Mrs. Dora P. Rothschild

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

June 6, 1962

BULLETIN 1451

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ITEM

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

June 6, 1962

BULLETIN 1451

1. APPELLATE DECISIONS - FIRST NATIONAL STORES, INC. v. DUMONT.

First National Stores, Inc., a corporation of the State of Massachusetts, Appellant,	On Appeal
v.	CONCLUSIONS and ORDER
Mayor and Borough Council of the Borough of Dumont, Respondent.	

Chazin & Chazin, Esqs., by Theodore S. Chazin, Esq., Attorneys for Appellant
Robert E. Personette, Esq., Attorney for Respondent
Joseph A. Fitzpatrick, Esq., Attorney for proposed Transferor
Samuel Moskowitz, Esq., Attorney for Hudson-Bergen County Retail Liquor Stores Association

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Mayor and Borough Council of the Borough of Dumont (hereinafter respondent) whereby it denied, unanimously, the appellant's application for a person-to-person and place-to-place transfer of a limited retail distribution license from William C. Connelly, t/a Connelly's Delicatessen, for premises located at 227 West Madison Avenue in the Borough of Dumont, to First National Stores, Inc. (appellant) for premises located at 50 West Madison Avenue in said Borough. These locations are separated by a distance of about three city blocks.

"The petition of appeal herein alleges that the action of the respondent was erroneous in that said action was 'unreasonable, capricious, arbitrary, an abuse of discretion, not founded in law, and without any reason or ground.'

"The answer herein denies the allegations of the appellant's petition of appeal and affirms that its action was 'a reasonable use of their discretion and founded upon a diligent investigation, and a serious consideration of all proofs submitted, and that such refusal was in the best interest of the community.'

"The appeal before this Division was heard de novo with full opportunity for counsel to present testimony under oath and cross-examine the witnesses. Rule 6 of State Regulation No. 15. Shapiro v. Long Branch, Bulletin 901, Item 2.

"The factual thesis developed by the evidence presented at this hearing is as follows: The appellant is a chain store food supermarket, operating many facilities throughout the States of New York, Connecticut and New Jersey, and is the holder of similar

licenses as that in issue in many of its stores. It has built this supermarket and has provided for parking facilities for over 150 cars. The area of proposed transfer has four retail consumption licenses and two retail distribution licenses presently operating therein.

"Appellant seeks to show that the area of potential patronage for this facility includes this Borough which has increased its population fifty per cent. from 1950 to 1960, the Borough of Haworth which has seen a population increase of one hundred per cent. during the same period, and eastern New Milford whose population increased three hundred per cent.

"Francis J. Nugent (a real estate analyst and negotiator employed by appellant) testified in further support of appellant's position that the potential patronage at this facility will be about 10,000 transactions a week and that the present facilities in the area could not adequately serve the 'needs and conveniences' of these new customers.

"William C. Connelly (the proposed transferor) testified that he has been in business at his present location for six and one-half years and has decided to go out of business and to 'sell his license' to the appellant.

"Isabella Purland (a resident of Dumont) testified that she is a customer at Connelly's Delicatessen; that she would not enter a tavern or a liquor store to buy 'warm beer' and would find the lication of the appellant's convenient for her purposes.

"Melvin Alperstein (a specialist in placement of shopping centers and supermarkets) testified that in his opinion this facility would promote a large influx of customers thereto from the entire area.

"Gerald J. Driscoll, councilman of the respondent Council, whose testimony, by stipulation, was supported fully by the testimony of Councilwoman Sarah R. MacDermid, expressed the thinking of the respondent, when it unanimously denied the proposed transfer, in the following language:

> '*** the reasons *** revolved largely about, first off, the concentration in a rather heavily trafficked area of the town, of another license which would perhaps add to that traffic problem, for one.
>
> 'Perhaps, and even more importantly than that, there was no question in our minds, any one of the six of us, that public convenience and public need were well satisfied by the number of stores which were serving the people at that time. We could not be led to believe or we could not seem to see that a transfer of the license in question was going to, in any way, add to the servicing of the people in town which is, in the first instance, our reason for being there.
>
> 'I suppose a consideration, perhaps a lesser one but nonethe less important, was the fact that the removal of the Connelly license from the place where it is now situated would denude the southwest section of the borough of the service that the Connelly license offered.'

"In further clarification of that he stated that the particular area had a concentration of six establishments now where warm beer might be purchased, and the transfer of the one under consideration would only add to that picture by including one additional license.

"Appellant advocates, and quite properly, in a well considered brief submitted by it that in a trial de novo the Director's decision must be based on the testimonial record and evidence presented to this Division. The Director in hearing this appeal is authorized and required to hear this appeal de novo. Cino v. Driscoll, 130 N.J.L. 535 (Sup.Ct. 1943), p. 539.

"However, the burden of proving that the respondent abused its discretion falls upon the appellant and he must make out his case by a preponderance of the proofs. Family Finance Corp. v. Gaffney, 11 N.J. 565, 575 (1953); Buyer v. West Orange, Bulletin 1205, Item 2. The appellant's burden becomes heavy upon his appeal to this Division since, in a discretionary matter such as this, he must show manifest error or some abuse of discretion below. Nordco, Inc. v. State, 43 N.J. Super. 277, 287; Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598, 600 (App.Div. 1955).

"In this case the respondent denied this application for a transfer without stating any specific reasons therefor in its decision. However, in the appeal de novo the councilmen set forth the specific reasons as stated hereinabove upon which the respondent acted in reaching that decision. This testimony must be considered by me in order to determine whether the respondent acted reasonably or in abuse of its discretion.

"It is clear that a transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Gentes v. Middletown, Bulletin 1327, Item 1; Biscamp and Hess v. Teaneck, Bulletin 821, Item 8; see also Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949) where, as in the instant case, the issuing authority denied a transfer of a liquor license because it was of the opinion that there was no need or necessity for a liquor outlet in a particular location in a community.

"It has long been established that the number of licenses which should be permitted in any particular area, and the determination as to whether or not a license will be transferred to a particular location, are matters within the sound discretion of the issuing authority, and that the Director's function on appeal is not to substitute his opinion for that of the issuing authority but, rather, to determine if proper cause exists for its opinion and, if so, to affirm irrespective of his personal views. Rothman v. Hamilton Township, Bulletin 1091, Item 1; Food Fair Stores of New Jersey, Inc. v. Union, Bulletin 1129, Item 1; The Grand Union Company v. West Orange, Bulletin 1155, Item 3. This view is stated more positively in Ward v. Scott, 16 N.J. 16 (1934) where the Supreme Court dealt with an appeal from a zoning ordinance which had been granted by a municipality:

> '*** Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for variance. And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S.Ct. 148, 151, 58 L. Ed. 319, 324 (1913). Where, as here, the application for variance has been given careful and conscientious consideration by the zoning board and the town council and has been acted upon by both of them in

> strict conformity with the procedural and substantive terms of the statute, the ultimate interests of effective zoning will be advanced by permitting the action of the municipal officials to stand, in the absence of an affirmative showing that it was manifestly in abuse of their discretionary authority.'

"This is particularly weighty here because the instant matter concerns the more serious question of liquor regulation, and the municipality did not grant but denied the application. The action of the local Board may not be reversed by the Director unless he finds 'the action of the Board was clearly against the logic and effect of the presented facts.' Hudson-Bergen County Retail Liquor Stores Association Inc. v. Hoboken, 135 N.J.L. 508, at 511.

"The appellant further argues that the proposed transfer is necessary for the present public 'need, necessity, convenience and interest.' In support of this postulate it produced a resident of the Borough of Dumont who testified that she would not go into a tavern or a package liquor store to purchase warm beer, and in fact has traveled a substantial distance from her home on other occasions to purchase such alcoholic beverages. Appellant states that a preponderant number of customers of its establishment are women and they would (1) find it more convenient to make purchases of warm beer concurrently with their purchases of food products, and (2) that, in any event, they would not enter taverns or package liquor stores to make such purchases.

"What is meant by 'public necessity' and 'public convenience' becomes a matter of semantics rather than one of realistic interpretation. In Fanwood v. Rocco, 59 N.J. Super. 306, at 323, the court discusses these terms in the following language:

> 'The terms "public necessity" and "public convenience" are probably as confusing and misleading when used in connection with liquor cases as the term "abuse of discretion." '

"Judge Clapp pointed this out in Township Committee of Lakewood v. Brandt, 38 N.J. Super. 462, at 464, saying:

> 'An even more obvious question arises as to the significance of the term in connection with intoxicating liquors. Is there any public necessity for a tavern? *** It would help clarify our thinking if the use of such sonorous expressions were avoided wherever possible, and instead there were hammered out a plain statement of the facts and the considerations leading to the decision.'

The court further stated that the Director may not compel a municipality to transfer licensed premises merely because more people would be able to buy liquor more easily.

> '*** Such "convenience"may in a proper case be a reason for a municipality's granting a transfer but it is rarely, if ever, a valid basis upon which the Director may compel the municipality to do so.'

"The contention of appellant that it is unreasonable to compel persons to patronize taverns to purchase bottled alcoholic beverages for off-premises consumption has been rejected time and again. Boody v. Gloucester, Bulletin 300, Item 11; Thompson v. Mount Olive Township, Bulletin 986, Item 1; Hyman v. Howell Township, Bulletin 1039, Item 3, cited with approval in Moschera v. Plumsted, Bulletin 1075, Item 8.

"As Commissioner Burnett said in Franklin Stores Co. v. Belleville, Bulletin 102, Item 2:

> 'Appellant claims, however, that consumption places do not cater to the package trade and that women desiring to make such purchases would prefer to enter stores dealing only with package goods. Quite true. But they already have in the municipality three such stores. With present-day telephone and transportation facilities such stores can properly service large areas.'

"In the instant case there are six other facilities selling warm beer. I am not persuaded that the respondent acted in manifest or unreasonable abuse of its discretion in deciding that this area had a sufficient concentration of licensed premises.

"Another argument raised by appellant is that its facilities will service a large area including several neighboring communities and would, therefore, overtax the present facilities. This appears to me to be a matter of speculation.

"Witnesses for the appellant testified to the increase in population of Dumont and several neighboring towns as justification for the need for this facility because these potential purchasers would result in increased demand for warm beer. There is an absence in the record of any evidence indicating whether or not there was any proportionate increase in the facilities for the purchase of warm beer in those municipalities. It is reasonable to assume that persons coming from other municipalities would have additional facilities in those towns available to them should they desire to make such purchases. Thus the number of persons who would patronize this establishment cannot be separated from the availability to them of similar facilities in the other communities.

"It is finally asserted by the appellant that the transferor has operated his present license for six and one-half years; that he is entitled to a measure of protection, and that his interest should not be arbitrarily destroyed. It should be observed that the mere fact that a denial of an application may result in personal hardship to the appellant(or, in the instant case, to the transferor) is not sufficient to overcome the primary consideration of the general welfare of the community. Moran v. West Orange, Bulletin 143, Item 8; Hutchins v. Paterson, Bulletin 764, Item 9.

"The evidence additionally discloses that, while the proposed site of this transfer is in an area in which there are six other facilities selling warm beer, the site of the present license is in the southwest area of this Borough where there are only two licenses now in existence. Councilman Driscoll testified that the removal of the Connelly license would 'denude' the southwest section of the Borough of the service which this license substantially offers, and would not serve the best interest of the community. It should be made clear that this denial was predicated upon the particular location to which the governing body objects. It does not preclude the transferor from transferring his license to a particular area that would be more in consonance with the best interests of the community. Pasquale v. Tenafly, Bulletin 1012, Item 1.

"After reviewing the testimony and the exhibits therein, including the arguments advanced in the briefs submitted by both parties, I find that there is sufficient evidence to support respondent's findings that the area to which appellant seeks to transfer its license has sufficient liquor establishments to meet its needs. I further find that respondent's unanimous action was neither arbitrary, capricious, unreasonable or an abuse of discretion nor that the respondent was

improperly motivated.

"I conclude, therefore, that appellant has failed to establish that respondent's action was erroneous and I recommend that an order be entered affirming respondent's action and dismissing the appeal herein."

Pursuant to the provisions of Rule 14 of State Regulation No. 15, exceptions to the Hearer's Report and written argument thereon were filed by the attorney for the appellant. He has also requested oral argument, which I have not required. See State Regulation No. 15, Rule 14.

I have given careful consideration to the evidence and exhibits herein, the Hearer's Report, the written arguments of respective counsel contained in briefs submitted at the conclusion of the hearing, and the exceptions and written arguments of counsel for the appellant regarding the exceptions filed herein. I concur in the conclusions of the Hearer and adopt them as my conclusions herein. I shall, therefore, affirm respondent's action.

Accordingly, it is, on this 5th day of April 1962,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - SALE AT LESS THAN FILED PRICE - PRIOR RECORD - CHANGE IN CORPORATE STOCKHOLDINGS - LICENSE SUSPENDED FOR 80 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
Clendenny Tavern, Inc. 60 Clendenny Avenue Jersey City, N. J.	)	CONCLUSIONS
	)	and
Holder of Plenary Retail Consumption License C-335, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	)	ORDER

Robert W. Wolfe, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on February 27, 1962, it sold a pint bottle of whiskey (1) for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, and (2) at less than its filed price, in violation of Rule 5 of State Regulation No. 30.

Licensee has a previous record of suspensions of license as follows: (1) by the municipal issuing authority for five days in 1945 for local "hours" violation; (2) by the Director of the Division (a) for thirty days in 1946 for a "front" and municipal "hours" violation (Bulletin 692, Item 10); (b) for ten days in 1956, for violation

of State Regulation No. 38 (Bulletin 1147, Item 6); (c) for twenty-five days effective June 23, 1958, for violation of State Regulation No. 38 (Bulletin 1235, Item 3); (d) for fifty-five days effective January 20, 1959, for violation of State Regulation No. 38 (Bulletin 1261, Item 7), and (e) for twenty-five days effective March 16, 1959, for false statements in license application (Bulletin 1272, Item 5).

Division records and reports of investigation disclose that, since the last suspension of license, the stockholdings in the licensee corporation have substantially changed in that Richard McHale (formerly principal stockholder holding 98% of the stock), is now a minority stockholder holding 1% of the stock. However, all of the present Stockholders were the only stockholders for many years prior hereto.

The previous record considered, particularly the multiplicity of similar "hours" violations (two within the past five years and a total of three within the past ten years), as well as the dissimilar violation occurring within the past five years, and the change in stockholders also considered (cf. Re. Marlborough Hotel Corporation, Bulletin 1391, Item 1), the license will be suspended for sixty days on the first charge (cf. Re Celtic Bar, Incorporated, Bulletin 1414, Item 8) and for twenty days on the second charge (Re Schwebel, Bulletin 1358, Item 4) or a total of eighty days, with remission of five days for the plea entered, leaving a net suspension of seventy-five days.

The licensee will be well advised scrupulously to avoid the commission of any future "hours" violation which may well result in revocation of the license.

Accordingly, it is, on this 9th day of April 1962,

ORDERED that plenary retail consumption license C-335, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Clendenny Tavern, Inc., for premises 60 Clendenny Avenue, Jersey City, be and the same is hereby suspended for seventy-five (75) days, commencing at 2 a.m. Monday, April 16, 1962, and terminating at 2 a.m. Saturday, June 30, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISQUALIFICATION REMOVAL PROCEEDINGS - CONVICTION OF EMBEZZLEMENT OF MAIL - ORDER REMOVING DISQUALIFICATION.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R.S. 33: 1-31.2.	CONCLUSIONS AND ORDER
Case No. 1672	

Nicholas A. Carella, Esq., Attorney for applicant.

BY THE DIRECTOR:

In 1947 petitioner pleaded guilty in a Federal District Court to embezzlement of mail in violation of Title 18, U. S. C. sec. 318, now embodied in Title 18, U. S. C. sec. 1709, and, as a result thereof, received a suspended sentence of one year and one day and was placed on two years probation. His fingerprint records further disclose convictions under the disorderly persons section of the statute for possession of lottery slips on January 26, 1951, for which he received a suspended sentence and a $175. fine; on September 10, 1954, for which he received a suspended sentence and a $200. fine; and on April 5, 1957, for which he received a suspended sentence and a $100. fine.

Conviction for violation of the federal statute regarding postal employees' theft or embezzlement of mail involves the element of moral turpitude. Re Case No. 224, Bulletin 248, Item 6. Petitioner was thereby rendered ineligible to be associated with the alcoholic beverage industry in this State. R.S. 33:1-25,26. A conviction as a disorderly person is not a crime under the Alcoholic Beverage Law; hence, petitioner's other convictions will not be considered for this purpose.

At the hearing herein, petitioner testified that he is presentl employed upon the licensed premises of a fraternal lodge as steward, and has been so employed for approximately three or four years. Prior thereto he was employed as a bartender for several years upon other licensed premises. He further testified that he is married and has one child and he seeks relief in these proceedings in order that he might continue his present employment.

Three witnesses (a retired auto mechanic, a letter carrier, and a law librarian) testified that they have known petitioner for over five years last past and he now bears a reputation for being a law-abiding person.

The police department of the municipality wherein petitioner resides has advised that no complaints or investigations involving petitioner are pending.

I would not hesitate to lift petitioner's disqualification were it not for the fact that he has been employed in the liquor industry in this state while disqualified. However, after carefully considering his testimony, I am of the belief that he was unaware of the legal requirements until so advised by one of this Division's agents a short time ago. In view of the fact that knowledge of the law is not an essential prerequisite in these proceedings (Re Case No. 996, Bulletin 943, Item 8) and considering all the circumstances herein, I am satisfied that petitioner has conducted himself in a law-abiding manner for over five years last past and conclude that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 10th day of April, 1962,

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

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - PRIOR RECORD OF LICENSEE AND STOCKHOLDERS AS INDIVIDUALS - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION

In the Matter of Disciplinary Proceedings against One Twenty Eight, Inc. t/a Clover Club 128 North New Road Pleasantville, New Jersey Holder of Plenary Retail Consumption License C-4, issued by the Common Council of the City of Pleasantville.	CONCLUSIONS AND ORDER
Auto. Susp. #211 In the Matter of the Automatic Suspension of License C-4, held by One Twenty Eight, Inc. (same address)	ORDER

Lawrence Milton Freed, Esq., Attorney for Licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 24, 1962, it sold a drink and a bottle of beer to a 17-year-old minor, in violation of Rule 1 of State Regulation No. 20.

On March 23, 1962, Samuel L. Bocelle, principal stockholder of the licensee corporation, was convicted in the Pleasantville Municipal Court of sale of alcoholic beverages to the minor, in violation of R.S. 33:1-77, and fined $50. This conviction resulted in statutory automatic suspension of the license by virtue of the provisions of R.S. 33:1-31.1. However, because of the pendency of these proceedings, the statutory automatic suspension has not been effectuated.

In alleged mitigation of penalty, it is urged that the minor is "of unsavory character" and had exhibited false identification. However, it is pointed out that the public impact of the violation is the same regardless of the character of the minor to whom alcoholic beverages are sold and that reliance on false identification, in the absence of obtaining requisite written representation of age as contemplated by R.S. 33:1-77, constitutes no defense and very little mitigation.

Licensee has a previous record of suspension of license for ten days effective March 25, 1957 (within five years prior to the instant violation) for sale to minors (Re One Twenty Eight, Inc., Bulletin 1165, Item 7); and the license then held by Paul A. and Samuel Bocelle, t/a Clover Club (both now stockholders and officers of the licensee corporation) for the same premises was suspended by the municipal issuing authority for five days in March 1953 for an "hours" violation.

The prior record of similar violation considered, the license will be suspended for thirty days (Cf. Re DeLellis, Bulletin 1432, Item 10; Re Tony Mart, Inc., Bulletin 1437, Item 4) with remission

of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 9th day of April, 1962,

ORDERED that Plenary Retail Consumption License C-4, issued by the Common Council of the City of Pleasantville to One Twenty Eight, Inc., t/a Clover Club, for premises 128 North New Road, Pleasantville, be and the same is hereby suspended for twenty-five (25) days, commencing at 1:00 a.m., Monday, April 16, 1962, and terminating at 1:00 a.m., Friday, May 11, 1962; and it is further

ORDERED that in view of the penalty of suspension imposed herein, the statutory automatic suspension of said license resulting from the conviction of Samuel L. Bocelle, be and the same is hereby lifted effective at 1:00 a.m., Friday, May 11, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

5. MORAL TURPITUDE - CONVICTION OF MAINTAINING PREMISES FOR GAMBLING HELD TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.

RE: Eligibility No. 699

Applicant seeks a determination as to whether or not, in the opinion of the Director, he is eligible to be engaged in the alcoholic beverage industry in this State in view of his conviction of a crime.

The records received by this Division disclose that on March 16, 1962, the applicant received a one-to-three year suspended sentence, a $1,500 fine and two years probation after being found guilty of maintaining premises for gambling in violation of N.J.S. 2A:112-3.

The crime of commercialized gambling, which includes the specific crime of maintaining premises for gambling (Re Case No. 1497, Bulletin 1300, Item 8) may or may not involve the element of moral turpitude, depending on the circumstances of the case. Re Case No. 1018, Bulletin 956, Item 7. Where a subject engaged in commercialized gambling as a principal or "lieutenant", such crime is deemed to involve the element of moral turpitude. Re Case No. 635, Bulletin 946, Item 10.

At the hearing herein applicant testified that he is president of a corporation holding a plenary retail consumption license and that he acts as manager and night bartender for the establishment. He further alleged that he had no knowledge of the gambling taking place upon the licensed premises. Maintaining premises for gambling might be considered the most aggravated type of commercialized gambling inasmuch as a person convicted of this charge is the party who has provided the location for the illegal acts to take place. It is difficult to conceive of how one so closely associated with the premises as the applicant, and bearing the responsibility for the conduct thereon, could be unaware of the activity taking place. In view of the finding of the jury, the severity of the sentence and the particular charge herein, in my opinion applicant's conviction involves the element of moral turpitude.

It is recommended that applicant be advised that, in the opinion of the Director, he is not eligible to be associated with the alcoholic beverage industry in this State by reason of his conviction of the aforementioned crime.

Emerson A. Tschupp
Deputy Director

Approved:

William Howe Davis,
Director

Dated: April 10, 1962

6. DISQUALIFICATION REMOVAL PROCEEDINGS - CONVICTION OF CONSPIRACY TO COMMIT ARMED ROBBERY - ORDER REMOVING DISQUALIFICATION.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R.S. 33: 1-31.2.	CONCLUSIONS AND ORDER
Case No. 1682	

Owen N. Eisenberg, Esq., Attorney for applicant.

BY THE DIRECTOR:

On July 18, 1954 petitioner pleaded non vult to charges of carrying a concealed deadly weapon and conspiracy to commit armed robbery, and as a result, was given a one to two years suspended sentence and placed on two years probation. Prior thereto, on January 7, 1954, he was given a six months suspended sentence for attempted breaking and entering and in 1951 received a suspended six months sentence for non-support.

Whether conspiracy involves moral turpitude should be determined by the type of conspiracy with which the defendant is charged. Re Case No. 236, Bulletin 279, Item 2. The crime of robbery, per se, involves the element of moral turpitude. Re Case No. 1061, Bulletin 981, Item 9. Inasmuch as the substantive offense involved in the conspiracy, per se, involves moral turpitude, the conspiracy to commit such a crime must necessarily involve the element of moral turpitude. Therefore, the petitioner was rendered ineligible to be engaged in the alcoholic beverage industry in this State (R.S. 33:1-25, 26) and the other offenses need not be considered.

At the hearing herein, petitioner testified that he is unemployed at present but has in the past worked as a deckhand and in other capacities for various construction firms. He further testified that he is divorced and has one child and that he seeks relief in this matter in order that he might secure employment as a bartender.

Three witnesses (a union business representative, a drill-press operator and a letter carrier) testified that they have known the petitioner for over five years last past and he now bears a reputation for being a law-abiding person.

The police department of the municipality wherein petitioner resides has advised that no complaint or investigation involving the petitioner is pending.

Petitioner has disclosed in his testimony that he worked as a bartender for a short period of time approximately three years

ago. He terminated his employment when advised that his past convictions disqualified him from working upon licensed premises. Since then he has not worked in any capacity upon licensed premises. I will accept as true petitioner's testimony that he was unaware of the legal requirements at the time of his employment. In view of the fact that knowledge of the law is not an essential prerequisite in these proceedings (Re Case No. 996, Bulletin 943, Item 8), and considering all the circumstances herein, I am satisfied that petitioner has conducted himself in a law-abiding manner for over five years last past and conclude that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 11th day of April 1962,

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

WILLIAM HOWE DAVIS
DIRECTOR

7. STATUTORY AUTOMATIC SUSPENSION - SUPPLEMENTAL ORDER LIFTING SUSPENSION.

Auto. Susp. #202 In the Matter of a Petition to Lift the Automatic Suspension of Plenary Retail Distribution License D-1, issued by the Common Council of the City of Estell Manor to Helen Magazzu t/a Helen's Liquor Store Route 50, Estell Manor PO Mays Landing, R.D.2, N. J.	On Petition SUPPLEMENTAL ORDER

Frank J. Ferry, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

On February 20, 1962, an order was entered temporarily staying statutory automatic suspension of license of petitioner pending institution and determination of disciplinary proceedings against the license.

It now appears from supplemental petition filed herein that in disciplinary proceedings conducted by the municipal issuing authority, the license was suspended for five days after the licensee pleaded non vult to a charge alleging sale of alcoholic beverages to the same minor, which sale was the subject of the previous criminal conviction. The suspension was effective from March 5 to March 10, 1962. It appearing that the suspension was adequate and that the suspension has been served, I shall lift the automatic suspension.

Accordingly, it is on this 11th day of April, 1962,

ORDERED that the statutory automatic suspension of said license D-1 be and the same is hereby lifted, effective immediately.

WILLIAM HOWE DAVIS
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - INDECENT ENTERTAINMENT - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)	
Fred Sadrak)	
t/a Brass Lamp	CONCLUSIONS
39 Harding Avenue)	
Clifton, N. J.,	AND
)	
Holder of Plenary Retail Consumption	ORDER
License C-120, issued by the Municipal)	
Board of Alcoholic Beverage Control of	
the City of Clifton)	

Philip Rubin, Esq., Attorney for licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging:

"On March 9, 1962, you allowed, permitted and suffered lewdness, immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises, viz., in that you allowed, permitted and suffered a male person to perform for the entertainment of your customers and patrons on your licensed premises in a lewd, indecent and immoral manner, use and engage in foul, filthy and obscene language and conduct and sing songs, recite stories and utter words and phrases having lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning; in violation of Rule 5 of State Regulation No. 20."

Reports of investigation disclose that the entertainment, in the language of Re Jeanne's Enterprises, Inc., Bulletin 1422, Item 2, consisted of unquestionably obscene, vulgar and disgusting references to sex and sexual behavior. No purpose would be served in repeating herein the language, expressions and comments which punctuated the performance, except to state that the entertainer used indecorous language to impart indecorous concepts and his performance was geared on a pornographic level with "dirt for dirt's sake."

Absent prior record, the license will be suspended, as it was in Re Jeanne's Enterprises, for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 16th day of April 1962,

ORDERED that plenary retail consumption license C-120, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to Fred Sadrak, t/a Brass Lamp, for premises 39 Harding Avenue, Clifton, be and the same is hereby suspended for fifty-five (55) days, commencing at 3 a.m. Tuesday, April 24, 1962, and terminating at 3 a.m. Monday, June 18, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
Ann Hibbits t/a Hibbo's Tavern 439 Harrison Avenue Harrison, New Jersey	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-23, issued by the Town Council of the Town of Harrison	)

Daniel F. Gilmore, Esq., Attorney for licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 16, 1962 she possessed on the licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, the minimum period where one bottle is involved, with remission of five days for the plea entered, leaving a net suspension of five days. Re Santina & Peter Berta, Inc., Bulletin 1441, Item 10.

Accordingly, it is, on this 16th day of April, 1962,

ORDERED that Plenary Retail Consumption License C-23, issued by the Town Council of the Town of Harrison to Ann Hibbits, t/a Hibbo's Tavern, for premises 439 Harrison Avenue, Harrison, be and the same is hereby suspended for five (5) days, commencing at 2:00 A. M. Monday, April 23, 1962, and terminating at 2:00 A. M. Saturday, April 28, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

10. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING BALANCE OF SUSPENSION AFTER STAY BY APPELLATE DIVISION.

In the Matter of Disciplinary Proceedings against

Timothy Mondello
t/a Mondello's Store
Rt. #46
Mount Olive Township
PO Netcong, New Jersey,

Holder of Plenary Retail Distribution License D-2, issued by the Township Committee of the Township of Mount Olive.

ORDER

BY THE DIRECTOR:

On October 31, 1961, I suspended the license herein for 15 days commencing November 6, 1961 (Bulletin 1426, Item 4).

Upon appeal to the Superior Court, Appellate Division, the court, on November 13, 1961, after 7 days of the suspension had been served, entered an order staying the "unexecuted portion" of the suspension pending the outcome of the appeal. Consent stipulation of dismissal of the appeal having been filed, an order to reimpose the balance of the suspension may now be entered.

Accordingly, it is, on this 16th day of April 1962,

ORDERED that the 8-day balance of the aforesaid 15-day suspension be and hereby is reimposed against plenary retail distribution license D-2, issued to Timothy Mondello, t/a Mondello's Store, for premises on Rt. #46, Mount Olive Township, commencing at 9 a.m. Monday, April 23, 1962, and terminating at 9 a.m. Tuesday, May 1, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against

Lucille W. Britton
t/a Britton's
229 Port-au-Peck Ave.
Long Branch, New Jersey

Holder of Plenary Retail Distribution License D-3, issued by the City Council of the City of Long Branch

CONCLUSIONS
AND
ORDER

Lucille W. Britton, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 28, 1962, she sold two cans of beer to a minor, age 20, in

violation of Rule 1 of State Regulation No. 20.

Absent prior record, 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 Chateau Pinewald, Inc., Bulletin 1437, Item 7.

Accordingly, it is on this 16th day of April, 1962,

ORDERED that Plenary Retail Distribution License D-3, issued by the City Council of the City of Long Branch to Lucille W. Britton, t/a Britton's, for premises 229 Port-au-Peck Ave., Long Branch, be and the same is hereby suspended for five (5) days, commencing at 9:00 A. M. Monday, April 23, 1962, and terminating at 9:00 A. M. Saturday, April 28, 1962.

WILLIAM HOWE DAVIS
Director