

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

BULLETIN 1506

April 22, 1963

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April 22, 1963

1. PETITION PROCEEDINGS - DISCRIMINATION AGAINST WHOLESALERS -
IMPORTER ORDERED TO SUPPLY WHOLESALER.

FLEMING & MC CAIG, INC.,)	
A CORPORATION,)	
)	
Petitioner,)	ON PETITION
)	CONCLUSIONS
v.)	AND ORDER
)	
JAMES M. MC CUNN & CO., INC.,)	
A CORPORATION,)	
)	
Respondent.)	

Max Mehler, Esq., Attorney for Petitioner.
Harrison & Jacobs, Esqs., by Joseph M. Jacobs, Esq., Attorneys
for Respondent.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"Fleming & McCaig, Inc. is a duly licensed New Jersey wholesaler of alcoholic beverages, with offices in the Borough of Wood-Ridge. Respondent James M. McCunn & Co., Inc. is an importer of alcoholic beverages with its offices in New York State and is the exclusive importer and distributor in the United States of a Scotch whisky called John Begg. Although John Begg Scotch is the major item of its line, respondent is also the exclusive distributor of lesser items, including an imported gin called Tanqueray.

"Petitioner has filed the petition herein alleging that respondent discriminated against it in the sale of alcoholic beverages and requests relief under the provisions of R.S. 33:1-93.1-5, which prohibits a distiller of alcoholic liquors from arbitrarily refusing to sell to any licensed wholesaler nationally advertised brands of alcoholic liquors.

"The statute here involved was added by Chapter 264 of the Laws of 1942 as a supplement to the Alcoholic Beverage Law, and provides as follows:

- '1. There shall be no discrimination in the sale of alcoholic liquors by distillers, importers, and rectifiers of nationally advertised brands of alcoholic liquors to duly licensed wholesalers of alcoholic liquors in this State.
- '2. In the event any distiller, importer, or rectifier shall refuse to sell to any individual wholesaler any amount of alcoholic liquor or comply with the provisions of this act, then the wholesaler shall petition the Commissioner of Alcoholic Beverage Control setting forth the facts and demanding a hearing thereon to

determine whether such refusal to sell is arbitrary or not.

- '3. If the Commissioner of Alcoholic Beverage Control is satisfied with the ability of the wholesaler to pay for such merchandise as ordered, he shall order the distiller, importer, or rectifier to complete said sale of alcoholic liquor to the wholesaler.
- '4. In the event the distiller, importer, or rectifier refuses to complete the sale or comply with the terms of the order of the Commissioner, the Commissioner shall issue an order to every licensed wholesaler prohibiting the purchase by such wholesaler of any alcoholic liquor product of the said distiller, importer or rectifier directly or indirectly until there is strict compliance by the distiller, importer, or rectifier with the order of the Commissioner of Alcoholic Beverage Control.
- '5. The State Commissioner of Alcoholic Beverage Control shall adopt and promulgate such rules and regulations as may be necessary to carry out and insure compliance with the provisions of this act.'

"The title of Commissioner was changed to Director by L. 1948, c. 439, § 16 (N.J.S.A. 52:17B-16). An answer was filed by respondent on August 27, 1962, which generally denied the essential of the charging part of the petitions, and sets up defenses which may be briefly summarized as follows:

- (1) Petitioner had a one year's distributorship and "did not thereby acquire a vested interest in said distributorship;"
- (2) Petitioner failed to fulfill its commitment under said agreement, and was unable to negotiate a new agreement;
- (3) Respondent denies any infraction of the provisions of N.J.S. 33:1-93.1 to 93.5.

Incidental to the basic issue presented by the petition, the petitioner on August 10, 1962, obtained an ex parte order to show cause signed by the Director. In the order to show cause the Director directed the respondent, in the meantime, to fill and complete purchase orders for products of the respondent. Thereafter, after hearing on October 11, 1962, the Director entered an Order prohibiting all wholesalers in New Jersey from purchasing respondent's products.

"Upon application to the Superior Court, Appellate Division, the respondent was, by order of that court dated November 1, 1962, granted leave to appeal from the Director's order of October 11, 1962, and at the same time the effect thereof was stayed pending the appeal and the further order of the court. An application to the Supreme Court of New Jersey for leave to appeal the Appellate Division's determination and to vacate the stay was denied by an order dated November 12, 1962. The issue of the validity of the Order of October 11, 1962, is now before the Appellate Division and is, of course, not now before me for adjudication.

"Accordingly, the sole question now before me is that of the unlawful discrimination alleged in the petition. Hearings thereon were held before me on several dates during September and October; the last hearing was held on October 26, 1962. At the outset it should be clearly stated that both petitioner and respondent agreed that the issue herein does not relate to nor can it be determined by any contractual relations between the parties; and it was further stipulated that the issue of ability to pay as required under R.S. 33:1-3 is not in issue although there has been some testimony that petitioner currently has a small indebtedness to the respondent.

"The transcript is voluminous and a recital of the pertinent facts will be set forth as briefly as possible in order to focus the proper perspective in which the basic issue can be determined.

"Petitioner has been engaged in the wholesale distribution of alcoholic beverages for over twenty-five years; is a major wholesale distributor and has, in its own right, and through its affiliates, extensive sales accommodations in this State. It maintains a fleet of over ten trucks for sale and delivery of its merchandise; employs over thirty licensed solicitors and served approximately 3,000 accounts throughout the State of New Jersey. It is a subsidiary of Galsworthy, Inc., one of the largest wholesale distributors of alcoholic beverages in this State. Petitioner handles about fifteen brands of Scotch and about four brands of imported gin, and had been the prime distributor of the Begg Scotch line in New Jersey from 1937 to 1952.

"The respondent, an importer of the said products, has always distributed its products in New Jersey through a New Jersey wholesaler other than itself.

"In 1952 John Barry, who was formerly employed as a sales manager for petitioner, went into business for himself and became the prime distributor of respondent's products. Petitioner continued to merchandise the products as a jobber. Barry was a one-man organization and his distribution was made and effected through petitioner's organization. Thus petitioner continued as a dealer and a distributor of the respondent's products in question. From 1952 to 1961 Barry continued as the prime distributor of respondent's products and entered into an arrangement prior to March 31 of each year wherein he orally agreed to an annual commitment for the purchase of a minimum number of cases of Begg's Scotch during the ensuing fiscal year. For the fiscal year ending March 31, 1961, Barry placed an order with respondent for 8,400 cases of Begg's Scotch. This basic order was the result of an agreement reached prior to April 1, 1960. He also agreed to purchase 1,050 cases of Tanqueray gin.

"In the Spring of 1961 Barry retired from the wholesale liquor business and offered to sell to the petitioner his good will, which included a list of over two hundred accounts of some customers and retailers who had retailed respondent's products, and the balance of his inventory on hand. Petitioner paid Barry \$15,000 for the good will, in addition to the actual cost of the inventory, which sum was to be paid, under a written agreement, over a period of three years. Prior to entering into this agreement, discussions were held between Nat Tyler, petitioner's vice president in charge of relations with suppliers, and officials of the respondent. Several conferences were held at which Donald McCaig, petitioner's president, Anthony Marsloe,

respondent's president, and Joseph Brown, respondent's vice president, were present. The purposes of these conferences were to ascertain whether or not petitioner would be continued as the prime and exclusive distributor of respondent's products and whether the respondent would appoint the petitioner thereafter as the prime distributor of the respondent in New Jersey. Apparently receiving assurance of such continuation of that relationship, petitioner entered into that agreement and Marsloe, on behalf of respondent, advised the Director of this Division that it has appointed petitioner its prime distributor.

"The appointment of petitioner as a prime distributor was based upon an agreement entered into for a period of one year from April 1, 1961 through March 31, 1962, wherein petitioner agreed to take over Barry's inventory (approximately 1,200 cases of John Begg Scotch) and purchased the additional quantity of 6800 additional cases of John Begg and 1,000 cases of Tanqueray for that fiscal year. The respondent had originally requested that petitioner commit itself to disposing of at least 10,000 cases of John Begg during that fiscal period. The figure of 8,000 cases was a compromise finally reflected in the agreement.

"There was testimonial contention by petitioner's witnesses that this sum was far in excess of the amount based upon its previous experience with this product, and they had misgivings at the time of the execution of the memorandum as to whether such amounts were fanciful and could be distributed during the stated period. The stark reality of their misgivings was finally crystalized at a conference held on March 1, 1962, when McCaig informed Marsloe that he had an inventory of 5,200 cases of Begg Scotch on hand and was, therefore, unable to make a commitment at that time for any additional purchases of John Begg for the ensuing fiscal year.

"Said Mr. McCaig: 'The fact remains we had inventory. I went to acquaint Mr. Marsloe with the fact I was not in position to place an additional order at that time and that I undoubtedly would make a purchase order before the end of the year.' Marsloe expressed shock at the information that petitioner had a large inventory still on hand in view of the earlier representations of Tyler that this sum would be disposed of; that, indeed, an increased amount would be sold in the 1962-63 fiscal year. Because of the substantial inventory still at hand amounting to about 5,000 cases of Begg's Scotch, it was agreed that there was no purpose in discussing a new agreement for the new fiscal year; petitioner did not place any purchase order for the said period.

"Petitioner advised Marsloe by letter dated March 2, 1962, that he intended to post off the price to retailers for the month of April 1962, and indicated his desire to remain as the prime, sole distributor of respondent's products. Marsloe, on behalf of respondent, answered on March 6 that he would discuss the matter with his associates and advise petitioner of respondent's future policy.

"In the latter part of May 1962 petitioner was advised by telephone that its distributorship would be terminated as of August 1, 1962. In the meantime, during August 1962, large advertisements were placed in the publications of the liquor industry to the effect that Joseph H. Reinfeld, Inc. and Majestic Wine and Spirits Corporation, two licensed wholesalers in New Jersey, were designated as respondent's prime distributors, and

on July 16, 1962, respondent notified the Director of this Division by letter of such appointment.

"During the month of June 1962 petitioner sought to place an order for one hundred cases of Tanqueray gin, which order was refused. Petitioner also sought to place an order for two hundred cases of Christmas-wrapped cartons of Begg's Scotch (the only accepted method by which they could be sold at that time), but was advised by telephone that such order would not be honored. Thus it did not place any actual formal order therefor. Respondent made it clearly known to the petitioner that it would not thereafter honor any of petitioner's orders, and suggested that it make its purchases through the newly named distributors of its products. There is absent any evidence or allegation that respondent's refusal to sell its products to petitioner was that petitioner did or may have promoted competitors' products, and was sacrificing respondent's products.

"There is equally absent any evidence or suggestion that the petitioner abused or misused respondent's good will, Fair Trade pricing or any other act consistent with its obligation as a distributor of respondent's products.

"Before discussing the issue herein involved, it may be appropriate to observe that it is often necessary to look beyond the tilting ground and envision the entire battleground as revealed by the pleadings and testimony, within the context of the objectives and spirit of the pertinent statute.

"The sole issue to be determined herein is whether the respondent arbitrarily and unjustifiably discriminated in its refusal to honor petitioner's normal orders, in violation of the statute hereinabove referred to. As stated by the Supreme Court in Canada Dry Ginger Ale, Inc. v. F & A Distributing Co., et als., 28 N.J. 444, at 457, the question of whether respondent has justifiably discriminated against petitioner 'in each case is to be determined in the first instance by the Director.' In that case the court, at p. 456, defined the word 'arbitrary' in the following language:

"Arbitrary" means "[d]epending on will or discretion," that is, not governed by any fixed rules or standards.' Paul v. Board of Zoning Appeals, 142 Conn. 40, 110 A. 2d 619, 621 (Sup. Ct. Err. 1955); see also State v. Then, 114 N.J.L. 413, 418-419 (Sup.Ct. 1935).

"An act is arbitrary when it is supported by mere option or discretion of the actor. Bedford Inv. Co. v. Folb, 180 Pac. 2d 361 (D.C.A. 2d Dist. Cal. 1947). Arbitrary discrimination exists where conditions and restrictions are placed on one and not on all the others in a like situation, giving advantage to one over the other. McCraney v. City of Leeds, 241 Ala. 198, 1 So. 2d 894, 897. Arbitrary means not governed by an objective standard. Hundley v. McCune, 6 Ohio L.A. 186. A discrimination made without adequate principles is arbitrary. Re Housing Authority of the City of Salisbury, 235 N.C. 463, 70 S.E. 2d 500, 503. Where a decision is dependent entirely upon the will of the actor without adequate determining principles, it is arbitrary. Zweig v. U.S., (D.C. Tex. 1945) 60 Fed. Supp. 785. In Zweig the court further defined 'arbitrary' as "independent of law or rule; discretionary; capricious, or, despotic." It may mean, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according

to reason or judgment, depending on the will alone.'

"Petitioner energetically advocates that the action of the respondent was arbitrary and quotes Canada Dry, at p. 456, as follows:

'There must be a showing that the selection of certain wholesalers to the exclusion of others was made on the basis of a standard reasonably related to the legitimate business goal sought to be achieved and not conducive to the evils which the act is designed to prevent. This standard must be of such a tangible or objective nature as will enable the Director to determine from the proofs whether its application to the wholesalers in question could reasonably result in the distinction which a distiller has made.'

"Petitioner asserts that no objective pattern of behavior was formulated nor did respondent disclose any objective factors based on fixed rules and standards which indicated a valid distinction between the petitioner and the new distributors. Petitioner further contends that contractual obligations should play no part in determining whether or not the petitioner is entitled to these nationally advertised brands of alcoholic beverages; that it makes no difference whether a contract was entered into or refused, under the statute, and that as a wholesaler it is entitled, upon compliance with the other facts of the cited statute, to receive these alcoholic beverages for distribution from the respondent regardless of its failure to fulfill the expectations under prior agreements. Petitioner further argues that it is not enough for a distributor to state that it has a rational reason to adopt a policy of so-called exclusive dealership as a matter of business policy, but must yield to the policy of the State in the field of liquor traffic. This means, it continues, that it is reasonably related to the legitimate business goal sought to be achieved, and not conducive to the evils which the act is designed to prevent. Nor can respondent justify its refusal by contending that Reinfeld and Majestic will do a better job, although the record is entirely absent of evidence to support that position. Therefore, it submits that the respondent's refusal to honor petitioner's normal orders, within respondent's ability to fill them, 'was discriminatory, arbitrarily so, and in clear violation of the letter, intent and purpose of the statute.'

"Respondent in its defense asserts that it did not act arbitrarily or with discrimination, but upon sound business judgment based upon the failure of the petitioner to adequately handle its products during a given period. It asserts that a wholesaler does not acquire a vested right to be continued in a line to the extent of its periodic requirements only where the distiller or importer has had a practice of operating on the basis of annual orders. It further contends that the termination of such distributorship was based upon petitioner's poor performance in the distribution of its products and its refusal to make a commitment for the present fiscal year, in violation of respondent's standard practice. It states that it acted upon ample justification and sound business judgment and is not bound in any way to continue its relationship with the petitioner.

"In its reply brief the petitioner reiterates that respondent has misinterpreted petitioner's position as an application for the enforcement of a contract or a renewal of a

contract for distributorship, but seeks to make clear that its position has no relevancy to the question of contract although much evidence has been adduced herein to show the long relationship between the two parties.

"It now insists, however, that it does not assert the right to be a sole or prime distributor. Nor does it preclude the right of respondent to employ Reinfeld and Majestic as additional distributors. It asserts primarily that, under the statute, it has the right to be a distributor without discrimination of the nationally advertised brands of the respondent, and the respondent's refusal or failure to permit petitioner to continue as its distributor of these products, unsupported by any basis derived from bona fide objective criteria, is violative of the express language of the above quoted statute.

"Nowhere in the statute are the words 'arbitrary discrimination' defined. In order to understand the full meaning of that term it is necessary to consider it within the context of the basic philosophy of the Alcoholic Beverage Law. The law recognizes the uniqueness of the alcoholic beverage industry and gives the Director an almost unlimited power to regulate and control the liquor traffic not only among retailers but wholesalers and distillers as well. As was stated in Hudson-Bergen, etc. Ass'n. v. Hoboken, 135 N.J.L. 502, at 507 (E. & A. 1947):

'The reason and the need for singling out the liquor traffic for peculiar limitation and strict supervision may be read in our statutes from early colonial times.***Thus, through nearly 250 years the legislature has struggled with the conditions arising out of the sale of liquor. The current statute is to be construed in the light of the long series of statutes of which it is the culmination and of the decisions of the courts regarding those statutes. Meticulous technicalities should not be permitted to thwart so considerable an effort toward keeping a public convenience from becoming a social evil. The state authorities should be given every reasonable opportunity to work out the mandate of the legislature.' Cited with approval in Greenbrier, Inc. v. Hock, 14 N.J. Super. 39.

"The Legislature has specifically enjoined the Director to 'do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive' administration of the Alcoholic Beverage Law (R.S. 33:1-22) and to 'make such general rules and regulations and such special rules and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this chapter, in addition thereto, and not inconsistent therewith.' R.S. 33:1-39.

"It might be interesting to note that in the majority opinion the court commented on the fact that the statute immediately involved is not as explicit as it might be, and suggested that 'to guide distillers the Director might well adopt implementing regulations at an early date which would delineate the grounds and the nature of the showing required.' It should be noted that, after the hearing in this matter, the

Director did formulate such regulations as hereinabove suggested. These regulations are known as Regulation No. 15A (Bulletin 1485, Item 1).

"The Director, therefore, is particularly empowered to control the activities under these sections of the act relating to wholesalers and distillers in order to prevent evils such as tie-in sales and artificial and unrealistic minimum quantities required to be purchased as a prerequisite for doing business with a particular distiller. Three cases thus far in New Jersey have considered the problem of arbitrary discrimination under this statute. In Re Boller Beverages, Inc., Bulletin 838, Item 2, the then Director decided that the petitioner had not established that the refusal to sell was arbitrary where it appeared that the petitioner sought the right to sell only one of the distiller's products and had been offered the right to sell two similar items, and it further appeared that the petitioner had not sold any of the distiller's products for more than five years last past.

"In Re Hoffman, Bulletin 929, Item 1, the then Director decided that the petitioner had not established that the refusal to sell was arbitrary when it appeared that the distiller had decided to resume its former practice of selling directly to retailers in the northerly counties of the State, thus establishing one such standard, i.e., the territorial location of wholesalers. Said the court in Hoffman v. Hock, 8 N.J. 397 (Sup.Ct. 1952):

'The apparent scope of the statute in question is to be found in section 1 thereof which bars "discrimination in the sale of alcoholic liquors by distillers, *** of nationally advertised brands" thereof "to duly licensed wholesalers of alcoholic liquors ***." Thus it is still open to the distiller to sell directly to retail dealers if licensed so to do. It may, of course, sell indirectly through the medium of duly licensed wholesalers, if it so chooses, but in the latter event it may not discriminate between such wholesalers.'

"In Canada Dry, supra, the court held that the reduction of authorized distributors from eleven to five in the State of New Jersey, without any attempt to document the objective criteria upon which such reduction was made, was, in the opinion of the court, arbitrary discrimination.

"It is my considered judgment that the respondent has not established such objective criteria which would justify its refusal to continue petitioner as a distributor. I think respondent misses the point when it makes the following statement:

'Whether such justification may be rested along upon the mere termination of the contractual relation which would leave petitioner similarly situated with all other wholesalers (as the Director and the Courts have indicated) or must be supported by facts of an objective nature is an issue that need not be decided. From the whole record it appears there was more than ample justification for the action taken by the respondent.'

It is this position with which we disagree. Respondent apparently feels that the mere termination of the contract between it and

the petitioner gives it the right to terminate its relationship with the petitioner and undertake a new relationship with other distributors. This might be true in the normal contractual situation in any other industry. Cf. Great Atlantic & Pacific Tea Co. v. Cream of Wheat Co., 227 F. 46 (2 Cir. 1915). However, in the alcoholic beverage field this cannot be so. It must 'bow to the heavy and pervasive hand of the police power - if the Legislature wills it.' Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373, 384 (1956); Eskridge v. Division of Alcoholic Beverage Control, 30 N.J. Super. 472 (App.Div. 1954). The license to sell intoxicating liquors "does not embody any property right." Mazza v. Cavicchia, 15 N.J. 498 (1954). Cf. 30 Am. Jur. p. 263, sec. 19 and 20.

"We are not here concerned, of course, with the assurances or contractual obligations of either party. We are concerned primarily with the implementation and enforcement of the statute in question. If the statute has any reason for existence, if it has any meaning, then the principle must prevail with respect to the situation at issue.

"Petitioner states that it is entitled to special consideration because it is not merely another fellow 'coming down the pike.' In addition, it has produced convincing proof that it has legitimately promoted respondent's products for more than ten years, at great cost to itself; has indebted itself to the sum of \$15,000 to purchase Barry's accounts servicing respondent's products exclusively, and has developed a climate 'pivoted on respondent's products.' These facts must not be disregarded and are, indeed, relevant in determining whether or not respondent's refusal to continue to sell to petitioner is arbitrary.

"Justice Francis, in the concurring opinion in Canada Dry, goes one step further. He says:

'I think the statute in question, N.J.S.A. 33:1-1 et seq., says that all wholesalers duly licensed by the Director of Alcoholic Beverage Control have an equal right to purchase the products of distillers operating in New Jersey, and that if they have the financial capacity to pay therefor, they cannot be refused arbitrarily. Prima facie all wholesalers must be treated on a parity, and prima facie the distillers cannot limit the number with whom they will deal. The impact of the statute under ordinary circumstances is that any reasonably competent and financially capable wholesaler is entitled to be served and cannot be discriminated against arbitrarily. The fact that it would be more convenient or more feasible or more efficient for the distiller to deal with a limited number would not of itself provide an escape from condemnation as arbitrary discrimination. Such is the burden imposed by N.J.S.A. 33:1-1 et seq. on this highly regulated industry. Any lessening of that burden must come from the source which imposed it.'

"It is unnecessary to decide in this report whether all wholesalers have an equal right to purchase the products of the distillers. It is only necessary in this matter to decide that, on the basis of the evidence presented herein, the petitioner has a right to purchase the products of the respondent, and this right is asserted not on the basis of any specific contract but on the statutory right given by N.J.S.A. 33:1-1 et seq.

"The prior cases cited herein have only the persuasive force of an analogy. As the Director stated in his conclusions in F & A v. Canada Dry etc., in this Division (Bulletin 1205, Item 1): 'Each case (including the case in question) must be decided upon its own particular facts.' Equity should have the last say. Thus fairness to the parties involved should be the guiding principle in the light of the legislative objective.

"One further note. As the introducer's statement declares:

'The purpose of this act is to insure an equitable basis for competition between all licensed wholesalers of alcoholic beverages in New Jersey and to prevent any monopolistic freezing-out of one wholesaler by another by preventing the sale of certain products to him.' (Emphasis added)

"Respondent has raised the additional point that its method of operation has been to require an annual commitment in order that it may carry on its business in a practical manner. The testimony of Marsloe shows that this is a two-man operation and that, unless business were done in that way, it could not carry on its business profitably on a national basis. It is admitted by the respondent that no such commitment has been given by the Reinfeld and Majestic companies. The reason assigned therefor is that petitioner still had a large quantity of stock on hand and, therefore, no accurate commitment could have been given. Since fairness is the touchstone of the administrative process, it might well be that an annual commitment may be a reasonable requirement, provided it does not impose any arbitrary standard. This was particularly raised in this case where the petitioners claim that the amount which they were required to commit themselves to during the 1961-62 fiscal period was far in excess of any prior commitment and beyond their reasonable expectation of resale. Consideration must be given to the distributor as well as to the distiller if this requirement is not to be used as a subterfuge.

"Finally, it is difficult for me to reconcile the statement contained in the brief of the respondent that it would have had a right to change its method of operation 'provided the selection was not made in an arbitrary manner' and then it follows that with a statement that it is not necessary to show facts of an objective nature to disprove the arbitrariness of the selection. It should finally be pointed out that the Joseph H. Reinfeld Company has a 35% interest in the respondent company, and this may have influenced the selection of the Reinfeld Company, and the Majestic Company which is a wholly owned subsidiary of the Reinfeld Company, in making such change.

"The evidence clearly demonstrates that the overriding consideration and perhaps sole reason why the respondent terminated the distributorship of petitioner was because petitioner did not fulfill respondent's expectations and did not adequately meet respondent's sales goal of purchasing and distributing 8,000 cases of respondent's products. The figure of 10,000 cases was mentioned as a reasonable sales goal. This was apparently justification, in respondent's judgment, for its refusal to sell to petitioner. Indeed, counsel for respondent states in his main brief:

'A supplier is entitled to maintain and indeed attempt to increase the acceptance of his brand in the New Jersey market'

And further (in his reply brief):

'*** supplier has a right to change distributors, and the result may well be a restoration of the 8000 cases a year level or even an increase to 10,000 cases a year. *** What was involved was a woeful incompetence resulting in understimulation of sales by a wholesaler. ***'

"In the field of alcoholic liquor control these arguments are ineffective and invalid.

"I am not persuaded that there were any objective criteria established consistent with the imperative statutory language. Therefore, the action of the respondent was clearly arbitrary and discriminatory.

"Under all the facts and circumstances herein, it is recommended that an order be entered determining that the action of the respondent is arbitrary and discriminatory, and directing respondent to sell to the petitioner alcoholic beverages on terms usually and normally required by the respondent and that, in the event respondent refuses to comply with the terms of said order, a further order be entered in accordance with the provisions of R.S. 33:1-93.4."

Written exceptions to the Hearer's Report and written argument thereto were filed with me by the attorneys for the respondent. Written answering argument to said exceptions was filed by the attorney for the petitioner. Oral argument is deemed unnecessary and unwarranted and, accordingly, the request for same by counsel for the petitioner is hereby denied.

I have given careful consideration to the evidence and exhibits, the Hearer's Report and the written arguments of the respective counsel regarding the exceptions hereto. I concur in the conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 12th day of March 1963,

ORDERED that the respondent sell and continue to sell to the petitioner alcoholic beverages on terms usually and normally required by the respondent.

EMERSON A. TSCHUPP
ACTING DIRECTOR

ACTIVITY REPORT FOR MARCH 1965

2.

ARRESTS:

Total number of persons arrested	- - - - -	15
Licenses and employees	- - - - - 10	
Bootleggers	- - - - - 5	

SEIZURES:

Distilled alcoholic beverages - gallons	- - - - -	1,401
Wine - gallons	- - - - -	5,000
Brewed malt alcoholic beverages - gallons	- - - - -	2,998

RETAIL LICENSEES:

Premises inspected	- - - - -	1,046	
Premises where alcoholic beverages were gauged	- - - - -	600	
Bottles gauged	- - - - -	9,054	
Premises where violations were found	- - - - -	145	
Violations found	- - - - -	178	
Reg. #28 Sign not posted	- - - - - 45	Questionable liquor	- - - - - 5
Application copy not available	- - - - - 27	Improper beer taps	- - - - - 4
Unqualified employees	- - - - - 26	Disposal permit necessary	- - - - - 2
Other mercantile business	- - - - - 19	Other violations	- - - - - 41
Prohibited signs	- - - - - 9		

STATE LICENSEES:

Premises inspected	- - - - -	28
License applications investigated	- - - - -	7

COMPLAINTS:

Complaints assigned for investigation	- - - - -	462
Investigations completed	- - - - -	465
Investigations pending	- - - - -	196

LABORATORY:

Analyses made	- - - - -	141
Refills from licensed premises - bottles	- - - - -	72
Bottles from unlicensed premises	- - - - -	7

IDENTIFICATION:

Criminal fingerprint identifications made	- - - - -	6
Persons fingerprinted for non-criminal purposes	- - - - -	260
Identification contacts made with other enforcement agencies	- - - - -	196

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities	- - - - -	19
Violations found	- - - - -	20

Sale during prohibited hours	- - - - - 12	Permitting brawl on premises	- - - - - 1
Sale to minors	- - - - - 3	Failure to afford view into premises	- - - - -
Sale to non-members by club	- - - - - 2	during prohibited hours	- - - - - 1
Possessing chilled beer (DL lic.)	- - - - - 1		

Cases instituted at Division	- - - - -	25
Violations found	- - - - -	36

Possessing liquor not truly labeled	- - - - - 10	Sale below filed price	- - - - - 1
Sales to minors	- - - - - 6	Possessing indecent matter	- - - - - 1
Permitting lottery activity (numbers)	- - - - - 3	Permitting hostess activity on prem.	- - - - - 1
Permitting gambling (cards, "match stick game") on premises	- - - - - 2	Conducting business as a nuisance	- - - - - 1
Sale during prohibited hours	- - - - - 2	Unqualified employees	- - - - - 1
Sale to non-members by club	- - - - - 1	Hindering investigation	- - - - - 1
Possessing contraceptives on prem.	- - - - - 1	Permitting pin ball machine on prem.	- - - - - 1
Sale outside scope of license	- - - - - 1	Permitting slot machines on premises	- - - - - 1
Beverage Tax Law non-compliance	- - - - - 1	Permitting bookmaking on premises	- - - - - 1

Cases brought by municipalities on own initiative and reported to Division	- - - - -	19
Violations involved	- - - - -	35

Sale to minors	- - - - - 10	Failure to file notice of change in appl.	- - - - - 2
Failure to close prem. dur. proh. hrs.	- - - - - 3	Sale during prohibited hours	- - - - - 1
Permitting minors on prem. unaccomp. by parents or guard. (local reg.)	- - - - - 2	Act of violence	- - - - - 1
Permitting foul language on prem.	- - - - - 2	Sale to non-members by club	- - - - - 1
Permitting brawls on premises	- - - - - 2	Fraud and front	- - - - - 1
Conducting business as a nuisance	- - - - - 2	Sale outside scope of license	- - - - - 1
Sales to intoxicated persons	- - - - - 2	Permitting female impersonator on prem.	- - - - - 1
Permitting persons of ill repute on premises	- - - - - 2	Hindering investigation	- - - - - 1
		Licensee working while intoxicated	- - - - - 1

HEARINGS HELD AT DIVISION:

Total number of hearings held	- - - - -	41	
Appeals	- - - - - 2	Seizures	- - - - - 2
Disciplinary proceedings	- - - - - 24	Tax revocations	- - - - - 2
Eligibility	- - - - - 11		

STATE LICENSES AND PERMITS ISSUED:

Total number issued	- - - - -	838	
Licenses	- - - - - 5	Social affair permits	- - - - - 326
Solicitors' permits	- - - - - 54	Miscellaneous permits	- - - - - 104
Employment permits	- - - - - 97	Transit insignia	- - - - - 171
Disposal permits	- - - - - 60	Transit certificates	- - - - - 19
Wine permits	- - - - - 2		

OFFICE OF AMUSEMENT GAMES CONTROL:

Licenses issued	- - - - - 145	Premises where violations were found	- - - - - 1
Premises inspected	- - - - - 1	Number of violations found	- - - - - 1
Enforcement files established	- - - - - 3	Displaying items over retail value of \$15.-	- - - - - 1

EMERSON A. TSCHUPP
 Acting Director of Alcoholic Beverage Control
 Acting Commissioner of Amusement Games Control

Dated: April 3, 1965

3. STATUTORY AUTOMATIC SUSPENSION - DISCIPLINARY PROCEEDINGS PENDING BEFORE LOCAL ISSUING AUTHORITY - AUTOMATIC SUSPENSION TEMPORARILY STAYED.

Auto.Susp. #223)	
In the Matter of a Petition to Lift)	
the Automatic Suspension of Plenary)	
Retail Consumption License C-25,)	
issued by the Borough Council of the)	ON PETITION
Borough of South River to)	ORDER
)	
ALFRED HILLMAN)	
t/a HILLMAN'S BAR)	
18 Washington Street)	
South River, N. J.)	

Robert W. Wolfe, Esq., Attorney for Petitioner.

BY THE ACTING DIRECTOR:

It appears from the petition filed herein and the records of this Division that on February 14, 1963, petitioner herein was fined \$100 and \$5 costs in the South River Municipal Court after being found guilty of sale of alcoholic beverages on November 24, 1962 to a minor, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of his license for the balance of its term. R.S. 33:1-31.1. The suspension has not been effectuated because of the pendency of this proceeding.

It further appears that disciplinary proceedings are presently pending before the municipal issuing authority against the licensee because of said sale of alcoholic beverages to the minor. A supplemental petition to lift the automatic suspension may be filed with me by petitioner after the disciplinary proceedings have been decided. In fairness to petitioner, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Maksymetz, Bulletin 1480, Item 11.

Accordingly, it is, on this 6th day of March, 1963,

ORDERED that the aforesaid automatic suspension be stayed pending the entry of a further order herein.

EMERSON A. TSCHUPP
ACTING DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO NON-MEMBERS - LICENSE
SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against)

PRIDE OF CAMDEN LODGE OF ELKS #83)
I.B.P.O.E. of W.)
711 Kaighn Avenue)
Camden, N. J.)

CONCLUSIONS
AND ORDER

Holder of Club License CB-36, issued)
by the Municipal Board of Alcoholic)
Beverage Control of the City of Camden.)

Licensee, by Raymond E. Harmon, Financial Secretary, Pro se.
Harry D. Gross, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on
February 22, 1963, it sold drinks of alcoholic beverages to
non-members, in violation of Rule 8 of State Regulation No. 7.

Licensee has a previous record of suspension of
license by the Director for ten days, effective March 6, 1950,
for municipal hours violation. Re Pride of Camden Lodge No. 83,
Bulletin 869, Item 8.

The prior record of dissimilar violation occurring
more than five years ago disregarded, the license will be sus-
pended for fifteen days, with remission of five days for the
plea entered, leaving a net suspension of ten days. Re Passaic
Memorial Post #200, American Legion, Bulletin 1491, Item 10.

Accordingly, it is, on this 11th day of March, 1963,

ORDERED that Club License CB-36, issued by the Municipal
Board of Alcoholic Beverage Control of the City of Camden to
Pride of Camden Lodge of Elks #83, I.B.P.O.E. of W., for
premises 711 Kaighn Avenue, Camden, be and the same is hereby
suspended for ten (10) days, commencing at 2:00 a.m. Monday,
March 18, 1963, and terminating at 2:00 a.m. Thursday, March
28, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

5. DISQUALIFICATION REMOVAL PROCEEDINGS - BOOKMAKING - ORDER REMOVING DISQUALIFICATION.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R.S. 33:1-31.2.

CONCLUSIONS AND ORDER

Case No. 1735

BY THE ACTING DIRECTOR:

In 1954 petitioner pleaded guilty to bookmaking, as a result he was given a twelve-to-eighteen-month suspended sentence, \$500 fine and three years probation.

Petitioner testified that while operating a newspaper route, he engaged in bookmaking for his own benefit. The crime of bookmaking may or may not involve moral turpitude. Re Case No. 1018, Bulletin 956, Item 7. However, since petitioner admittedly acted as a principal in the bookmaking business, the crime in question involves the element of moral turpitude (Re Case No. 635, Bulletin 946, Item 10) and he was thereby rendered ineligible to be associated with the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

Petitioner testified that he has been employed as a car salesman for about five years. He further testified that he has never been associated with the liquor industry and he seeks relief in this matter in order that he might accept employment as a bartender.

Three character witnesses (a clothing salesman, a yard inspector and a retired bookkeeper) testified that they have known petitioner for over five years last past and he now bears a reputation for being a law-abiding person.

The police department of the municipality wherein he resides advises that no complaint or investigation involving the petitioner is presently pending.

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

Accordingly, it is, on this 15th day of March, 1963,

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

EMERSON A. TSCHUPP
ACTING DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ANNA T. STABILE)
t/a RARITAN HOUSE)
39 Thompson Street)
Raritan, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-9, issued by the Mayor and Council of the Borough of Raritan.)

Paul G. Fleischer, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 8, 1963, she sold drinks of beer to two minors, both age 18, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days (Re Dontal, Inc., Bulletin 1491, Item 4), with remission of five days for the plea entered, leaving a net suspension of ten days.

Accordingly, it is, on this 12th day of March, 1963,

ORDERED that Plenary Retail Consumption License C-9, issued by the Mayor and Council of the Borough of Raritan to Anna T. Stabile, t/a Raritan House, for premises 39 Thompson Street, Raritan, be and the same is hereby suspended for ten (10) days, commencing at 1:00 a.m. Tuesday, March 19, 1963, and terminating at 1:00 a.m. Friday, March 29, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR


7. STATE LICENSES - NEW APPLICATIONS FILED.

Rocco Russo, t/a Robert Russo
197-199 Second Street, Newark, N. J.

Application filed April 19, 1963 for person-to-person transfer of State Beverage Distributor's License SBD-71 from Robert Russo.

High Grade Beverage
Upper Jersey Avenue, New Brunswick, N. J.

Application filed April 19, 1963 for place-to-place transfer of Additional Warehouse License AW-35, issued pursuant to State Beverage Distributor's License SBD-187, from 820 Route 46, Kenil, N. J., to Replogle Avenue, Mine Hill, N. J.


Emerson A. Tschupp
Acting Director