilt on these charges but rather entered pleas of guilty and was fined \$50 for shoplifting and \$500 for malicious mischief or damage. He was fined \$100 with a twenty-day Hudson County Jail suspended sentence for simple assault.

In Mazza v. Cavicchia, 15 N.J. 498, 505 (1954) the Court stated:

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In addition it must be remembered that a license to sell intoxicating liquor is not a contract nor is it a property right. Rather it is a temporary permit or privilege to pursue an occupation which otherwise is illegal. From the earliest history of our State the sale of intoxicating liquors has been treated in an exceptional manner by the Legislature. "It is a subject by itself, to the treatment of which all the analogies of the law appropriate to other topics cannot be applied." "The sale of intoxicating liquor is in a class by itself." "As it is a business attended with danger to the community it may...be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils." (citations omitted)

It must also be borne in mind that on a de novo hearing of an appeal such as this, it is my duty to abide by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable, Fanwood, at 414. Even though petitioner has never been convicted of a crime involving moral turpitude, he has nevertheless been convicted of three disorderly persons offenses, which convictions rest upon his pleas of guilty. Two of these offenses revealed that petitioner is a violent individual and the third disclosed that he is a shoplifter and a thief. In my judgment, applying the rule on the settled practice at a de novo hearing of an appeal such as this, respondent municipal issuing authority exercised its judgment and discretion reasonably and properly. It determined that it did not wish as a liquor license holder within its territorial limits a shoplifter and a violent person. The case is as simple as that, and the issues petitioner poses; namely, whether respondent abused its discretion in denying the transfer in question and whether respondent acted arbitrarily, capriciously and reasonably in denying the transfer, are both answered in the negative.

In view of the foregoing, I ORDER that the resolution of respondent, dated January 7, 1986, appealed from and which denied the application of petitioner for a person-to-person transfer of plenary retail consumption license number 0904-33-060-003 from Carl & Pat's Inc., for premises at 211 North Third Street, Harrison, New Jersey be **AFFIRMED**.

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This recommended decision may be affirmed, modified or rejected by the DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL, JOHN F. VASSALLO, JR., who by law is empowered to make a final decision in this matter. However, if John F. Vassallo, Jr., does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with JOHN F. VASSALLO, JR., for consideration.

May 7, 1986  
DATE

Gerald T. Foley, Jr.  
GERALD T. FOLEY, JR., ALS

5/9/86  
DATE

Receipt Acknowledged:  
[Signature]  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

MAY 12 1986  
DATE

Mailed To Parties:  
Ronald C. Parkes  
FOR OFFICE OF ADMINISTRATIVE LAW

kdk/e

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APPENDIX

The Following Exhibits Were Admitted Into Evidence

- J-1 Documents in support of petitioner's appeal.
- J-2 Investigation documents of the Harrison Police Department concerning petitioner.

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PUBLICATION OF BULLETIN 2447 IS HEREBY DIRECTED THIS  
20TH DAY OF OCTOBER, 1986.

  
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 JOHN F. VASSALLO, JR.  
 DIRECTOR