

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N. J. 07016

BULLETIN 2259

July 20, 1977

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STATE OF NEW JERSEY
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BULLETIN 2259

July 20, 1977

1. DIRECTOR'S ADVISORY OPINION - POLICE OFFICERS EMPLOYED AS PART-TIME GUARDS - GENERALLY PROHIBITED - PERMITTED IN UNLICENSED AREA ATTACHED TO LICENSED RACETRACK.

Robert N. Wilentz, Esq.
Perth Amboy, N. J.

Dear Mr. Wilentz:

I am in receipt of your request for an advisory opinion regarding the employment of a regular full-time police officer, during his off-duty hours, as a security guard on the Monmouth Park premises of the Monmouth Park Jockey Club in Oceanport, New Jersey, under the particular circumstances which you set forth in your June 28, 1977 letter.

Rule 30 of State Regulation No. 20 prohibits "any regular police officer, any peace officer, or any other person whose powers or duties include the enforcement of the Alcoholic Beverage Law" from being employed by any licensee. The Monmouth Park Jockey Club is the holder of a plenary retail consumption license issued by the municipality of Oceanport for a premises described on the license application as the "second floor" of the "Administration Building" located in Monmouth Park.

In an affidavit of Harvey I. Wardell, President of the Monmouth Park Jockey Club, Inc., dated June 28, 1977, which you submitted in support of your request for an opinion, he avers that:

"During the period of time that Monmouth Park Jockey Club has held this license the license has been inactive in that there has never been any sale of any alcoholic beverage for consumption on the licensed premises by the glass or other open receptacle, nor has there been any sale of any alcoholic beverage in original containers for consumption off the licensed premises. Thus, as is apparent, the license has been completely inoperative since its inception, and remains inoperative."

Additionally, you state that while the off-duty police officer in question is employed on a part-time basis by the Jockey Club, his employment is totally unrelated to the sale or service of alcoholic beverages, does not bring him onto the premises described in the license application, and consists solely and entirely of performing the duties of a security guard in the stable area.

You further advise that three additional plenary retail licenses are held by a concessionaire for several narrowly defined and enumerated locations within the clubhouse and grandstand located on the Monmouth Park premises. You indicate that the Monmouth Park Jockey Club has no interest in these licenses and that the duties of the officers do not involve this licensee or extend onto these licensed premises.

Upon a careful consideration of the above, I conclude that there is no violation of Rule 30 of State Regulation No. 20 under the particular circumstances set forth here. The purpose of this Rule is to prevent police officers who are duty-bound to enforce the Alcoholic Beverage Laws, from being placed in a position of conflict or apparent conflict when faced with possible violations, by their part-time employer. The Rule seeks to avoid even the possibility that part-time employment by a licensee may skew an officer's judgment, or cause him to enforce the laws with less than full vigor against any licensee.

However, no such possibility apparently exists on the facts here. No sales of alcoholic beverages are actually made by the licensee, and the officer's duties do not extend onto the licensed premises or in any manner involving the sale, service or delivery of alcoholic beverages. It, thus, appears that the factual situation presented here was simply not within the contemplation of the Rule. I find that no valid purpose would be served by holding it applicable in such circumstances.

I, therefore, authorize the continued employment of a full-time police officer under the circumstances you set forth, provided that the duties performed and the circumstances of the employment remain as set forth herein.

Very truly yours,

JOSEPH H. LERNER
DIRECTOR

Dated: June 29, 1977

2. APPELLATE DECISIONS - THE BIG TOP CAFE, INC. v. NEWARK.

The Big Top Cafe, Inc. t/a .
Big Top Cafe, .

Appellant,

On Appeal

v.

CONCLUSIONS
AND
ORDER

Municipal Board of Alcoholic .
Beverage Control of the City .
of Newark, .

.. .. Respondent
Gold and Macri, Esqs., by Jack Gold, Esq., Attorneys for
Appellant
Milton A. Buck, Esq., by John C. Pidgeon, Esq., Attorneys for
Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) which, on April 14, 1976 suspended appellant's Plenary Retail Consumption License C-582, for premises 257 Clifton Avenue, Newark, for twenty-five days, following a finding of guilt to a charge that it permitted and suffered an act of violence to have been committed upon two (brothers) patrons within the licensed premises.

The said suspension was stayed by Order of the Director dated May 5, 1976, pending the determination of this appeal.

Appellant contends that the evidence produced, as well as evidence unavailable for production at the hearing before the Board exculpates appellant.

The Board denies appellant's contention and responds that there is sufficient evidence upon which a guilty finding could be predicated.

An appeal hearing de novo was held in this Division, pursuant to Rule 6 of State Regulation No. 15, at which the parties had full opportunity to present evidence and to cross-examine witnesses. At this hearing only witnesses testifying on behalf of appellant were produced; however, the parties offered a transcript of the testimony taken before the Board, in accordance with Rule 8 of the aforesaid Regulation.

Testifying before the Board, Thomas and John Massi, brothers, described being in appellant's premises and there engaged at playing pool. Thereupon, without provocation, Louis Malanga the stockholder of the corporate appellant and his cousin, Dennis Malanga, physically forced them to leave the premises, inflicting a severe beating upon them in the process. Thomas Massi asserted his injuries included a broken nose and cut under his eye. John Massi maintained that his injuries included the bending of a steel plate which he carries in his head.

Louis Malanga, testified that there was no physical contact between and among the Massi brothers and him or anyone else. He merely requested them to leave after they appeared to monopolize the use of the pool table.

A patron, Ronald Martino, testified that he was present in appellant's establishment when the Massi brothers were present. He observed them depart without physical contact whatever.

At the hearing de novo, the two police officers who had responded to appellant's premises at the request of the Massi brothers, testified that they saw no evidence of any physical beating to either male and described them as being somewhat inebriated. No complaints were then lodged against anyone. Four patrons and the bartender testified that they were present when the Massi brothers were playing pool, observed their departure without physical contact, and saw them return a few hours later in an intoxicated condition.

Larry Policastro testified that a month or so after the incident, at which he was not present, he was in appellant's establishment. At that time he was first identified as one of the assailants by the Massi brothers, who immediately retracted their accusation against him upon realizing that he is a relative of theirs.

Dennis Malanga, testified that he was identified as being an assailant of the Massi brothers a month after the alleged incident. He declared that he was not in the premises when the incident occurred and learned of it over the telephone a day later.

Louis Malanga, was called to explain his failure to produce the series of witnesses he produced for the hearing in this Division who were absent at the hearing before the Board. He averred that the only reason for not calling all of them was the possible loss of wages they each might experience by taking the time off to appear before the Board.

The critical issue on this appeal is whether the record substantiates and justifies the Board's action. The burden of proof in all cases which involve discretionary matters, calls upon appellant to show manifest error or abuse of discretion by the issuing authority. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957); Zicherman v. Driscoll, 133 N.J.L. 586 (1946).

It is apparent that at the hearing before the Board, the testimony of the two Massi brothers, refuted only by the testimony of Malanga and of one of his patrons, carried the greater weight upon which the Board understandably determined guilt to the charge.

However, with the additional testimony produced in this Division, of which the Board had no benefit, it is clear that the initial weight of the Massis' testimony has been abundantly overcome.

The testimony of the Massi brothers before the Board wherein they explained that they were playing pool when suddenly, and without provocation, they were attacked by the appellant's agent and his cousin, has little ring of truth when analyzed in conjunction with the testimony of the two police officers who indicated that they observed no evidence of physical injury to the Massis, and that both appeared to be intoxicated.

In view of the testimony of their cousin who indicated that he was initially identified as one of the assailants; considering that such identification was retracted immediately; and further considering that he was not present at the time the incident was alleged to have occurred, I find that the testimony of the Massi brothers to be unbelievable.

Thus, I conclude that the appellant has maintained its burden of establishing that the action of the issuing authority was erroneous and should be reversed, in accordance with Rule 6 of State Regulation No. 15.

Therefore, it is recommended that the action of the Board be reversed and that the charge herein be dismissed.

Conclusions and Order

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

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

Accordingly, it is, on this 31st day of March, 1977

ORDERED that the action of the respondent Board of Alcoholic Beverage Control of the City of Newark be and the same is hereby reversed, and the charge herein be and the same is hereby dismissed.

Joseph H. Lerner
Director

3. DISCIPLINARY PROCEEDINGS - FRONT - VIOLATION OF SPECIAL CONDITION OF LICENSE -
DISQUALIFIED PERSON IN OWNERSHIP OF BREWERY-LICENSE - LICENSE SUSPENDED
FOR BALANCE OF TERM.

In the Matter of Disciplinary
Proceedings against

C. Schmidt & Sons, Inc.
127 Edward Street,
Philadelphia, Pa.

Holder of Limited Wholesale License
WL-67 issued by the Director of the
Division of Alcoholic Beverage Control;
and

In the Matter of Disciplinary
Proceedings against

C. Schmidt & Sons, Inc. of N.J.
500-A Benigno Boulevard,
Interstate Industrial Park
Bellmawr, N. J.

Holder of Limited Wholesale License
WL-11 issued by the Director of the
Division of Alcoholic Beverage Control.

CONCLUSIONS
and
ORDER

Sterns & Greenberg, Esqs., by William S. Greenberg, Esq., Attorneys for Licensee
David S. Piltzer, Esq., Deputy Attorney General, Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

For the purposes of preparation of a Hearer's Report, the above captioned Disciplinary Proceedings were combined in one hearing; one set of proofs substantially embraced both complaints, to both of which the licensee entered a plea of "not guilty". The respective charges in both complaints are identical and are set forth as follows:

1. On or about May 10, 1976, William H. Pflaumer, a person disqualified to hold an alcoholic beverage license by reason of his conviction of crimes involving moral turpitude, became President, Chairman of your Board and owner of all of your issued and outstanding stock, such being an act or happening occurring after the time of your making application for your 1975-76 limited wholesale license which, if it had occurred before said time would have prevented the issuance of your said license since such issuance would have been contrary to N.J.S.A. 33:1-25; in violation of N.J.S.A. 33:1-31(i).

2. You are the holder of a limited wholesale license, but are disqualified from holding said license by reason of the fact that William H. Pflaumer, your President, Chairman of your Board and owner of all of your stock, fails to qualify as an individual applicant for license because of his conviction of crimes involving moral turpitude; in violation of N.J.S.A. 33:1-25.

3. On August 25, 1976, you violated the terms of a special condition under which your current limited wholesale license was issued, viz., that your license may be immediately suspended or cancelled in the event the Director should decide, in a pending eligibility proceeding, that William H. Pflaumer is disqualified, to continue to be your corporate stockholder, officer, or director, in that on August 25, 1976, the Director ruled that William H. Pflaumer is disqualified from engaging in the alcoholic beverage industry in this State by reason of having been convicted of crimes which involve the element of moral turpitude; in violation of N.J.S.A. 33:1-32.

The substantive facts involved here are not in controversy. The corporate licensees have, as their Chairman of the Board and major stockholder, one William H. Pflaumer who, the Division contends, is disqualified from engaging in the alcoholic beverage industry, by reason of having been convicted of a crime which, the Division contends, involves moral turpitude; hence N.J.S.A. 33:1-32 is violated.

The licensees admit that Pflaumer is their chairman of its board and major stockholder, but denies that the convictions referred to, which are admitted and part of the record, involve moral turpitude, therefore, they have pleaded "not-guilty" to the charges herein preferred.

The within charges followed a "Declaratory Ruling" by the Director of this Division on August 25, 1976, wherein he determined that William H. Pflaumer was disqualified from engaging in the alcoholic beverage industry. As Pflaumer's connection with the licensees herein was not, thereafter, terminated, the Division preferred the within charges.

In their defense, the licensee produced testimony of William Elliott, President of the licensee corporations. He gave a detailed account of the business workings of the licensee, the connection therewith of Pflaumer, and the prejudice to the licensees if the licenses were terminated.

Counsel for the licensees advanced argument that, in view of the fact their appeal to the Appellate Division of the Superior Court of New Jersey had been taken from the "Declaratory Ruling" of the Director aforesaid, and is presently pending,

these Disciplinary Proceedings should await the Appellate Court's ruling. The short answer to this, advanced by the Division, is that the statute is presently being violated (N.J.S.A. 33:1-32); hence, if there is to be any delay in the prosecution thereof, such stay should emanate from the Appellate Division itself.

The licensee further contends that the crimes of which Pflaumer was convicted were not crimes involving "moral turpitude", therefore, the licensees should not be affected. This contention is completely without merit because the Director of this Division has, by the aforesaid "Declaratory Ruling" determined such crimes do, indeed, involve moral turpitude.

The defenses advanced by the licensees being wholly without merit, I find that the Division has proven the charges by a fair preponderance of the evidence, which evidence consists of the myriad documents and writings entered into evidence.

It is recommended that the subject licenses be suspended for the balance of their terms with leave to be granted to the licensees or any bona fide transferee of the license to apply to the Director, by verified petition, for the lifting of the said suspension whenever the unlawful situation has been corrected.

A penalty suspension is not being recommended in these matters as the request for the "Declaratory Ruling" came from the licensees and the preferment of the charges by the Division was not attempted to be stayed by the request to the Appellate Division in the belief of counsel that equivalent stay would be automatic through the Director.

Additionally, although the Director has determined Pflaumer's crimes involved "moral turpitude" and that issue is about to be determined by the Appellate Division, and is a subject that has had a great sensitivity in the past, it would appear most practicable to have the licenses herein merely suspended for the balance of their terms as aforesaid. I so recommend.

Conclusions and Order

Written Exceptions to the Hearer's report were filed by the licensees and Written Answer to the said Exceptions was filed on behalf of the Division, pursuant to Rule 6 of State Regulation No. 16.

The licensees' sole contention in the Exceptions is that the Hearer failed to make findings pursuant to N.J.S.A. 2A:168A-1 et seq and that such failure "precludes suspension of the licenses here in question". The licensees do not make any substantive claim that the provisions of N.J.S.A. 2A:168A-1 would allow their licensure; only that, procedurally, the Hearer did not make the kind of findings provided by the statute.

The Attorney General's formal opinion of 1975, No. 4, holds to the contrary. In that opinion, the Attorney General ruled that "neither Chapter 282 of the Laws of 1968 (N.J.S.A.

2A:168A-1 et seq. titled 'An Act relating to employment qualifications of rehabilitated convicted offenders ') nor Chapter 161 of the Laws of 1974 which amends and supplements Chapter 282 of the Laws of 1968 aforesaid, is applicable to the determination of whether persons convicted of crime are eligible to be associated with the alcoholic beverage industry. Such eligibility continues to be governed by the provisions of the Alcoholic Beverage Law and the Division's rules and regulations adopted pursuant thereto."

I, therefore, find that the Exceptions are without merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, the Written Exceptions filed thereto, and the Answer to the said Exceptions, I concur in the findings and recommendation of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 10th day of March 1977,

ORDERED that Limited Wholesale License WL-67, issued by the Director of the Division of Alcoholic Beverage Control to C. Schmidt & Sons, Inc., 127 Edwards Street, Philadelphia, be and the same is hereby suspended for the balance of its term, viz., midnight, June 30, 1977 commencing at 8:00 a.m. on Monday, March 21, 1977; and it is further

ORDERED that Limited Wholesale License WL-11, issued by the Director of the Division of Alcoholic Beverage Control to C. Schmidt & Sons, Inc. of New Jersey, 500-A Benigno Boulevard, Interstate Industrial Park, Bellmawr, be and the same is hereby suspended for the balance of its term, viz., midnight, June 30, 1977 commencing at 8:00 a.m. on Monday, March 21, 1977.

Joseph H. Lerner
Director

4. APPLICATION FOR LIMITED TRANSPORTATION PERMIT - APPLICATION DENIED UPON
PROOF APPLICANT DISQUALIFIED.

In the Matter of the
Application of

William H.P. Inc. of N.J.

for Limited Transportation
Permit

CONCLUSIONS
and
ORDER

Sterns & Greenberg, Esqs., by William S. Greenberg, Esq., Attorneys for Applicant
David S. Piltzer, Esq., Deputy Attorney General, Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Applicant, a New Jersey Corporation, sought the Director's approval to limitedly transport alcoholic beverages in this State through the issuance of a Special Limited Transportation Permit to be issued it under N.J.S.A. 33:1-2 granted to it pending investigation for approval of a Class D Transportation license, to be issued pursuant to N.J.S.A. 33:1-13. Upon such Special Limited Transportation Permit being issued, a hearing was held in this Division relative to the application for such Transportation License.

At the hearing in this Division, a transcript of depositions previously obtained from the holders of the corporate stock of the corporate licensee was introduced into evidence, and, together with accompanying documents, formed the basis for a determination of the issue as to whether or not the applicant was entitled to the grant of its application for the aforesaid license.

The subject application has been filed for the purpose of transporting beer from the C. Schmidt & Sons Inc. brewery in Philadelphia into New Jersey. The applicant additionally plans to haul beer other than Schmidt's but the Schmidt brand will be the principal item carried. From the testimony given in this Division as depositions above referred to, Charles A. Gillan and Ralph Ruggiero, testified that they are the sole owners of the applicant corporation.

The trucks used for haulage are the property of C & R Transport under a further lease with a corporation identified as K.M.A. Leasing Corporation. The latter corporation is the sole property of one William H. Pflaumer, who also owns C. Schmidt & Son, Inc. The C & R Transport Company is, in turn, owned by Gillan, Ruggiero and Pflaumer. Pflaumer owns none of the capital stock of the applicant corporation, yet the name of the corporation, Wm. H.P. Corporation, carries the initials of Pflaumer.

In the area of licensing, as distinguished from disciplinary proceedings,

the determinative consideration is the public interest in the creation or continuance of the licensed operation, not the fault or merit of the licensee. Lubliner v. Bd. of Alcoholic Beverage Con. of Paterson, 33 N.J. 428, 446 (1960).

The Director of this Division has established that William H. Pflaumer has become disqualified to be associated with the alcoholic beverage industry in the State of New Jersey because of his conviction of crime containing the element of moral turpitude.

That, having been established in a parallel matter, the issue herein concerns the interest of William H. Pflaumer in the applicant corporation.

The testimony of Gillan and Ruggiero clearly evinces the interest of Pflaumer in their corporation. The interwoven corporations of C & R Corp. and the K.M.A. Leasing Corporation all share common offices and facilities. Pflaumer owns all of K.M.A. Leasing Corp. and one-third of C & R Corporation. These two corporations have assets; the subject corporation has no tangible assets, and merely acts as a conduit for the transportation of alcoholic beverages from Schmidt to New Jersey in vehicles owned by Pflaumer completely, leased through C & R Corporation, and then, by way of an intricate leasing plan, to the subject corporation.

I find that Gillan and Ruggiero are merely serving as a front for Pflaumer and, although this may be disputed from an evidentiary standpoint, there is sufficient basis upon the evidence presented, for the Director to come to that conclusion, it is recommended that the Director deny the application.

Conclusions and Order

Written Exceptions to the Hearer's report with supportive argument, were filed by the applicant Wm. H. P. Inc. of N.J. and written Answer to the said Exceptions was filed on behalf of the Division pursuant to Rule 6 of State Regulation No. 16.

The applicant does not dispute the factual complex upon which the Hearer based his recommendation for denial of its application for a Class D Transportation License, but rather complains that the facts do not warrant denial.

However, the applicant does take issue with one of the factual findings of the Hearer, who states that Charles Gillan and Ralph Ruggiero are merely servicing as a front for William H. Pflaumer. The applicant argues that the Hearer suggests the lack of factual basis for this finding when he states that this conclusion regarding Gillan and Ruggiero "may be disputed from an evidentiary standpoint...".

I have analyzed and assayed the testimony in this matter, and am in agreement with the findings of the Hearer. I have previously determined in an earlier proceeding, that William H. Pflaumer was disqualified from holding a license. Here, according

to the evidence presented, he is the sole stockholder in the corporation called K.M.A. Leasing Corporation. K.M.A. Leasing Corporation owns trucks which are leased to C & R Transport Corporation. C & R Transport Corporation has three shareholders owning equal shares: Charles A. Gillan, Ralph Ruggiero and William H. Pflaumer.

Because of the interest of Pflaumer, it is apparent that neither K.M.A. Leasing Corporation nor C & R Transport Corporation could validly hold a transportation license. C & R Transport Corporation leases the trucks and rents from K.M.A. Leasing Corporation to the subject applicant, Wm. H. P. Inc. of N.J.

The applicant's dominant business is the transportation of beer into New Jersey from a brewery in Philadelphia owned by C. Schmidt & Sons, Inc., a corporation in which the disqualified Pflaumer holds a majority interest. The corporate applicant has two shareholders: the aforementioned Gillan and Ruggiero. It has no assets.

On the basis of this relationship, the Hearer properly found that the applicant is part of a corporate family controlled by the disqualified Pflaumer; that it operates as such; and, therefore, its application should be denied.

The applicant argues, however, that the Division must demonstrate that Pflaumer has a direct involvement in the management operations and profits of the applicant herein within the context of the corporate scheme devised by the principals.

This reasoning is specious. There is a distinction between the licensing function alluded to by the Hearer in his report, where the public interest is paramount, and the disciplinary function, where an otherwise qualified license is required to respond to an allegation of a transgression.

"There is no common, inherent, natural or constitutional right to a liquor license; it is but a privilege. (Citations omitted)." Benedetti v. Board of Commissioners of Trenton, 35 N.J. Super. 30, 35 (App. Div. 1955). No person is entitled to the issuance of a license as a matter of law. Fanwood v. Rocco, 59 N.J. Super. 306, 320 (App. Div. 1960), aff'd. 33 N.J. 404 (1960).

I find that the corporate arrangement here is obviously one with the intent of subterfuge. This type of corporate arrangement is used to operate a multi-faceted business enterprise as one unit, and yet set up to enable it to obtain certain business advantages in various sub-stages of the operation by appearing to operate that sub-unit as an independent facility. It would be ingenuous, indeed, to overlook the patent inference that the profits earned by the applicant will flow back through the leasing arrangements to C & R Transport Corporation and K.M.A. Leasing Corporation.

The applicant contends that denial here will threaten the license of any licensee who happens to deal with another "distinct entity" controlled by a disqualified interest. This is quite an exaggeration. Here, the applicant's two principals are in partnership with the disqualified applicant through a corporation, in a business which supplies the applicant its trucks. The applicant's primary business involves transporting the product manufactured by a corporation controlled by the same disqualified individual. While the applicant appears to be a distinct entity on paper, it is hardly distinct from the Schmidt enterprise in operation, which is the obvious design and intent of the arrangement, and not happenstance.

N.J.S.A. 433:1-26 provides:

"No person who would fail to qualify as a licensee under this chapter shall be knowingly employed by or connected in any business capacity whatsoever with a licensee."

I am persuaded that Wm. H. P. Inc. of N.J. exists by virtue of the Schmidt enterprise. It is the transportation arm for the disqualified licensee, C. Schmidt & Sons, Inc. This is a purposeful business arrangement, not the result of the evolution of arms-length business dealings between otherwise independent and unrelated entities.

I have examined the Exceptions and find that they are, in their totality, devoid of merit.

Having carefully considered the entire record herein, including the Hearer's report, the written Exceptions filed thereto, and the Answer to the said Exceptions, I concur in the findings and recommendation of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 10th day of March 1977,

ORDERED that the application of the applicant Wm. H. P. Inc. of N.J. for a Limited Transportation Permit, be and the same is hereby denied.

Joseph H. Lerner
Director

5. APPLICATION FOR RENEWAL OF LICENSE BEYOND TIME - UPON PROOF OF LICENSEES
DERELICTION APPLICATION DENIED.

In the Matter of Application .
of .

V-Bar, Inc. .
t/a Huston's V Bar .
410-410 ½ Reservoir Street .
Trenton, N.J. .

CONCLUSIONS
and
ORDER

Petitioner.

..
Cannon and Rosenthal, Esqs., by John F. Cannon, Esq., Attorneys
for Petitioner

BY THE DIRECTOR:

By Petition dated September 22, 1976, V-Bar, Inc. previous owner of retail consumption liquor License C-81, in the City of Trenton, sought relief pursuant to N.J.S.A. 33:1-12.18, which provides as follows:

"Nothing in this act shall be deemed to prevent the issuance of a new license to a person who files application therefor within sixty days following the expiration of the license renewal period if the State Commissioner shall determine in writing that the applicant's failure to apply for a renewal of his license was due to circumstances beyond his control."

The predominant reasoning advanced for failure to renew the license which expired on July 31, 1976 was the defalcations of a counsellor-at-law of New Jersey retained by petitioner to manage its financial affairs. It is alleged by petitioner that misappropriation of funds by his then attorney resulted in a foreclosure by the City of Trenton for tax delinquency of the "licensed building", also owned by petitioner.

While a less-than-adequate factual matrix has been submitted by petitioner, certain factors can be extrapolated from documents and affidavits disclosing the ownership history of the "licensed building" where V-Bar, Inc. operated under retail consumption License C-81.

- (A) Licensed building at 410-410 ½ Reservoir Street, Trenton, N.J. sold to City of Trenton by Certificate of Sale No. 2513 dated November 14, 1969 and recorded February 10, 1971.
- (B) City of Trenton by court order seized possession of licensed building, petitioner "effectually closed down" on or about January 15, 1976. (Johnson Affidavit, Par. 3, 2/8/77)

- (C) Foreclosure of Tax Sale Certificate barred owner's equity of redemption by virtue of final judgment dated February 10, 1976 in Superior Court of N.J.; recorded February 23, 1976.
- (D) October 1, 1976 letter from Trenton confirming Huston Johnson as purchaser of licensed building upon payment of sum certain.
- (E) Deed to licensed building dated December 10, 1976, from City of Trenton to H.J.J.C., Inc., allegedly recorded same date.

The efforts by petitioner to renew its license, which expired June 30, 1976, consisted of the following:

- (A) Letter dated July 29, 1976, from attorney for licensee to Pascal Gallerano requesting extension of time to apply for renewal.
- (B) Filing of petition to direct issuance of a new license under provisions of N.J.S.A. 33:1-12.18 on or about September 22, 1976.

It is axiomatic that a person seeking a new license under the provisions of N.J.S.A. 33:1-12.18 must evidence a prior valid license and a current possessory interest in premises sought to be licensed. On July 29, 1976 and September 22, 1976, the licensee had no possessory interest in the licensed building. V-Bar, Inc., or the owners of 410-410 1/2 Reservoir Street, Trenton, New Jersey had had its equity of redemption barred by the judgment of foreclosure on February 23, 1976.

It is well established that no license can be issued or renewed unless licensed premises are in existence and the proposed licensee has possession, right to possession or interest in premises sought to be licensed. S. Mortimer Hershorn, Esq., Trustee in Bankruptcy of Estate of Sam's Shack, Inc. v. Estell Manor, Bulletin 1326, Item 1. It is also clear that, in order for a renewal to be granted, there must be a valid license then in being. Greenspan v. Division of Alcoholic Beverage Control, 12 N.J. 456, 460 (1953); Liptak v. Division of Alcoholic Beverage Control, 44 N.J. Super. 140, 142 (App. Div. 1957). Neither a possessory interest or a valid license existed at the time of application. Had any action been taken on a renewal prior to expiration of the license or within the sixty days thereafter, such action would have been illegal ab initio for lack of possessory interest in a premises sought to be licensed. S. Mortimer Hershorne, Esq., et al v. Estell Manor, supra.

Absent a finding of possessory interest, it is unnecessary to decide whether the petitioner has demonstrated that its failure to apply for renewal of license was due to "circumstances beyond his control". N.J.S.A. 33:1-12.18. For the benefit of a

full proceeding it shall be noted that the factors adduced do not satisfy this Director that the difficulties were created without substantial culpability on the part of the applicant. The principal of V-Bar, Inc. abdicated fiscal responsibility to a non-licensee since early 1974; failed to adequately oversee his agent to assure compliance with purported instructions; permitted real estate taxes on 410-410 1/2 Reservoir Street, Trenton, New Jersey to remain unpaid and be then subject to Town acquisition on November 14, 1969; neglected to effectuate redemption of the licensed premises for over six years; and plead guilty to pending disciplinary violations concerning failure to disclose beneficial interest and to maintain true books of account.

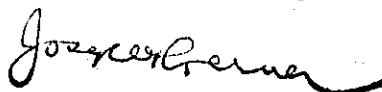
It is abundantly clear that petitioner's difficulties emanated from and were generated by his lack of diligence in his business affairs and selection of an agent. Having selected another to manage his affairs, he cannot avoid the concomitant assumption of liability for his agents acts. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Rule 33 of State Regulation No. 20. As held in Zicherman v. Driscoll, 133 N.J.L. 586, 587 (App. Div. 1946), a liquor license is not a property right, rather a privilege. There is no vested right to a renewal by a licensee and the liquor business is one that must be carefully supervised and conducted in a reputable manner.

At no time can it be concluded that the difficulties encountered by petitioner were due to "circumstances beyond his control". His actions and lack of diligence proximately and naturally resulted in a situation for which petitioner must accept responsibility.

For the foregoing reasons, I shall deny the said petition to direct the issuance of a new license, on failure to renew, submitted pursuant to N.J.S.A. 33:1-12.18.

Accordingly, it is, on this 24th day of March 1977,

ORDERED that the petition to direct the issuance of a new license to V-Bar, Inc., pursuant to N.J.S.A. 33:1-12.18, be and the same is hereby denied.



Joseph H. Lerner
Director