

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

BULLETIN 1654

January 19, 1966

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January 19, 1966

1. PETITION PROCEEDINGS - DISCRIMINATION AGAINST WHOLESALERS -
ORDER DISMISSING PETITION.

REITMAN INDUSTRIES, a NEW JERSEY)
CORPORATION, GALSWORTHY, INC., a)
NEW JERSEY CORPORATION, and CREST)
WINE & SPIRITS, LTD.,)

Petitioners,)

ON PETITION
ORDER

v.)

PAUL MASSON VINEYARDS, a)
CORPORATION,)

Respondent.)

Fox, Yanoff & Fox, by Leo Yanoff, Esq., Attorneys for Petitioners
Harrison and Jacobs, by Joseph M. Jacobs, Esq., Attorneys for
Respondent.

BY THE DIRECTOR:

Petitioners seek relief under R.S. 33:1-93.1 et seq.
from respondent's alleged discriminatory refusal to sell to
petitioners a quantity of respondent's wines and brandy.

Request for ad interim relief pending final hearing
was denied by order dated August 13, 1965. Reitman Industries,
et als. v. Paul Masson Vineyards, Bulletin 1637, Item 6.

Prior to final hearing, the attorneys for the parties
entered into a stipulation of dismissal, dated November 22,
1965, agreeing to withdrawal of the petition and dismissal
thereof.

No reason appearing to the contrary, it is, on this
30th day of November 1965,

ORDERED that the petition herein be and the same is
hereby dismissed.

JOSEPH P. LORDI
DIRECTOR

2. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION AND POSSESSION OF UNTAXED ALCOHOLIC BEVERAGES - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on)	Case No. 11,387
December 22, 1964 of a quantity of)	
alcoholic beverages and a 1947)	ON HEARING
Chevrolet sedan at a public thorough-)	CONCLUSIONS
fare, at the intersections of Liberty)	AND ORDER
and Howe Streets, in the City of Passaic)	
and State of New Jersey.)	

 William John Colandrea, Pro Se.
 I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey and State Regulation No. 28 to determine whether a quantity of alcoholic beverages and a 1947 Chevrolet sedan, described in a schedule annexed hereto and made part hereof, seized on December 22, 1964 at a public thoroughfare, at the intersections of Liberty and Howe Streets, in the City of Passaic, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, forfeiture of the motor vehicle and the alcoholic beverages was unopposed.

Agent S. testifying on behalf of the Division, gave the following account: Acting upon a specific assignment to investigate an abandoned motor vehicle which was found by officers of the Passaic Police Department at the intersections of Liberty and Howe Streets in the City of Passaic, he proceeded to the Passaic Police Department. He was there informed that in the abandoned motor vehicle were found 10 - five-gallon cans of alleged alcohol in the back seat of this motor vehicle.

While at headquarters he questioned one William John Colandrea who stated that he was the owner of the said motor vehicle; that the car was stolen on the day before when he left it on a public street in the City of Newark with the keys in the ignition; and he denied knowledge of the alcohol in the car. The seizure of the motor vehicle and the alcohol was adopted by agents of this Division.

William Colandrea, the said registered owner, testified substantially to the same effect as that of Agent S and stated that this car was left on a street because it was not in operating condition. He could not explain the presence of the alcohol but denied any knowledge thereof. He also stated that he made no claim for the return of the car since the costs of seizure and storage would be more than the value of the car; and in any event, the costs of restoring the car to operating condition would be prohibitive.

Colandrea was arrested, charged with possession of alcoholic beverages in violation of R.S. 33:1-50(e) and was held in bail, pending arraignment, in the Passaic Municipal Court.

The Division chemist's report discloses that a sample of one of the bottles analyzed is an alcoholic beverage fit for beverage purposes with alcohol by volume of 89.1%.

None of the cans had affixed thereto any stamps indicating payment of tax. Thus, they were possessed with intent to be used in unlawful activity.

Such alcoholic beverages and the motor vehicle in which they were transported and found are subject to forfeiture. R.S. 33:1-1(y); R.S. 33:1-2; R.S. 33:1-66.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A", attached hereto, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and shall be sold at public sale for the use of the State in accordance with State Regulation No. 29 or retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

JOSEPH P. LORDI
DIRECTOR

Dated: November 30, 1965

SCHEDULE "A"

- 10 - containers of alcoholic beverages
- 1 - 1947 Chevrolet sedan, N.J. Registration IYX-405.

3. SEIZURE - FORFEITURE PROCEEDINGS - UNLICENSED SALE OF ALCOHOLIC BEVERAGES - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR - COMMINGLED CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure)	Case No. 11,517
on June 13, 1965 of a quantity of)	
alcoholic beverages, 4 bottles of soda,)	ON HEARING
a wash tub, \$15.50 in cash, and a)	CONCLUSIONS
Chevrolet sedan in an open area at)	AND ORDER
Fenwick Station Road, in Pilesgrove)	
Township, County of Salem and State of)	
New Jersey.)	

Chivian & Chivian, Esqs., by Louis Chivian, Esq., appearing for
General Motors Acceptance Corporation, claimant.
I. Edward Amada, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey and State Regulation No. 28 to determine whether a quantity of alcoholic beverages, four bottles of soda, a wash tub, \$15.50 in cash and a Chevrolet sedan, more particularly described in a schedule attached hereto, made part hereof and marked Schedule "A", seized on June 13, 1965 in an open area at Fenwick Station Road, in Pilesgrove Township, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.D. 33:1-66 no one appeared to seek return of the said seized property.

On the date of the hearing, Joseph T. Sherman, attorney for Annie L. Watson, the registered owner of the seized motor vehicle, informed this Division by telegram that his client did not intend to oppose forfeiture thereof.

The General Motors Acceptance Corporation, the lienor of the said motor vehicle, entered an appearance in support of its lien claim upon the said motor vehicle.

The reports of the ABC agents and other documents presented with the consent of the claimant disclose the following facts: On June 13, 1965, ABC agents were assigned to investigate a complaint that alcoholic beverages were being sold in an open area on Fenwick Station Road, in Pilesgrove Township where a revival meeting was taking place. There were about 3,000 people in attendance. One of the agents proceeded to the area and observed Annie L. Watson selling alcoholic beverages from the trunk of the Chevrolet sedan in question.

Within a period of about two or three hours the agent made three purchases of beer and whiskey from Annie L. Watson, for two of which said purchases, he paid with "marked" one-dollar bills. Immediately upon making the third purchase, other agents and a State Trooper joined the said agent. They identified themselves to Annie L. Watson and seized the alcoholic beverages, \$15.50 in cash which included the "marked" two one-dollar bills found in the possession of Annie L. Watson and the motor vehicle. The seized automobile bore New Jersey license plates AJZ-401, registered in the name of Annie L. Watson of Camden, New Jersey.

Annie L. Watson was thereupon arrested, charged with the sale of alcoholic beverages and possession of the same with intent to sell without a license contrary to R.S. 33:1-2, in violation of R.S. 33:1-50. She was arraigned in the Pilesgrove Township Municipal Court and held for action by the Salem County Grand Jury. The motor vehicle and the personal property were seized by agents of this Division.

The records of this Division do not disclose that any license or permit was issued to Annie L. Watson or for the premises in question for the sale of alcoholic beverages.

On June 25, 1965 a sample of the contents of one of the cans of beer was analyzed by the Division chemist who reports that it is an alcoholic beverage fit for beverage purposes with an alcoholic content by volume of 6.2%. The seized alcoholic beverages are illicit because they were intended for unlawful sale. R.S. 33:1-1(i). Such illicit alcoholic beverages, personal property, commingled money and the motor vehicle in which such beverages were found, constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y); R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 11,378, Bulletin 1619, Item 3.

With particular reference to the cash, the evidence clearly shows that the "marked" money was commingled with the other monies obtained through the unlawful sale of alcoholic beverages and was obviously obtained from the unlawful sale of alcoholic beverages. Thus, the seized cash is subject to forfeiture. Seizure Case No. 10,646, Bulletin 1435, Item 5; R.S. 33:1-2; R.S. 33:1-66.

Robert J. Mullins, called as a witness in behalf of the claimant, General Motors Acceptance Corporation, testified that he is employed by the said claimant as a collection manager in its Camden branch and is familiar with the Annie L. Watson account. This claimant holds a conditional sales contract dated April 2, 1964 signed by Annie L. Watson, covering the sale of the Chevrolet sedan, described in a schedule herein.

A complete investigation was made of Annie L. Watson, which satisfied him that she was a good account. She had a previous account with the claimant; her credit references were checked; her employment was verified and considered satisfactory; and there was no derogatory information disclosed by the said investigation. In addition, the investigation did not disclose any prior liquor law violation.

I am satisfied from the evidence presented that this claimant appears to have made a reasonable investigation; that it did not have any reason to believe that Annie L. Watson was engaged in any illicit alcoholic beverage activity or that the motor vehicle would be used in connection therewith. Seizure Case No. 11,378, supra; Seizure Case No. 10,391, Bulletin 1373, Item 4.

This account was in default at the time of the seizure by the Division. It appears that the contract sale price for the motor vehicle was \$3,372.35 on which she received a net trade value for the car traded in the sum of \$286.18. In addition, she paid \$400.00 as a cash down payment so that the total financing amount was \$2,686.17. Annie L. Watson was in default at the time of the seizure, so that there is now due to it on its claim the sum of \$2,091.82, after due allowances for insurance rebate.

The claimant further advises that the motor vehicle has a present market value in the sum of \$1,600.00, assuming that it is in good condition. It appears likely that the amount realized at public sale of the motor vehicle will not exceed the costs of seizure and storage and the amount of the lien claim. Since this lien claimant has set forth its willingness to accept the return of the car upon payment of the costs of the seizure and storage in full satisfaction of its claim, the said motor vehicle will be returned to the General Motors Acceptance Corporation upon the payment of such costs.

Accordingly, it is on this 1st day of December, 1965,

DETERMINED and ORDERED that if on or before the 13th day of December, 1965, General Motors Acceptance Corporation pays the costs of the seizure and storage of the said 1964 Chevrolet sedan, more particularly described in a schedule attached hereto, said motor vehicle will be returned to it; and it is further

DETERMINED and ORDERED that the balance of the seized property, including the cash, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and that the alcoholic beverages shall be retained for the use of hospitals and state, county or municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control.

JOSEPH P. LORDI
DIRECTOR

Dated: December 1, 1965

SCHEDULE "A"

- 185 - containers of alcoholic beverages
- 1 - galvanized wash tub
- 4 - bottles of ginger ale
- \$15.50 in cash
- 1 - Chevrolet sedan (1964), Serial No. 41839Y 181382, N.J. Registration AJZ-401.

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - PRIOR RECORD OF OTHER CORPORATION WITH COMMON STOCKHOLDER - SUSPENSION IMPOSED SUBSEQUENT TO DATE OF VIOLATION NOT CONSIDERED AGGRAVATING CIRCUMSTANCE - LICENSE SUSPENDED 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CLUB ALI-BABA, INC.)
 t/a CLUB ALI-BABA)
 98 Straight Street)
 Paterson, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-123, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

 Harry Castelbaum, 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 that on Sunday, July 25, 1965, it sold a pint bottle of gin for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Director for fifteen days effective January 28, 1965, for similar violation. Re Club Ali-Baba, Inc., Bulletin 1602, Item 9. In addition, by resolution dated November 12, 1965, the municipal issuing authority has ordered the license to be suspended for twenty-five days effective December 13, 1965, terminating January 7, 1966, for permitting the licensed place of business to be conducted as a nuisance (brawls) and permitting an intoxicated employee to work on the licensed premises. Furthermore, the license of Per-Mac Corp., t/a All Fair Tavern, 13 Fair Street, Paterson (in which Peter Tabatneck, a 97% stockholder of the licensee corporation, was a 50% stockholder) was suspended by the Director for one hundred fifteen days effective December 2, 1963, for permitting homosexuals on the licensed premises and sale to minors. Re Per-Mac Corp., Bulletin 1546, Item 2.

The record of suspension of license to take effect on December 13, 1965 disregarded because imposed subsequent to the instant violation (cf. Re Riper, Bulletin 1628, Item 4; Re McKernan, Bulletin 1519, Item 2) but the prior record of suspension for similar violation within the past five years considered, the license will be suspended for thirty days (Re Gazi, Bulletin 1636, Item 8), to which will be added five days by reason of the

record of suspension of Per-Mac Corp. (Re The Count Cafe, Bulletin 1643, Item 3) for dissimilar violation occurring within the past five years (Re Sawicki, Bulletin 1645, Item 2) or a total of thirty-five days, with remission of five days for the plea entered, leaving a net suspension of thirty days, which will be imposed to take effect at the expiration of the municipal suspension about to commence on December 13, 1965.

Accordingly, it is, on this 7th day of December, 1965,

ORDERED that Plenary Retail Consumption License C-123, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Club Ali-Baba, Inc., t/a Club Ali-Baba, for premises 98 Straight Street, Paterson, be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m. Friday, January 7, 1966, and terminating at 3:00 a.m. Sunday, February 6, 1966.

JOSEPH P. LORDI
DIRECTOR

5. STATE LICENSES - OBJECTIONS TO TRANSFER OF STATE BEVERAGE DISTRIBUTOR'S LICENSE - TRANSFER APPROVED SUBJECT TO SPECIAL CONDITION.

In the Matter of Objections to the)
Transfer of State Beverage Distri-)
butor's License SBD-173 issued to)

PETER, JOSEPH, AUGUST, JULIAN,)
and ARTHUR MUSTARDO)
t/a LYNDAL BEVERAGE CO.)
15-17 Hackensack Avenue)
Ridgefield Park, N. J.)

CONCLUSIONS

to premises)

650 Valley Brook Avenue)
Lyndhurst, N. J.)

Frank Piscatella, Esq., Attorney for Applicants.
Samuel Moskowitz, Esq., and Samuel J. Davidson, Esq., Attorneys for
Objector, Hudson-Bergen County Retail Liquor Stores Assn.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

On August 24, 1965, the licensees filed an application for place-to-place transfer of their state beverage distributor's license from premises 15-17 Hackensack Avenue, Ridgefield Park, to premises 650 Valley Brook Avenue, Lyndhurst.

Objections to the grant of the said application were filed on behalf of the Hudson-Bergen County Retail Liquor Stores Association and a hearing was held thereon. The objections may be summarized as follows:

(1) The said transfer would be to premises located in a "B" residential zone and the proposed use of the property would be in violation of the local zoning ordinance.

(2) There is no public need and necessity for the said transfer since the area is adequately serviced by other licensees.

(3) The Lyndhurst Board of Commissioners had expressed its disapproval of such transfer on previous occasions by resolutions adopted.

(4) Denial of a similar application in 1958 is res adjudicata of the issues herein.

At the hearing herein, testimony was offered on behalf of the applicants to the following effect: Applicants are the owners of the premises in Lyndhurst where they manufacture and distribute carbonated non-alcoholic beverages under the name of Lyndale Beverage Company. They also distribute malt beverages from premises in Ridgefield Park under their state beverage distributor's license. They desire to transfer this license from Ridgefield Park to Lyndhurst in order to afford an efficiency of operation and a decrease in operating expenses.

Peter Mustardo testified that the applicants do not intend to alter the building at the proposed licensed premises, do not intend to increase the number of trucks used in the operation of their business, or to increase the volume of their business. He felt that it is uneconomical and impractical to operate under the license in Ridgefield Park because it is located about fifteen miles from the Lyndhurst premises and requires a total of an hour and forty minutes in travel time. The business in Lyndhurst has been operated at these premises since 1947, having originally been founded by the father of the applicants. Its area of operation includes Bergen, Hudson and Essex counties. The witness further indicated that deliveries of malt products are made on Thursday of each week and some products are delivered only once in six or seven weeks. The premises in Lyndhurst are located more than two hundred feet from schools or churches.

James DeLellis, testifying on behalf of the objector, stated that he is the holder of a plenary retail distribution license in Lyndhurst and is opposed to this transfer because the township is adequately serviced with "D" and "C" licenses. The introduction of a state beverage distributor's license into the area would increase competition and take away business from the other licensees. He was also concerned with the fact that the said transfer would be in violation of the existing zoning ordinance prohibiting the use of the premises for the proposed purpose.

On cross examination, the witness admitted that the applicants presently service the Township of Lyndhurst. However, he felt that the physical transfer of the facility to this township would be detrimental to the interests of the other licensees, and that there is no need and necessity for such transfer.

Also introduced into evidence was a resolution adopted by the Lyndhurst Board of Commissioners on May 3, 1965, at a time when a prior application for transfer had been made. The said application was withdrawn. The resolution recorded the Board of Commissioners as being opposed to the proposed transfer for the following reasons:

"1. The proposed use of the property is in violation of the Zoning Ordinance in that it is located in a 'B' residence zone;

"2. The Board, as a general policy, is opposed to any increase in the number of licenses issued;

"3. It is the opinion of the Board that the public already is adequately served, based upon the number of licenses presently issued."

This Division, of course, takes into consideration the attitude of municipal governing bodies with respect to applications for transfer of state beverage distributor's licenses. Where such objection appears to be reasonable, it is influential in the determination of the Director, who has the discretionary authority in these matters.

From the facts adduced herein, I cannot understand how the municipality or its local licensees can be prejudiced by the said transfer. The fact is that the applicants are presently operating under a state beverage distributor's license and are servicing this municipality. Their operation is patently uneconomical because they engage essentially in one business from two locations, separated by a distance of fifteen miles. Applicants seek merely to consolidate their operation under one roof without any increase in business or in the instrumentalities required for such operation. They have assured the Division that they will make no alterations to the proposed premises in Lyndhurst, nor are such alterations required.

The attitude of this Division has been well established to the effect that in considering the objections to applications for transfer, it must be understood that the privileges of a state beverage distributor are state-wide. Thus, the question of public necessity cannot be determined on the narrow basis of the single municipality in which the prospective licensee will have his principal office or warehouse. Re Beer Depot, Inc., Bulletin 1312, Item 8; Re Maglione, Bulletin 1650, Item 5.

Under R.S. 33:1-11(2c), state beverage distributor licensees may sell unchilled malt alcoholic beverages in quantities not less than 144 fluid ounces. Such licensees may sell and deliver these unchilled beverages both to licensed retailers and to consumers, with consumer sales and deliveries required to be made at prices which are not lower than the minimum prices filed. There may, of course, be no sale or delivery of alcoholic beverages for consumption upon the licensed premises.

It should be emphasized, furthermore, that a municipal ordinance limiting the number of retail licenses in the municipality does not apply to state beverage distributor licenses which are issued and transferred by the Director. This is an application for transfer and not for original issuance of a license. Experience has indicated that this type of licensee offers little, if any, competition to retail distribution and consumption licensees by home delivery in the same area. Re Walkiewicz, Bulletin 1172, Item 5.

Counsel for the objector raises the further objection that an application made by these applicants in 1958 for a person-to-person and place-to-place transfer of an SBD license was denied by the Director. Re Mustardo, Bulletin 1237, Item 7. The said denial was rooted primarily upon the premise that such grant would result in a violation of the zoning ordinance. Since then, the Supreme Court in Lubliner v. Paterson, 33 N.J. 428, has held that it is without the jurisdiction of this Division to determine zoning matters. Zoning matters are left to the municipal authorities and,

in the event that such business is impermissible under the local zoning ordinance, they may take action consistent with such ordinance. Re Lutz, Bulletin 1401, Item 5.

The objection raised by the objector and the Board of Commissioners with respect to alleged possible violation of the zoning ordinance is irrelevant to our consideration, and without merit herein.

I further point out that no objection to the present application was filed with this Division by any local resident or by the Lyndhurst Board of Commissioners, nor did the said Board take any formal action by resolution or otherwise with respect hereto. The sole objection raised to this application comes from a retail trade association, as to this, it is pertinent to quote the observation of the Appellate Division (per Sullivan, J.A.D.) in Blanck et als. v. Magnolia et als., 73 N.J. Super 306, 313, reprinted in Bulletin 1443, Item 1, that:

"The present appellants are other liquor dealers in the area who really don't want any license to issue to anyone, whether to the D'Amicos or anybody else."

There is substantial merit to the objector's contention that over-the-counter retail sales at the proposed licensed premises may affect the business of the present licensees in the municipality. There are thirty-five plenary retail consumption and twelve plenary retail distribution licenses issued and outstanding in Lyndhurst. While I am convinced that a state beverage distributor licensee does not conduct an over-the-counter retail business of any substance, a special condition may be imposed prohibiting such sales over the counter to allay the fear, real or fancied, of any added competition. Applicants have indicated that the purpose of the transfer is to effect economy of operation rather than to open a new over-the-counter facility.

After considering all the evidence, it is my considered judgment that the objections are not sufficiently meritorious to warrant denial of this application. Re Breton Woods Beverage Distributors, Inc., Bulletin 1490, Item 4; Re Kalb, Bulletin 1457, Item 5.

I, therefore, recommend that the pending application for place-to-place transfer be granted subject to the express condition that no deliveries of alcoholic beverages to consumers be made on the licensed premises, and that the applicants notify the Director, in writing, of their intention to comply with said condition. Cf. Re Watchung Spring Water Co., Inc., Bulletin 1581, Item 6.

Conclusions

No exceptions to the Hearer's Report were filed by the attorneys for the objector. In a letter dated November 29, 1965, the attorney for the applicants advised me that the applicants accept the condition attached to the Hearer's report and annexed to the said letter is a written consent thereto.

I have given careful consideration to the evidence, the Hearer's Report and the argument of counsel. I concur in the conclusions of the Hearer and adopt them as my conclusions herein. I shall therefore grant the application, subject to completion of all statutory requisites and subject to the express condition that no deliveries of alcoholic beverages to consumers be made on the licensed premises.

JOSEPH P. LORDI
DIRECTOR

Dated: December 14, 1965

6. STATE LICENSES - OBJECTIONS TO TRANSFER OF STATE BEVERAGE DISTRIBUTOR'S LICENSE - TRANSFER APPROVED.

In the Matter of Objections to the Transfer of State Beverage Distributor's License SBD-112 to)

THEODORE J. LEITEREG)
t/a LEITEREG BEER & SODA DISTRIBUTING CO.)
rear 106 Matawan Road)
Madison Township)
PO Laurence Harbor, N. J.)

CONCLUSIONS

from)

KEANSBURG BEVERAGE COMPANY)
158-162 Main Street)
Keansburg, New Jersey)

Lillian Forman-Neubauer, Attorney for Applicant
Martin Alan Spritzer, Esq., Attorney for Objector, Hoffman Liquors.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

On September 20, 1965 Theodore J. Leitereg, t/a Leitereg Beer & Soda Distributing Co., filed an application for person-to-person and place-to-place transfer of License SBD-112 from Keansburg Beverage Company, located at 158-162 Main Street, Keansburg, to applicant, and to premises at Rear of 106 Matawan Road, Laurence Harbor, Madison Township.

Written objections to the grant of the application for said transfer were filed and a hearing was duly held thereon. At the hearing counsel for the objector stated that the principal objection related to the introduction of this license to an allegedly residential area. However, other objections set forth in the letters received by this Division add the following further objections: (1) the proposed premises are too close to churches and schools; (2) there are nine various types of other liquor licenses within a one-mile radius of the proposed premises; (3) the population growth in the area does not justify the grant of an additional license in this community.

However, at the hearing herein no witnesses were called nor was any testimony offered on behalf of the said objectors.

Testifying in support of his application the applicant presented the following picture: He is the owner of a one-story cinder block building containing two store units at the proposed location, the front store of which is presently operated as a grocery store. The rear unit, which is separated from the front unit, has an entrance on the side road at the parking lot. The premises are located more than two hundred feet from schools and churches.

The applicant, who has lived in this community for over twenty years, states that there is only one other liquor licensee in Madison Township, located approximately two-and-one-half miles from these premises and, to his knowledge, there are no other state beverage distributor licensees serving this community.

Madison Township has had a dramatic population growth during the past ten years, with a correspondingly large number of new dwelling units during that time. Over four thousand single dwellings, as well as sixteen hundred garden apartment units, have been constructed in Madison Township.

The applicant further asserts that the said transfer would serve a need and convenience not only to the residents of this Township but to the entire area, and there was admitted into evidence, in support of this application, a petition containing about two hundred fifty names of residents of this Township and adjacent communities.

No objection was received by this Division from the local authorities to the said application.

After considering the testimony herein, I am persuaded that the objections to the approval of the application for the transfer of the license herein have not been supported by any testimony and are without merit. The evidence substantially sustains the applicant's contention that there is a need and a public convenience to be served by grant of this application and the transfer of the license as sought.

As noted hereinabove, this area has had a radical population growth with a concomitant construction of dwelling units. In fact, a witness produced by the applicant testified that the population has "at least tripled in the past ten years." The proposed premises have an entrance on a side road which would answer any objection that the licensing of these premises would create a traffic hazard.

Furthermore, this Division has no jurisdiction to consider the zoning issue raised. Re Lutz, Bulletin 1401, Item 5; Lublner v. Paterson, 33 N.J. 428. Zoning matters are left to the municipal authorities and, in the event that such business is impermissible under the local zoning ordinance, then they may take effective action consistent therewith.

It should be additionally emphasized that, in considering objections to applications for transfer, it must be understood that the privileges of a state beverage distributor licensee are state-wide. Thus the question of public necessity cannot be determined on the narrow basis of the single municipality in which the prospective licensee will have his facility. Re Beer Depot, Inc., Bulletin 1312, Item 8; Re Mustardo, Bulletin 1654, Item 5.

Under R.S. 33:1-11(2c), state beverage distributor licensees may sell unchilled malt alcoholic beverages in quantities of not less than 144 fluid ounces. Such licensees may sell and deliver these unchilled beverages both to licensed retailers and to consumers, with consumer sales and deliveries required to be made at prices which are not lower than the minimum prices filed. There may, of course, be no sale or delivery of alcoholic beverages for consumption upon the licensed premises.

It is my considered judgment that the applicant has satisfied the requirements and that the objections are not sufficiently meritorious to warrant denial of this application. Re Breton Woods Beverage Distributors, Inc., Bulletin 1490, Item 4; Re Kalb, Bulletin 1457, Item 5.

I therefore recommend that the pending application for person-to-person and place-to-place transfer be granted.

Conclusions

No exceptions to the Hearer's Report were filed by the attorney for the objector.

I have given careful consideration to the evidence, the argument of counsel and the Hearer's Report. I concur in the conclusions and recommendation of the Hearer and adopt them as my conclusions herein.

I shall, therefore, grant the application, subject to the completion of all statutory requisites.

JOSEPH P. LORDI
DIRECTOR

Dated: December 15, 1965

7. DISQUALIFICATION REMOVAL PROCEEDINGS - OBTAINING MONEY UNDER FALSE PRETENSES - PRIOR DISCIPLINARY RECORD AS LICENSEE CONSIDERED - ORDER DENYING PETITION.

In the Matter of an Application)
to Remove Disqualification because) CONCLUSIONS
of a Conviction, Pursuant to) AND ORDER
R.S. 33:1-31.2.)
Case No. 1966)

BY THE DIRECTOR:

Petitioner's criminal record discloses that on December 18, 1959, he was convicted in the Passaic County Court on two charges of obtaining money under false pretenses; as a result thereof he received concurrent sentences of one to two years in New Jersey State Prison (suspended), was fined \$250.00 and was placed on probation for two years.

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

The records of this Division disclose that petitioner and Mr. B--- were officers of Tuck Inn, a Corp., t/a Tuck Inn, a retail consumption licensee; that the license was acquired by transfer on July 3, 1957; that each held about fifty per cent of the stock; that in June 1958, petitioner assigned his shares of stock to B and continued to receive half of the profits of the licensed business.

It further appears that agents of this Division visited the licensed premises on February 14 and 15, 1959, to investigate a complaint of immoral activities; that on February 15, aforesaid, B arranged for one of the agents to engage in illicit sexual intercourse with a Mrs. R---, a patron at the premises, following which Mrs. R--- led the agent to an apartment above the licensed premises; that at the suggestion of Mrs. R--- the agent purchased drinks for him and Mrs. R--- from the occupants of the apartment; that shortly after an ensuing raid, the petitioner entered the premises and admitted he had rented the apartment to its occupants for \$25.00 a week; that he had no knowledge of their aforesaid speakeasy activities; that he had been tending bar at the licensed

premises for fifteen months; that he had assigned his interest in the licensed business because he had gotten into trouble and that he and B had been splitting the profits of the licensed business since such assignment.

Effective June 9, 1959 the license for Tuck Inn, A Corp., t/a Tuck Inn, for premises 314 River Street, Paterson and transferred to Thomas Marmo, Jr., was revoked by the then Director for immoral activity, viz., the making of overtures and arrangements for illicit sexual intercourse, foul language, undisclosed interest in license, failure to notify of change of facts in application and failure to have copy of license application on licensed premises. Re Tuck Inn, Bulletin 1286, Item 2.

At the hearing held herein, petitioner (45 years old), denied that he was aware that any immoral activities had taken place at the licensed premises; denied that he had ever made arrangements for patrons to engage in illicit sexual intercourse; denied he knew Mrs. R--- used the rented apartment for such purposes and further testified that Mrs. R--- had been a patron at the licensed premises for about two years; that she visited the premises daily; that he knew she was a prostitute; that he permitted her to come into the premises because "She was spending a good buck", and that he imagines B had not procured female patrons for immoral purposes prior to February 15 aforesaid.

Petitioner further testified that he is married and living with his wife; that for the past thirty years he has lived in the same municipality where he presently resides and that ever since his aforesaid convictions he has been employed as a construction worker.

Petitioner further testified 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 1959, he has not been convicted of any crime or arrested.

Petitioner produced three character witnesses (a general contractor, a domestic and a housemaid) 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 Police Department of the municipality wherein the petitioner resides reports that there are no complaints or investigations presently pending against the petitioner.

A review of the Division's file in this case, and the petitioner's testimony herein indicate, in my opinion, that petitioner knew, or should have known, that the licensed premises were used for the immoral purposes hereinabove briefly outlined.

To afford petitioner the relief requested, it is necessary that I find that he has been conducting himself in a law-abiding manner for five years last past, and that his association with the alcoholic beverage industry will not be contrary to the public interest. See R.S. 33:1-31.2.

While more than five years have lapsed since his convictions in 1959, I am not satisfied by reason of petitioner's criminal record and his above described disregard for the Alcoholic Beverage Laws of this State and the rules and regulations of this Division, that his association with the alcoholic beverage industry

9. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSONS - AGGRAVATING CIRCUMSTANCE - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ANNELLA M. SCHMIDT)
t/a ROY'S BAR)
9 West Broadway)
Paterson, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-23, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

Licensee, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

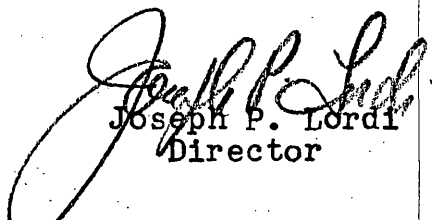
BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on November 4-5, 1965, she sold drinks of beer to five intoxicated persons, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the minimum penalty for sale to an intoxicated person is twenty days but, considering the number of intoxicated persons involved, the violation is deemed aggravated and the license will be suspended for thirty days (Re Triple T. Inc., Bulletin 1639, Item 2; Re Freedman, Bulletin 1436, Item 4), with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 27th day of December, 1965,

ORDERED that Plenary Retail Consumption License C-23, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Annella M. Schmidt, t/a Roy's Bar, for premises 9 West Broadway, Paterson, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. Monday, January 3, 1966, and terminating at 3:00 a.m. Friday, January 28, 1966.


Joseph P. Lordi
Director

New Jersey State Library