

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

BULLETIN 1962

April 1, 1971

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STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - JOSEPH AND EDNA HOLLIE v. NEWARK.

JOSEPH and EDNA HOLLIE)
t/a CLUB 852,)
Appellants,) ON APPEAL
v.) CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC) AND ORDER
BEVERAGE CONTROL OF THE CITY OF)
NEWARK,)
Respondent.

Mayer and Mayer, Esqs., by Elias I. Cohen, Esq., Attorneys
for Appellants
William H. Walls, Esq., by Charles DeFazio, Esq., Attorney
for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellants appeal from the action of the respondent (hereinafter Board) whereby it suspended for fifteen days the plenary retail consumption license for premises 130 Chapel Street, Newark, after finding appellants guilty of the following charge:

"You did on Saturday, December 13, 1969, sell, serve, deliver or allowed, permitted or suffered the sale, service or delivery of an alcoholic beverage and permitted consumption of same on your licensed premises between the hours of 2:00 a.m. and 7:00 a.m. when sales of alcoholic beverages are prohibited and entire licensed premises shall also be closed; and no licensee shall sell or offer for sale or delivery to any consumer any alcoholic beverage, or allow, permit or suffer the consumption of any alcoholic beverage in or upon the licensed premises; in violation of City Ordinance, Number 4, Alcoholic Beverage, Section 4:1, Part A.B. and C."

Upon filing of the appeal an order was entered by the Director staying respondent's order of suspension until entry of further order herein.

The appeal was heard de novo and by stipulation was predicated upon transcript of proceedings before the Board, pursuant to Rules 6 and 8 of State Regulation No. 15.

An examination of the transcript indicates that the complaint against the appellants resulted from a visit by police officers to the licensed premises on December 13, 1969, at 4:00 a.m., based upon a complaint that a shooting had occurred there.

Upon arrival, one Eloise Caldwell was found sitting in front of the bar. Two fresh holes from a small calibre pistol were seen in the bar. There were no glasses on the bar nor was she drinking. Patrolman Dimino testifying on behalf of the Board did not see any sale or consumption of any alcoholic beverage. Respondent produced no other proofs.

In behalf of the licensee, Eloise Caldwell testified she once worked there, was in the premises after closing time only to await a ride home from the licensee; that she had not been at the bar following closing nor was she served any alcoholic beverage from that time. She stated that another female had been there who was also waiting, and upon hearing gun shots coming into the bar, the other female, unknown to her, left apparently in panic. She testified that the other female was not served either; that the place had been closed.

A co-licensee, Joseph Hollie, testified that he had closed his premises shortly before 2:00 a.m., allowed Mrs. Caldwell and the other female to wait while he cleaned up. He was in that process when shots rang out and he went next door to call the police. The other female, whom he did not know, left following the shots. He confirmed that from 2:00 a.m. on he neither served the two females nor permitted them to sit at the bar. He alleged that prior to the shots, the premises were closed and the door locked. He asserted he would not have permitted either female in the premises had they not been waiting for him.

His call brought the police to the premises and the premises were opened solely in order to admit the officers. He denied the sale, delivery or consumption of alcoholic beverages after 2:00 a.m.

At the hearing before the Division, the Hearer indicated to counsel that the transcript failed to reveal anything concerning a sale, delivery or consumption of an alcoholic beverage. This discussion, on the record, indicated that counsel for the Board was in agreement that the charge was not established. Upon motion to dismiss by counsel for appellants, his adversary raised no objection. Such motion would be in the nature of a final determination, which, of course, must be made by the Director.

I find the record completely devoid of testimony to substantiate the charge. The police officer, the only witness called by the Board, offered no testimony whatever in substantiation of the charge.

I conclude that the Board has failed to establish guilt by a fair preponderance of the evidence. Accordingly, it is recommended that an order be entered reversing the action of the Board and dismissing the said charge. Re Lipshitz, Inc. v. Newark, Bulletin 1243, Item 1; Re Night Owl Club, Inc., v. Newark, Bulletin 1314, Item 2; Re Wasserman and Goldberg v. Newark, Bulletin 1590, Item 1.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

My examination of the record reveals that there is no evidence whatsoever to sustain the charge.

Having carefully considered the entire record herein, including the transcripts of testimony, the argument of the attorneys for the respective parties herein, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 4th day of February 1971,

ORDERED that the action of respondent be and the same is hereby reversed, and the charge herein be and the same is hereby dismissed.

RICHARD C. McDONOUGH
DIRECTOR

2. APPELLATE DECISIONS - ULLMANN v. FAIRVIEW ET AL - ORDER DISMISSING APPEAL.

PHILIP ULLMANN
t/a BUZIE'S TAVERN,

Appellant,

v.

MAYOR AND COUNCIL OF THE BOROUGH
OF FAIRVIEW, and GAY'S TAVERN, INC.,
t/a GAY'S,

Respondents.

)
)
) QN APPEAL
) ORDER
)
)
)

Stanley L. Wyrzykowski, Esq., Attorney for Appellant
John V. Martino, Esq., Attorney for Respondent Borough
Erwin K. Weitz, Esq., Attorney for Respondent Gay's Tavern, Inc.

BY THE DIRECTOR:

Appellant appeals from the grant of an application for transfer of a plenary retail consumption license issued to respondent Gay's Tavern, Inc., from premises 117 Anderson Avenue to premises 11 Anderson Avenue, Fairview, on December 8, 1970.

Prior to the hearing, all parties being represented by counsel, I was advised in writing of the consent of all parties to the withdrawal of the instant appeal, with prejudice.

Accordingly, it is, on this 9th day of February 1971,

ORDERED that the appeal herein be and the same is hereby dismissed, with prejudice.

RICHARD C. McDONOUGH
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE BELOW FILED PRICE - HINDERING INVESTIGATION (BRIBERY) - LICENSE SUSPENDED FOR 105 DAYS.

In the Matter of Disciplinary Proceedings against)

Max Weisbrot and Stanley Weisbrot t/a Broad & Grove Club 400-402 South Broad Street Elizabeth, N.J.)

-----)
Holders of Plenary Retail Consumption License C-16, issued by the City Council of the City of Elizabeth.)

CONCLUSIONS AND ORDER

Forman, Forman and Cardonsky, Esq., Attorneys for Licensees, By Louis L. Forman, Esq.
Walter H. Cleaver Appearing for the Division

BY THE DIRECTOR:

The Hearer has filed the following report herein.

Hearer's Report

Licensee pleaded not guilty to the following charges:

- "1 On April 24, 1970, you sold and offered for sale, at retail, directly or indirectly, one S. Ryndebende Hand Painted Musical Windmill, Delft Pottery, Creme De Menthe (8 oz.), an alcoholic beverage at less than the price thereof filed with the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulation No. 30.
- 2 On April 24, 1970, you directly or indirectly, failed to facilitate, hindered, delayed, caused the hindrance and delay of an investigation of your licensed business then and there being conducted and made by an Inspector and an Investigator of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey in connection with the above-mentioned alleged violation of Rule 5 of State Regulation No. 30, viz., by urging, suggesting and counselling said Inspector and Investigator to make false and untruthful reports of said investigation, offering to give and actually giving money to them to make and file such false and untruthful reports; in violation of Rule 35 of State Regulation No. 20."

Pursuant to a specific assignment, Agent D entered the licensed premises on April 4, 1970 at approximately noon. Among the thirteen patrons present he observed a woman (not further identified) engaged in the purchase of a "windmill glass container" containing Creme De Menthe from the bartender (later identified as Max Weisbrot, the co-licensee) who then returned it to the kitchen area.

Subsequently, Agent D engaged the licensee in conversation regarding the windmill. He then retrieved it from the kitchen area, showed it to Agent D and said, "They sell for eighteen dollars but I can give it to you for fifteen dollars." Agent D informed him that he would "let him know" and then departed.

He further testified that "The next day I checked the minimum resale price book, and on page 63 it establishes the minimum resale price for this particular item is \$18.25, plus 5 percent sales tax. The brand name is S. Ryndebende."

On April 24, 1970 Agent D re-entered the licensed premises at noon and thereafter was joined by Agent P at approximately 1:00 p.m. at which time there were seven patrons on the premises and Max Weisbrot was again tending bar. Agent D questioned Weisbrot about the windmill. Weisbrot then brought out a box which when opened, contained a windmill similar to that sold to Agent D on April 7. Agent D was advised that the price was sixteen dollars whereupon he paid Weisbrot sixteen dollars, a ten dollar bill, a five dollar bill, and a one dollar bill, the serial numbers of which had been previously recorded by the Agents. Weisbrot then placed the sixteen dollars in the cash register remarking "See I didn't even ring it up because of the sales tax."

Agent D further testified that both he and Agent P were directly in front of the cash register at this time. The agents having taken possession of the windmill, identified themselves and requested Weisbrot to accompany them to the kitchen area. Upon arriving there, the agents again showed their identification and asked for the license application. The following conversation then ensued.

Weisbrot - "Take it easy on me. Give me a break. I just got over a 30 day suspension. I'll give you \$100 if you give me a break."

Agent D-- I looked at him and I said, "You got to be kidding! \$100?" He said, "I'll give you \$200; \$100 each."

I looked at my partner.

I said, "What do you say, Mike?"

He says, "O.K."

Weisbrot then withdrew ten twenty dollar bills from his wallet and pocket. He gave them to Agent D. Agent P then advised Weisbrot that it would be necessary to remove the marked bills from the register. Weisbrot assisted in removing the bills and the agents then departed.

Immediately upon departing Agent D telephoned the Elizabeth Police Department. Sergeant Hennings and Detective Brennan arrived shortly thereafter and were advised of both violations. The four of them, Agents D and P, Detective Brennan, and Sergeant Hennings entered the premises and confronted Weisbrot who then admitted both violations. Stanley Weisbrot (brother of Max Weisbrot and co-licensee) entered shortly thereafter and was advised what had transpired. The ten twenty dollar bills were then recorded and handed over to Elizabeth Police.

On cross examination Agent D testified that he had had no interest in the windmill on April 7 until Weisbrot offered to sell it to him for fifteen dollars; that he had had six bottles of beer on the premises on April 7; that he had no gun or anything resembling a gun on his person on April 24. He further testified

that it has been the policy of agents to ask licensees to accompany them to another room upon apprising them of a violation to avoid any confrontation and exposure to patrons, and to complete their investigation. He also maintained that he had never demanded money from Weisbrot, that he had seen Weisbrot "cash a couple of checks," and that Weisbrot had some undetermined amount of money in his hand at the time.

Agent P testified that on April 24, 1970 he entered the licensed premises at approximately 1:05 p.m. and that Agent D was present. Before entering the premises Agent P had recorded the serial numbers of the money to be used in the purchase. The list identifying the money was admitted in evidence. The windmill was also properly identified by Agent P and placed in evidence. Agent P corroborated the testimony regarding the purchase and the alleged bribery having personally witnessed both transactions. He further testified that Weisbrot admitted both violations before himself, Agent D and officers Hennings and Brennan.

On cross examination he substantially corroborated the testimony of Agent D and further denied any attempt to extort money from Weisbrot. He stated that upon removing the marked bills from the register with the cooperation of Weisbrot a receipt for the money was then given to Weisbrot which Weisbrot acknowledged. The receipt was then admitted into evidence. He added that Weisbrot had no cash in his hand at the time of the sale other than the sixteen dollars.

Detective Brennan of the Elizabeth police force testified that on April 24, 1970 at the request of Sergeant Hennings also of the Elizabeth police, he accompanied Sergeant Hennings to the licensed premises where they met Agents D and P who advised them of the violations. He further testified that they entered the premises; that all presented their identification to Weisbrot; and that Weisbrot was in the process of cashing checks and had some money in his hand. He further testified that Weisbrot admitted the violations in the presence of the four of them and subsequently identified the two-hundred dollars which the agents had handed over to the officers.

Sergeant Hennings testified that he is in charge of the confidential squad of the Elizabeth Police Department. On April 24, he received a call from Agent D, whereupon he and Detective Brennan proceeded to the licensed premises. They met Agents D and P and were then advised of the violations and that the bribery money was "handed over to the detective in my presence." He further testified that Weisbrot admitted both violations in the presence of all four.

The co-licensee Max Weisbrot gave the following account: On April 4 and April 27 he was alone on the premises except for the patrons; on April 4 he had not received the current price catalog; Agent D had ordered the windmill; that Weisbrot had contacted a salesman for the price and was advised that the windmill called for the usual thirty-five percent mark-up.

Furthermore, while a female patron had ordered a windmill, the said transaction was never completed. He asserted that the wholesale price of the windmill was eleven dollars and thirty-five cents; that on April 24 he had received the current price list but could not find this item. On April 24, Agent D arrived some time between noon and 1:00 p.m. and consumed six bottles of beer during his stay; Agent D had asked for the windmill and this witness sold it to Agent D for sixteen dollars. After the sale was consummated Agent D came around the bar, opened the register, took out the sixteen dollars and started "dragging me." Agent D had not identified himself in any way; he happened to see a bulge in

Agent D's pocket; he thought it was a gun and thought the tavern was being held up. The testimony continued as follows:

- "Q How far did he drag you?
A Around forty-five foot.
Q About forty-five feet?
A Yes.
Q How far is the room from the register?
A Around forty-five foot.
Q When you got into the room did you have any money in your hand?
A That is right.
Q Tell us what took place then.
A He stopped and I heard something about money, that he wanted money.
Q How did you know it was something about money?
A He said big money. Money, I thought, that was it, money. I figured the man is a hold-up man and wants money. When we came in the room he just looked at me. He said, 'Let's have money.' I said, 'I got money.' He asked for two hundred dollars. I gave it to him.
Q Where did you have this money?
A I had it in my hand.
Q \$200?
A I had at that time about \$900. Say half of it was in my pocket, side pocket, and half in my hand. I still held money in my hand.
Q What happened?
A He said, 'I want \$200.' I gave it to him and he walked out. I started to run to the phone to call the police. What happened, my customers grabbed me. They wanted service. I gave one fellow a drink. I said, 'I have to get to the phone.' I have a private phone behind the bar. As soon as I went to the phone the police came in."

He further testified that Agent D never asked to see the license application and he never saw Agent D's credentials. He also insisted that he never admitted the violations to the agents or the police officers.

On cross examination Weisbrot testified that upon his arrival he told the police of the hold-up and the police ignored him. Moreover, he did have the current price catalog in his possession on April 24, 1970; before calling the police he served a few drinks to patrons and he still had some money in his hand when Agent D left the premises.

Stanley Weisbrot, (brother of Max Weisbrot and co-licensee) testified that he arrived at the rear of the premises at approximately 2:00 p.m., and was admitted into the premises by Sergeant Hennings. He was not advised of the charges against Max. He showed the license application to Agent P. He added that on Fridays it is customary to cash \$1200 to \$1500 in checks.

Robert Fuentes testifying on behalf of the licensee stated he was a patron on the premises at the time of the alleged violation; that he is presently employed at the Newark Post-Office and was formerly a Union County employee. He has lived in Elizabeth for thirty-nine years, works nights and usually stops at the licensed premises on the way home. On the date charged herein he saw Agent D go behind the bar, open the register and

take money; then Agent D spoke to Weisbrot and ushered Weisbrot out by the arm. Weisbrot had checks and money in his hand. Finally he acknowledged that although there was a bulge in Agent D's pocket he saw no weapon.

In rebuttal, Agent D testified that he did not go behind the bar near the cash register until after the police arrived; that Agent P went behind the bar with Weisbrot to retrieve the sixteen dollars.

At the conclusion of the Division's case and again after all evidence was presented, counsel for the licensee moved to dismiss the charges on the grounds that (1) there was no proof shown as to the minimum price of the windmill and (2) that the Division had failed to establish its case by preponderance of the evidence. As to the first ground for dismissal it should be noted that Agent D on direct examination specified the precise page of the then current List Of New Jersey Minimum Consumer Resale Prices of Alcoholic Beverages published pursuant to State Regulation No. 30, which testimony has been set forth supra. This testimony stands uncontradicted by the licensee. Additionally, Section 2(e) of rule 9 of chapter 2 of the New Jersey rules of evidence (see N.J.S.A. 2A:84A-60) provides "judicial notice may be taken without the request of a party of ... (e) specific facts and propositions of generalized knowledge which are capable of immediate determination by resort to sources of reasonably indisputable knowledge." The hearer therefore takes judicial notice that the minimum resale price of S. Ryndebende (Holland) hand painted, musical windmill, Delft Pottery, Creme De Menthe, eight ounces is eighteen dollars and twenty-five cents as appears on page 63 of the catalog identified supra.

The second ground for dismissal alleging that the Division has failed to establish by a fair preponderance of the evidence that Weisbrot is guilty of charges one or two, is, in light of the testimony herein set forth, wholly lacking in merit. I, therefore recommend that the above motions be denied.

Preliminarily it should be noted that "in matters of this nature we are guided by the firmly established principle that 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, p. 378 (1956), 36 N.J. Super. 512, p. 519 (App. Div. 1955).

In appraising the factual picture presented herein the credibility of witnesses must be weighed. Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 564 (1954).

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. 32A C.J.S. Evidence Sec. 1042.

I have detailed much of the testimony of both the witnesses for the Division and for the licensee, in order to obtain an objective picture of the facts upon which the charges herein are grounded.

The Division case in substantiation of charge number 1 was substantially proven by the candid, accurate description of the transactions by Agents D and P. Furthermore, the licensee has admitted the sale at the price of sixteen dollars. As has been shown this is less than the minimum resale price. It is no defense to say that the licensee could not find the minimum price listed in the price catalog which by his own admission was in his possession on the date of the sale. Rule 5 of State Regulation No. 30 provides "no licensee shall sell... at retail ... any alcoholic beverage ... at less than its filed price...." I therefore find that the Division has established the charge by the preponderance of the credible evidence and I recommend that the licensee be found guilty as to this charge.

As to the second charge, I am satisfied that the Division has clearly and convincingly established by credible evidence that the alleged violation in fact occurred. The testimony of two agents and two police officers does not vary and leads to no other conclusion. On the other hand the testimony of the licensee is wholly incredible. The defense of an alleged hold-up taxes the imagination and is totally without merit. I therefore completely reject this defense.

Considering the seriousness of the violation of the second charge involving as it does an attempt to subvert justice by seeking to prevent agents from the lawful performance of their duties a penalty commensurate with the seriousness of the charge is in order.

Licensees have a record of previous suspensions as follows:

- (1) By the Director for twenty days, effective February 10, 1955 for sale at less than minimum resale price list and a "hours" violation. Bulletin 1052, Item 7.
- (2) By the Local Issuing Authority for fifteen days effective January 30, 1951 for an hours violation.
- (3) By the Director in the names of Morris, Max, and Stanley Weisbrot for fifteen days effective August 13, 1964 for the sale of alcoholic beverages below the filed price. Bulletin 1581, Item 8.

The prior record of dissimilar violations in 1955 and 1961 disregarded but the prior record of suspension of license for a similar violation occurring more than five but less than ten years ago considered, I recommend that the license herein be suspended on the first charge for fifteen days. Re Innocenti, Bulletin 1784, Item 12. As to the second charge all the circumstances considered, and it being unique in that it is the first reported case of a completed bribe, I further recommend that the license be suspended for ninety days, making a total of one hundred and five days.

Conclusions and Order

Written exceptions to the Hearer's report were filed by the licensees pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions have either been fully considered by the Hearer in his report, or are without merit.

Consequently, having considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions filed with reference thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 4th day of February 1971,

ORDERED that Plenary Retail Consumption License C-16, issued by the City Council of the City of Elizabeth to Max Weisbrot and Stanley Weisbrot, t/a Broad & Grove Club, for premises 400-402 South Broad Street, Elizabeth, be and the same is hereby suspended for one hundred five (105) days, commencing at 2:00 a.m. Monday, February 22, 1971, and terminating at 2:00 a.m. Monday, June 7, 1971.

RICHARD C. McDONOUGH
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - LICENSE ISSUED IN VIOLATION OF STATE LIMITATION LAW - LICENSE CANCELLED.

In the Matter of Disciplinary Proceedings against)

HENRY FRANCIS CRUIKSHANK)
t/a Seven Veils)
203 Sussex Turnpike)
Randolph Township)
PO Mt. Freedom, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-19, issued by the Township Committee of the Township of Randolph.)

Lordi, Lordi and Imperial, Esqs., by James P. Lordi, Esq.,
Attorneys for Licensee
Francis P. Meehan, Jr., Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee, Henry F. Cruikshank, was ordered to show cause why his plenary retail consumption license should not be cancelled and declared null and void, for the following reasons (as amended at the hearing herein):

"Said license was improvidently issued in violation of R.S. 33:1-12.14 (P.L. 1960 ch. 72, supplementing R.S. 33:1-1 et seq.) in that it was the latest renewal for a new license originally issued to you October 7, 1965, at which time the combined total number of plenary and seasonal retail consumption licenses existing in Randolph Township was greater than one for each two thousand of its population as shown by the last then preceding Federal census, and that the issuance of your license was not authorized by any exception to said cited statute."

I make the following findings of facts: On October 7, 1965, pursuant to an application theretofore filed by the licensee, a plenary retail consumption license was issued by the Township Committee of the Township of Randolph, under the hotel exception to the State Limitation Law R.S. 33:1-12.14.

In his application the licensee set forth that the purpose of the license was for use as a hotel, tavern, dining room and bar. In answer to Question No. 9: "Will the applicant conduct any business other than the sale of alcoholic beverages on the premises sought to be licensed?" he stated: "incidental to hotel business".

The license was subsequently renewed for each succeeding year and in the succeeding application the same purposes were set forth.

Investigation of this matter by agents of this Division disclosed that the premises consist of a large white stucco building; that nearby are two other dilapidated buildings that appear to have been a hotel; both said buildings are unoccupied; and that the said buildings have not operated as a hotel.

The licensee testified at this hearing that at the time the application was granted under the hotel exception no hotel existed: "The structures were there and I'm sure there were fifty rooms on there or more, but they weren't operable with water, heat, electricity and so forth." It was his intention to operate merely a tavern and supper club. He did not own the adjoining property and had no control over them. At no time were the premises ever operated as a hotel nor were the premises completed for such purpose. He has not operated under this license since August 8, 1968.

It is apparent that the license issued to the licensee based on information set forth in the application upon which the said license was originally issued, as well as in the application pursuant to which he received renewal thereof for the current licensing year to the effect that he was the operator of a hotel in order to come within the purview of R.S. 33:1-12.20 was clearly in violation of the terms of the said statute. Furthermore, R.S. 33:1-12.14, as amended which is applicable to the facts in this case, reads:

"...no new plenary retail consumption license ... shall be issued in a municipality unless and until the combined total number of such licenses existing in the municipality is fewer than one for each two thousand of its population as shown by the last then preceding Federal census...."

The 1960 Federal census population for Randolph Township as certified by Paul Sherman, Secretary of State of New Jersey, was 7,295. The clerk of the local issuing authority testified that Section 3 of the applicable ordinance reads:

"(3a) Not more than three plenary retail consumption licenses shall be granted or outstanding at the same time."

At the time of the filing of this application there were twenty licenses in effect which were issued prior to the adoption of the State Limitation Law. The reason this license was issued, the clerk explained, was that the application set forth that the purpose was for the licensee to operate these premises as "a hotel, dining room and bar". The adoptive resolution specifically

set forth that the said license was issued pursuant to "a 'hotel' exception in Section 8 of the State Limitation Law and is subject to the special condition that the license shall not be transferred except to premises operated as a hotel containing at least 50 sleeping rooms".

Inasmuch as the premises were not operated as a hotel, did not contain fifty sleeping rooms and were never intended for such operation it is clear that the license was illegally issued and illegally renewed for the current licensing period. Re Monterey Management Co., Bulletin 1429, Item 4; Re Anna Liptak, Bulletin 1130, Item 1; Liptak v. Division of Alcoholic Beverage Control, 44 N.J. Super. 140.

Licensee, nevertheless, argues that in his 1969-70 application, he specifically states that the purpose for which this license would be used would be in the operation of a "cocktail, bar and restaurant" and that the local issuing authority "knowing the condition of these premises, knowing what was in operation, continued to grant this license."

He further argues that the Director is prevented on the basis of laches from cancelling, since he has invested a large sum of money in the improvement of the said premises. He cites in support of his position Passarella v. Board of Commissioners of Atlantic City, 1 N.J. Super. 313 (1949). Passarella is not applicable because in Passarella the court merely permitted the approval of an application subject to the completion of premises. Obviously, the completion of premises condition was not involved in these proceedings.

The defense of laches is not applicable to these proceedings because the Alcoholic Beverage Law does not contain any time limit within which these proceedings may be instituted. Cf. Bernstein v. Paterson, Bulletin 1356, Item 1; Re Kinney Club, Inc., Bulletin 502, Item 7.

The Director has the duty to "...take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration of this chapter." R.S. 33:1-23. The Alcoholic Beverage Law is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed. R.S. 33:1-73.

In view of all the facts and circumstances herein, including the admission of the licensee that he never operated or intended to operate these premises as a hotel, and had only operated a supper club and tavern under the said license, it is, accordingly, recommended that the said license be cancelled, effective immediately.

Conclusions and Order

No exceptions were filed to the Hearer's report pursuant to Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 5th day of February 1971,

ORDERED that Plenary Retail Consumption License C-19, issued by the Township Committee of the Township of Randolph to Henry Francis Cruikshank, t/a Seven Veils, for premises 203 Sussex Turnpike, Randolph Township, be and the same is hereby cancelled, effective immediately.

RICHARD C. McDONOUGH
DIRECTOR

5. DISQUALIFICATION REMOVAL PROCEEDINGS - TRANSPORTATION OF PORNOGRAPHIC FILM - 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. 2499

BY THE DIRECTOR:

Petitioner's criminal record discloses that he was convicted in 1959 in the United States District Court of the crime of transporting pornographic film. He was sentenced to three years in the Federal Prison and released in December, 1962.

Since the crime of which petitioner was convicted involved the element of moral turpitude per se, he was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing held herein petitioner (31 years old) testified that he is married and separated from his wife; he has resided at his present address for the past twenty years; and has been employed as a sales clerk in a liquor store.

Petitioner is asking for the removal of his disqualification to be free to engage in the alcoholic beverage industry in this State and stated that ever since his conviction in 1959 he has not been convicted of any crime or arrested.

The Police Department of the municipality wherein the petitioner resides reports that there are no complaints or investigations presently pending against the petitioner.

Petitioner produced three character witnesses (a municipal attendance officer, a postman and a building inspector) who testified that they have known petitioner for more than five years last past and that in their opinion he is now an honest, law-abiding person with a good reputation.

The only reservation I have in granting the relief sought herein is based on the fact that although disqualified, petitioner was employed on licensed premises in this State. I am, however, favorably influenced by three factors, viz., (a) testimony of his character witnesses, (b) his sworn testimony that he was unaware of his ineligibility to be employed on licensed premises, and (c) his present attitude. Knowledge of the law, moreover, is not a prerequisite to removal of disqualification in these proceedings. Re Case No. 1738, Bulletin 1510, Item 7.

Considering all the aforesaid facts and circumstances, I am satisfied that petitioner has conducted himself in a law-abiding manner for five years last past and conclude that his association with the alcoholic beverage industry in this State will not be contrary to the public interest.

Accordingly, it is on this 4th day of February 1971,

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

RICHARD C. McDONOUGH
DIRECTOR

6. DISQUALIFICATION REMOVAL PROCEEDINGS - FRAUD - 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. 2510

BY THE DIRECTOR:

Petitioner's criminal record discloses that he was convicted of the crime of fraud (uttering bad checks) in the Hudson County Court on June 10, 1965. He was thereupon sentenced to five weeks in jail and placed on probation for five years.

Since the crime of which petitioner was convicted involved the element of moral turpitude (Cf Re Case No. 1966, Bulletin 1654, Item 7) he was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State R.S. 33:1-25, 26.

At the hearing held herein petitioner (54 years old) testified that he is married and living with his wife and child; for the past thirty-five years he has lived at his present address; he was employed on licensed premises as a bartender; and is presently unemployed due to illness since 1968.

Petitioner further testified that he is asking for the removal of his disqualification to be free to engage in the alcoholic beverage industry in this State and that ever since his conviction in 1965 he has not been convicted of any crime or arrested.

The Police Department of the municipality wherein the petitioner resides reports that there are no complaints or investigations presently pending against petitioner.

Petitioner produced three character witnesses (a truck driver, a payroll analyst, and a retiree) who testified that they have known petitioner for more than five years last past and that in their opinion he is now an honest, law-abiding person with a good reputation.

The only reservation I have in granting the relief sought herein is based on the fact that although disqualified he was

employed on licensed premises in this State. I am, however, favorably influenced by three factors, viz., (a) testimony of his character witnesses, (b) his sworn testimony that he was unaware of his ineligibility to be associated with the alcoholic beverage industry in this State, and (c) his present attitude. Knowledge of the law, moreover, is not a prerequisite to removal of disqualification in these proceedings. Re Case No. 1738, Bulletin 1510, Item 7.

Considering all the aforesaid facts and circumstances, I am satisfied that petitioner has conducted himself in a law-abiding manner for five years last past and conclude that his association with the alcoholic beverage industry in this State will not be contrary to the public interest.

Accordingly, it is on this 4th day of February 1971,

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

RICHARD C. McDONOUGH
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE BELOW FILED PRICE - FALSE STATEMENT IN APPLICATION - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ELMORA LIQUORS, INC.)
t/a Old Colony Wine & Liquor Store)
611-613 Westfield Avenue)
Elizabeth, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-5, issued by the City Council of the City of Elizabeth.)

Margulies and Kochanski, Esqs., by Philip Margulies, Esq.,
Attorneys for Licensee
Francis P. Meehan, Jr., Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to Charges (1), (2) and (3) alleging that on April 29, 1970 it sold a case of blended American whiskey and a case of Scotch whisky as a combination sale at a single aggregate price, and in connection with the sale furnished a gift and a discount in price, in violation of Rules 19 and 20 of State Regulation No. 20, and Charge (4) alleging that in the application for its license for the 1969-70 period it failed to disclose record of license suspensions, in violation of R.S. 33:1-25.

Basically, the violations alleged in the first, second and third charges are equivalent to a charge of sale below filed price and will be so treated for penalty purposes. Re Edelman, Bulletin 1587, Item 11.

License of this corporation was suspended by the municipal issuing authority for fifteen days effective November 3, 1969 for

sale of alcoholic beverages during prohibited hours in violation of Rule 1 of State Regulation No. 38. See Elmora Liquors, Inc. v. Elizabeth, Bulletin 1955, Item 3. Additionally, licenses held by Sanal Liquors, Inc. for premises 1730 E. St. George Avenue, Linden, and by Elmora Liquors, Inc. (a corp. of N.J.) for premises 494 Central Avenue, Newark, both linked by common stockholdings with licensee corporation, were suspended by the respective municipal issuing authorities for sales to minors, the former for thirty days effective July 30, 1962, and the latter for fifteen days effective October 26, 1964, non-disclosure of these suspensions in 1962 and 1964 being the subject of the fourth charge.

The record of suspension of licensee corporation which was to have been effective November 3, 1969 disregarded for penalty purposes since it was then the subject of an appeal to this Division (cf. Re Suppa and Suppa, Bulletin 1775, Item 4), and the two aforementioned suspensions by Sanal Liquors, Inc. and Elmora Liquors, Inc. (a corp. of N. J.) for dissimilar violations occurring more than five years ago also disregarded for penalty purposes, the license will be suspended on the first, second and third charges for ten days (Re Edelman, supra), and on the fourth charge for ten days (Re Marcella Bar, Inc., Bulletin 1892, Item 4), or a total of twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days.

Accordingly, it is, on this 10th day of February 1971,

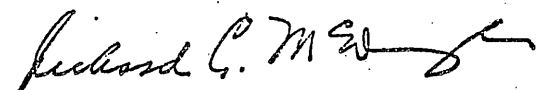
ORDERED that Plenary Retail Distribution License D-5, issued by the City Council of the City of Elizabeth to Elmora Liquors, Inc., t/a Old Colony Wine & Liquor Store, for premises 611-613 Westfield Avenue, Elizabeth, be and the same is hereby suspended for fifteen (15) days, commencing at 9:00 a.m. Wednesday, February 24, 1971, and terminating at 9:00 a.m. Thursday, March 11, 1971.

RICHARD C. McDONOUGH
DIRECTOR

8. STATE LICENSES - NEW APPLICATION FILED.

Leonard Kreusch, Inc.
223 Veterans Boulevard
Carlstadt, New Jersey

Application filed March 29, 1971 for place-to-place transfer of Wine Wholesale License WW-28 from 7814-20 Tonnelle Avenue, North Bergen, New Jersey


Richard C. McDonough
Director