

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

BULLETIN 1623

July 13, 1965

TABLE OF CONTENTSITEM

1. COURT DECISIONS - NORTH ORANGE BAPTIST CHURCH v. ORANGE, GREEN, et al. and DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.
2. APPELLATE DECISIONS - SILVER DOLLAR CAFE v. NEWARK.
3. APPELLATE DECISIONS - TROPICAL NIGHT CLUB v. PATERSON.
4. ACTIVITY REPORT FOR MAY 1965.
5. MORAL TURPITUDE - CONVICTION OF PETTY LARCENY (SHOPLIFTING) HELD NOT TO INVOLVE MORAL TURPITUDE - FALSE STATEMENTS IN APPLICATIONS FOR SOLICITOR'S PERMIT - DEFERRED EFFECTIVE DATE OF GRANTING NEW PERMIT.
6. DISQUALIFICATION REMOVAL PROCEEDINGS - OPEN LEWDNESS - ORDER REMOVING DISQUALIFICATION.
7. DISCIPLINARY PROCEEDINGS (South River) - ORDER TERMINATING SUSPENSION FOR BALANCE OF TERM ON PROOF OF CORRECTION OF UNLAWFUL SITUATION.
8. STATE LICENSEES - NEW APPLICATIONS FILED

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

July 13, 1965

BULLETIN 1623

1. COURT DECISIONS - NORTH ORANGE BAPTIST CHURCH v. ORANGE, GREEN, et al. and DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-918-63

NORTH ORANGE BAPTIST CHURCH,)
)
Appellant,)
)
v.)
)
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF ORANGE, MORRIS GREEN, et al.,)
t/a GREEN'S TAVERN, and DIRECTOR)
DIVISION OF ALCOHOLIC BEVERAGE CONTROL,)
STATE OF NEW JERSEY.)
)
Respondents.)

Argued May 17, 1965 -- Decided May 28, 1965.

Before Judges Goldmann, Sullivan and Labrecque.

Mr. John Kandray argued the matter for appellant (Messrs. Shanley & Fisher, attorneys; Mr. L. Bruce Puffer, Jr., of counsel).

Mr. Alfonso C. Viscione argued the cause for respondents Green and Brandwein, t/a Green's Tavern,

Mr. Joseph A. Hoffman, Deputy Attorney General, argued the cause for respondent Division of Alcoholic Beverage Control of New Jersey (Mr. Arthur J. Sills, Attorney General, attorney; Mr. Samuel B. Helfand, Deputy Attorney General, of counsel).

The opinion of the court was delivered by
GOLDMANN, S.J.A.D. (Sullivan, J.A.D., dissenting).

(Appeal from Director's decision in North Orange Baptist Church v. Orange and Green & Brandwein, Bulletin 1564, Item 1. Director affirmed. Opinion not approved for publication by the Court Committee on opinions.)

2. APPELLATE DECISIONS - SILVER DOLLAR CAFE v. NEWARK.

SILVER DOLLAR CAFE (A Corp.))	
Appellant,)	
v.)	ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC)	CONCLUSIONS
BEVERAGE CONTROL OF THE CITY)	AND ORDER
OF NEWARK,)	
Respondent.)	

Louis M. Turco, Esq., Attorney for Appellant.
Norman N. Schiff, Esq., by Paul E. Parker, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) whereby on October 21, 1964, it denied the application for renewal for 1964-65 of appellant's plenary retail consumption license for premises 264 Mulberry Street, Newark.

In its petition of appeal, appellant alleges that the action of respondent was erroneous in that it was "a flagrant abuse of discretion, and was not based upon any valid reasons for same."

Respondent, in its answer, admits the jurisdictional allegations and denies the substantive charge. It contends that its decision was based upon the factual testimony before it, from which it, in its sound discretion, concluded that the penalty (sic) imposed, substantiated such action. The answer appears to assert that the action taken was supported by the factual testimony before the Board.

Upon the filing of the appeal, an order was entered by the Director on November 23, 1964, extending the term of appellant's 1963-64 license until further order herein. Rule 12 of State Regulation No. 15.

This is an appeal de novo pursuant to Rule 6 of State Regulation No. 15 and was based entirely upon the transcript of proceedings before respondent, pursuant to Rule 8 of said regulation. Although appellant had the right to produce witnesses at this plenary hearing, it chose not to do so. However, considerable oral argument was adduced.

At an adjourned meeting of the Board on September 23, 1964, no one appeared on appellant's behalf and the matter was further adjourned. On September 30, Constantin Jolas, the husband of Josephine Jolas, president of the corporate appellant, appeared and stated that he did not have an attorney. No one else appeared on behalf of appellant at this or any subsequent meeting at which the application for renewal was considered.

The matter was again adjourned for two weeks until October 14, at which time an amended application was considered. The amended application apparently contained the incorrect address of the president of the corporate appellant, and the Board permitted a correction thereof.

No testimony was offered at that hearing by appellant in support of its application for renewal, decision was reserved and the matter further adjourned to October 21. On that date, by a vote of 3 to 0, the Board denied the said application for the reasons as expressed by the chairman:

"The Board, after considering the application for the renewal of the subject license, and the Board having taken into consideration the failure of the licensee to obtain the approval of the Newark Police Department, and additionally the Board having considered the premises as reflected in the records of the licensing authorities, the Board has concluded that the operation and management of the licensed premises was in their considered opinion to the detriment of the community and the health and welfare of its citizens, and therefore, the Board in its sound discretion unanimously voted to deny the application for renewal."

The records of this Division disclose that appellant answered charges dated May 27, 1964 at a hearing before the Board, and by resolution dated June 10, 1964, was found guilty thereof, viz:

1. On December 1, 1963, it sold alcoholic beverages to a 15-year-old minor, in violation of Rule 1 of State Regulation No. 20 -- 30 days suspension.

2. On December 1, 1963, it allowed, permitted and suffered lewdness and immoral activities in and about its licensed premises, viz., the making of arrangements for illicit sexual intercourse, in violation of Rule 5 of State Regulation No. 20 -- 30 days suspension.

3. On December 1, 1963, it allowed, permitted and suffered its place of business to be conducted in a manner offensive to common decency and public morals, in violation of Rule 5 of State Regulation No. 20 -- 15 days suspension.

Thus, appellant's license was suspended for a total of 75 days on these three charges, effective July 13, 1964. However, by amended resolution of July 22, 1964, the Board, taking note of the fact that appellant had not filed its application for renewal for the licensing year 1964-65, directed that the said 75-day suspension shall "commence when and if said licensee files a renewal for the licensing year 1964-65 and commences operation under said license."

Subsequently, after the entry of the Director's order extending the 1963-64 license pending determination of the appeal herein, the suspension was made operative against the extended license, effective December 17, 1964, by letter of the Board dated December 16, 1964, effectuating the prior resolution dated July 22, 1964.

The burden of proof in all these cases which involve discretionary matters, where the applicant seeks renewal of its

license, falls upon appellant to show manifest error or abuse of discretion by the local issuing authority. Nordco, Inc. v. State, 43 N.J. Super. 277. The fundamental operative principle in the matter of issuance of renewal licenses, just as in the issuance of new licenses, is that an applicant must satisfy the issuing authority that it is worthy of such action. As Commissioner Burnett said in Hodanish v. Trenton, Bulletin 121, Item 6:

"...it is competent for municipal issuing authorities to confine their selection of licensees to those who are clearly worthy."

See also Florence Methodist Church et als. v. Florence and Christy, Bulletin 1074, Item 2.

Decisional authority reiterated in this Division and expressed in the opinions of our courts adds force to the established doctrine that there is no inherent right to a license. Zicherman v. Driscoll, 133 N.J.L. 586; Bumball v. Burnett, 115 N.J.L. 254; Kleinberg v. Harrison, Bulletin 984, Item 2. A license is a special privilege granted to the few and denied to the many. Meehan v. Jersey City, 73 N.J.L. 382. As Justice Field stated in Crowley v. Christensen, 137 U.S. 86, 92:

"There is no inherent right in a citizen to thus sell intoxicating liquors by retail...As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority."

Counsel urged that since the Board imposed the suspension in this matter, it acted in abuse of its discretion in refusing to renew the license. The rationale appears to be that if the Board felt that the charges warranted severe action, it would have ordered revocation rather than mere suspension, and that since it apparently did not consider that the charges warranted revocation, it should have renewed the license. Failure to renew, under those circumstances, he alleges, constituted an abuse of discretion. Therefore, counsel advocated that, on appeal, the merits of the conviction should be re-examined in order to determine whether or not the Board's failure to renew, based upon such conviction, was proper.

I do not agree with that reasoning. Perhaps the direction and perspective of the Board vis-avis its action upon the application for renewal is best delineated in Tumulty v. Dunellen et al. (App.Div. 1963), not officially reported, reprinted in Bulletin 1519, Item 1, where the court, in a per curiam decision, stated:

"The problem before the Director was what penalty to impose for what his investigators had discovered the licensees had done in the past. The problem before Dunellen, upon the application for the renewal of the license, was whether it was in the public interest that this establishment be licensed in the future. Subject to law and to the Director's right of review, a municipality has the power to set its own reasonable standards for the conduct of its licensees. We hold

that Dunellen had the right to say that since these licensees permitted the things recited in the Director's 'Conclusions and Order' of June 13, 1962, they were not worthy to continue to hold their license and that it was not in the public interest that the license should be renewed; and that the Director was justified in holding, as he did, that Dunellen 'exercised its discretion reasonably, circumspectly, and in the best interests of the community in refusing to renew appellant's license.'" (Emphasis supplied)

The reasoning applied in that case is dramatically applicable to the situation herein presented.

On this plenary de novo hearing, the Director must consider the fact of the conviction and does not have the right to go beyond the conviction and examine the finding of guilt collaterally. Counsel for appellant readily admitted that appellant was given full opportunity to appeal the conviction to this Division but failed to do so and that the time for appeal has long since lapsed. He argues that had he known that the Board would refuse to renew the license, he might have considered appealing the license suspension. This argument must be rejected because appellant, having failed to take advantage of legal recourse given to him under the statute, cannot collaterally attack such suspension, as attempted herein. Cf. DeLuccia v. Paterson (App.Div. 1959), not officially reported, reprinted in Bulletin 1271, Item 1; Iannella v. Johnson, 136 N.J.L. 514, aff'd 137 N.J.L. 659, app. dismiss. 336 U.S. 932; State v. New York Central Railroad Co., 52 N.J.Super. 206 (Ch. 1958). Cf. Home Fuel Oil Co. v. Glen Rock, 118 N.J.L. 340 at p. 347, where the court, in a zoning case, stated that where an owner of property fails to pursue his right of appeal from an adverse ruling as to a non-conforming use, and permits the determination of the board of adjustment to remain unchallenged, it will not be permitted, thereafter to "resurrect the issues and determinations of the board of adjustment in this cause (appeal from conviction for violation of said ordinance) when its right to do so, in a direct attack, under the statute, has long since expired." The same principle is applicable to the matter sub judice.

The Board fully examined the facts and circumstances involved in this application, which reflected the fact that there were three serious charges during the past licensing year. In addition, there is attached to the application a report of the Newark Police Department which recommended disapproval of the said application. It is clearly evident that the Board felt that the public interest warranted such action.

It has consistently been held that the Director's function on appeal is not to substitute his personal opinion for that of the local issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Domapp, Inc. v. Newark, Bulletin 1543, Item 1.

In view of the circumstances of this case, which led the Board to its determination that the continued operation and management of the licensed premises by appellant was, in its opinion, detrimental to the community and the health and welfare of its citizens, it cannot be said that the motivations which resulted in respondent's determination constituted manifest error or an abuse of its discretion. Unless such manifest error

or clearly unreasonable action on the part of the Board is demonstrated, the Director must affirm its action. Oak Inn, Inc. v. Elizabeth, Bulletin 1483, Item 4, aff'd App.Div. 1963, not officially reported, reprinted in Bulletin 1523, Item 2; 279 Club, Inc. v. Newark, Bulletin 1405, Item 2, aff'd 73 N.J. Super. 15; Paul v. Brass Rail Liquors, 31 N.J. Super. 211; Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501.

My careful consideration of the transcript and the oral arguments convinces me that respondent exercised its discretion reasonably and in the best interests of the community, in its determination to deny renewal of appellant's license for the current licensing period. Since appellant has failed to prove, by a fair preponderance of the evidence, that respondent's action was improper, it is recommended that the action of respondent be affirmed, that the appeal herein be dismissed, and that the order extending the term of the 1963-64 license be vacated. Rule 6 of State Regulation No. 15.

Conclusions and Order

Written exceptions to the Hearer's Report and written argument in substantiation of the exceptions were filed with me by appellant's attorney pursuant to Rule 14 of State Regulation No. 15.

In his exceptions the attorney for the appellant states that "It is not the Appellant's desire to attack the finding of guilt collaterally." He then proceeds to argue that, since this is an appeal de novo, the Director "has the right to examine all of the evidence submitted at the hearing, not solely the fact that there is a conviction against the licensee." He refers to the fact that a transcript of the testimony relating to the charges upon which there was a conviction was admitted into evidence at the appeal hearing.

The simple answer to this is that, on the application for renewal of this license before the respondent, respondent properly excluded such collateral considerations of the specific evidence upon which prior convictions were based. It is also clear that the Hearer similarly accepted as a fact the record of conviction and did not examine the facts and circumstances involved therein. Thus the transcript of those proceedings was gratuitously accepted in evidence, and I agree with the Hearer that they cannot be considered collaterally in an appeal from the refusal to renew appellant's license.

Counsel argues that the prior convictions were based on insufficient testimony and states further that "The Appellant, through lack of necessary funds, did not appeal the 75-day closing." As was pointed out by the Hearer, "On this plenary de novo hearing, the Director must consider the fact of the convictions and does not have the right to go beyond the convictions and examine the evidential sufficiency thereof collaterally. Counsel for appellant readily admitted that appellant was given full opportunity to appeal the conviction to this Division but failed to do so and that the time for appeal has long since lapsed. He argues that had he known that the Board would refuse to renew the license, he might have considered

appealing the license suspension. This argument must be rejected because appellant, having failed to take advantage of legal recourse given to him under the statute, cannot collaterally attack such suspension, as attempted herein. Cf. DeLuccia v. Paterson (App.Div. 1959), not officially reported, reprinted in Bulletin 1271, Item 1; Ianella v. Johnson, 136 N.J.L. 514, aff'd 137 N.J.L. 659, app. disp. 336 U.S. 932."

In Ianella and Russo v. Johnson, 136 N.J.L. 514, 517, the court quoted from Home Fuel Oil Co. v. Glen Rock, *supra*, cited by the Hearer, where a similar situation to that at bar prevailed. In that case, involving a zoning issue, the prosecutor failed to avail himself of the statutory remedy within the statutory period following the adverse action of the Board of Adjustment and was subsequently convicted for violating the zoning ordinance. Said the court:

"*** Prosecutor, as already observed, properly followed that procedure to the point of an adverse determination by the board of adjustment of its appeal. It then permitted that determination to stand unchallenged. It did not exhaust the statutory provision of appeal. Prosecutor should not under these circumstances be permitted to resurrect the issues and determinations of the board of adjustment in this cause when its right to do so, in a direct attack, under the statute, has long since expired.***"

"We are, therefore, of the opinion that the prosecutor should not be permitted to collaterally review the action of the board of adjustment in this cause. To hold otherwise would not only lead to a practice contrary to the provisions of the statute but would lead to confusion and disorder. It should not be sanctioned."

I agree with the reasoning of the Hearer that the appellant should not be permitted by indirection to review on this appeal the agency's decision of the respondent.

Counsel further argues that "As in criminal jurisdictions the severity of the sentence depends, in great part, upon the actions of the defendant in the past. It is the actions of the Licensee Appellant which Counsel now proposes to consider." The analogy escapes me. This is not a criminal matter and considerations of "sentence" are not involved. The respondent was not concerned with imposing a sentence or penalty on the appellant. It concerned itself solely with making a judgment as to whether appellant's application for renewal of its liquor license should be granted.

"No one has a right to demand a license; license is a special privilege granted to the few, denied to the many." Paul v. Gloucester, 50 N.J.L. 585, at p. 596. And, as the Hearer pointed out, where such discretion is reasonably exercised the action of the local issuing authority will be sustained on appeal. Blanck v. Magnolia, 38 N.J. 484; Downie v. Somerdale, 44 N.J. Super. 84 (App.Div.) 1957; 279 Club, Inc. v. Newark and Div. of Alcoholic Beverage Control, 73 N.J. Super. 15. And the issuing authority may, in making its determination, take into consideration prior infractions of the law. Cf. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373, 378 (1956).

Counsel has apparently misread the thrust of the applicable principles delineated in Tumulty v. Dunellen, et al., supra, where the court stated that, in the renewal of a license, the problem before a municipality was whether it was in the public interest that the establishment be licensed in the future. Where the licensing authority determined that the applicant is not worthy to continue its license and it is not in the public interest that such license should be renewed, such discretion, reasonably used, will be affirmed by this Division.

The mere fact that the municipality imposed a suspension would not detract from the right of a municipality to refuse to renew the license for the same offenses. Downie v. Somerdale, supra.

And, finally, as Commissioner Burnett stated in Hodanish v. Trenton, Bulletin 121, Item 6:

"... it is competent for municipal issuing authorities to confine their selection of licensees to those who are clearly worthy."

Having carefully considered the record herein, including the transcript of the testimony relating to the application for renewal of this license before respondent, the transcript of the record on this de novo appeal, the exhibits, the argument and summation, the written exceptions and arguments in support thereof, and the Hearer's Report, I concur in the findings and recommended conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 14th day of May 1965,

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

ORDERED that my order entered on November 23, 1964, extending the term of appellant's 1963-64 license pending determination of the appeal herein, be and the same is hereby vacated, effective immediately.

JOSEPH P. LORDI
DIRECTOR

3. APPELLATE DECISIONS - TROPICAL NIGHT CLUB v. PATERSON.

TROPICAL NIGHT CLUB, A CORP.,)
 t/a TROPICAL NIGHT CLUB,)
)
 Appellant,)
)
 v.)
)
 BOARD OF ALCOHOLIC BEVERAGE)
 CONTROL FOR THE CITY OF)
 PATERSON,)
)
 Respondent.

ON APPEAL
CONCLUSIONS
AND ORDER

 Robert P. Swartz, Esq., Attorney for Appellant.
 Theodore D. Rosenberg, Esq., by William J. Rosenberg, Esq.,
 Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This appeal challenges the action of the respondent Board of Alcoholic Beverage Control for the City of Paterson (hereinafter Board) whereby it suspended appellant's plenary retail consumption license for premises located at 89-91 Prospect Street, Paterson, for a period of ten days commencing on February 22, 1965, after the appellant was adjudged guilty of permitting the employment of a minor as a bartender in and upon its licensed premises, in violation of Rule 2 of State Regulation No. 13.

Upon the filing of the appeal an order was entered staying the aforesaid order of suspension pending further order of the Director, pursuant to R.S. 33:1-31.

Appellant in its petition of appeal charges substantially that the action of the Board was erroneous in that "appellant never employed the said named minor as bartender on the premises."

Respondent in its answer admitted the jurisdictional facts and denied the substantive allegation of the petition. It further reserved its right to move at the time of the hearing for dismissal of the cause of action because the respondent was improperly pleaded "as the City of Paterson" and further for its alleged "failure to state a cause of action." (Such motion was not made at the time of the hearing, and this defense was accordingly abandoned.)

Respondent further defends upon the ground that the finding of guilty was made after a fair and impartial hearing before the Board.

The hearing on appeal was de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony under oath and examine witnesses.

The following picture was reflected from the testimony adduced at this plenary hearing: As a result of a complaint made

with the local Police Department by appellant's agent that its licensed premises had been burglarized, Detective Thomas Mahull was assigned to investigate the said incident, and on January 4, 1965 he visited the licensed premises and discussed this matter with Nelson Roman (the principal stockholder and officer of the corporate appellant). Thereafter, upon information obtained, he apprehended Jose M. Alemany, Jr., and interrogated him with reference to the alleged burglary.

During the course of his questioning, Alemany informed the detective that he was only twenty years of age and had been employed as a bartender at the licensed premises. This statement was made in the presence of Roman who denied that the said Alemany had ever been employed by appellant as a bartender and also expressed surprise that he was only twenty years of age. The officer admitted that Alemany had not shown him any proof of evidence of his age at that or any other time.

It was further developed that Alemany was subsequently arraigned on a charge of breaking and entering the licensed premises, and was thereafter indicted by the Passaic County Grand Jury. His present whereabouts are unknown and the Officer stated that he believes he is somewhere in New York.

Nelson Roman (the president and principal stockholder of the corporate appellant) vigorously denied that Alemany ever was employed by appellant as a bartender. He testified that he was a friend of one of his cousins, and that he was never actually employed in any capacity at the tavern. Alemany would occasionally drop in and help in cleaning, for which he would be given coffee and some food. He specifically denied that he was ever employed or worked in a capacity as a bartender at these premises. He was never paid any money and he cleaned and swept the floors as a friend of the family on these irregular occasions. He explained that the reason Alemany had stated that he was employed as a bartender was that Roman had made a complaint against him for breaking and entering, and "he was figuring he say that to be in his favor. He figured he would be safer to say that; he stated it."

Since the minor was not produced at this hearing, the testimony with respect to his alleged age obviously is insufficient to support this charge.

I adjourned this hearing for two weeks in order to give respondent an opportunity to produce the minor or present additional corroborative evidence of his age. I also suggested that the appellant produce the regular bartender to corroborate, if possible, the testimony of Roman.

At the adjourned hearing neither witness was produced. Counsel for the Board informed me that the whereabouts of the minor were still unknown, and he was unable to be located or produced.

With his usual high regard for fairness and interest in presenting the entire picture, counsel for the Board represented that this alleged minor Alemany admitted, under oath, at the time of the hearing before the Board that he was not employed by appellant as a bartender.

My evaluation of the facts and evidence in this case satisfies me that there has been insufficient proof to sustain the charge herein. The only proof as to the age of the alleged

minor was in the testimony of Detective Mahull that Alemany made a statement to him that he was twenty years of age. It is perfectly obvious that such evidence as to age based on the statement made to the police officer is not admissible as proof of age since it is purest hearsay. Stafford v. Haddon, Bulletin 877, Item 2. Proof of age must be established by one of the better recognized methods, namely, by the production of a birth certificate, the testimony of the minor, or the testimony of a member of the family. Ashen v. Carteret, Bulletin 652, Item 6; Re Alberti's, Inc., Bulletin 604, Item 1; Cino v. Driscoll, 130 N.J.L. 535. As the court stated in Cino, the appellants were entitled, as a matter of right, "to the ordinary and reasonable opportunity of the cross-examination" of the minor, citing Prout v. Bernards Land & Sand Co., 77 N.J.L. 719; Test v. Test, 131 N.J. Eq. 197. Such opportunity was obviously not afforded appellant in the matter sub judice. In the absence of such testimony, regrettable as is the inability of the respondent to produce the same, the charge must fail. Berney v. Mitchell, 34 N.J.L. 337.

Furthermore, and without meaning to be "beating a dead horse", the admission of the alleged minor at the hearing below, that he was not employed as a bartender, when supported by the affirmative testimony to the same effect by appellant's agent, would outweigh the contrary statement given to the police in the atmosphere of his arrest on the serious charge alluded to hereinabove, and would be sufficient to justify a finding in favor of the appellant.

A guilty finding must be based upon a preponderance of the credible evidence. I find that there has been no competent proof that the appellant allowed, permitted or suffered the employment of a minor as a bartender in and upon its licensed premises, and conclude that the action of the Board was clearly erroneous.

I therefore recommend that an order be entered reversing the action of the Board.

Conclusions and Order

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the transcript of the testimony, the exhibits, the arguments in summation advanced by the attorneys for the parties herein, and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 12th day of May 1965,

ORDERED that the action of the respondent Board be and the same is hereby reversed.

JOSEPH P. LORDI
DIRECTOR

4.

ACTIVITY REPORT FOR MAY 1965

ARRESTS:		
Total number of persons arrested	-----	26
Licensees and employees	14	
Bootleggers	12	
SEIZURES:		
Stillis - 50 gallons or under	-----	1
Alcohol - gallons	-----	16.097
Mash - gallons	-----	450
Distilled alcoholic beverages - gallons	-----	2.031
Wine - gallons	-----	6.038
Brewed malt alcoholic beverages - gallons	-----	9.011
RETAIL LICENSEES:		
Premises inspected	-----	651
Premises where alcoholic beverages were gauged	-----	501
Bottles gauged	-----	8,091
Premises where violations were found	-----	72
Violations found	-----	83
Application copy not available	28	Other mercantile business 5
Unqualified employees	17	Prohibited signs 2
Reg. #38 sign not posted	8	Other violations 17
Disposal permit necessary	6	
STATE LICENSEES:		
Premises inspected	-----	27
License applications investigated	-----	14
COMPLAINTS:		
Complaints assigned for investigation	-----	416
Investigations completed	-----	353
Investigations pending	-----	232
LABORATORY:		
Analyses made	-----	165
Refills from licensed premises - bottles	-----	56
Bottles from unlicensed premises	-----	17
IDENTIFICATION:		
Criminal fingerprint identifications made	-----	11
Persons fingerprinted for non-criminal purposes	-----	359
Identification contacts made with other enforcement agencies	-----	254
Motor vehicle identifications via N.J. State Police teletype	-----	2
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities	-----	8
Violations involved	-----	10
Sale to minors	5	Failure to close premises during prohibited hours 2
Sale during prohibited hours	3	
Cases instituted at Division	-----	23
Violations involved	-----	25
Possessing liquor not truly labeled	6	Permitting bookmaking on premises 1
Sale during prohibited hours	5	Sale to intoxicated person 1
Beverage Tax Law non-compliance	4	Permitting foul lang. on premises 1
Sale to minors	3	Fraud and front 1
Conducting business as a nuisance	2	Failure to close prem. dur. proh. hrs. 1
Cases brought by municipalities on own initiative and reported to Division	-----	16
Violations involved	-----	19
Sale to minors	7	Hindering investigation 1
Sale during prohibited hours	3	Licensee working while intoxicated 1
Conducting business as a nuisance	3	Permitting brawl on premises 1
Failure to close premises during prohibited hours	2	Purchase of shot gun by minor on premisses (local reg.) 1
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-----	30
Appeals	4	Eligibility 5
Disciplinary proceedings	18	Seizures 3
STATE LICENSES AND PERMITS ISSUED:		
Total number issued	-----	14,450
Licenses	4	Social affair permits 504
Solicitors' permits	17	Miscellaneous permits 374
Employment permits	437	Transit insignia 11,802
Disposal permits	44	Transit certificates 1,266
Wine permits	2	
OFFICE OF AMUSEMENT GAMES CONTROL:		
Licenses issued	102	
Enforcement files established	1	

JOSEPH P. LORDI
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: June 7, 1965

5. MORAL TURPITUDE - CONVICTION OF PETTY LARCENY (SHOPLIFTING) HELD NOT TO INVOLVE MORAL TURPITUDE - FALSE STATEMENTS IN APPLICATIONS FOR SOLICITOR'S PERMIT - DEFERRED EFFECTIVE DATE OF GRANTING NEW PERMIT.

Re: Eligibility No. 730

Applicant seeks an advisory opinion as to whether or not he is eligible to be associated with the alcoholic beverage industry in this State in view of a conviction of crime.

Applicant's criminal record discloses that he was convicted in a local magistrate's court on July 4, 1940, for violation of a municipal ordinance and on January 10, 1961, for petty larceny (taking merchandise valued at \$97.47 from a department store without paying for the same); that on his first conviction he received a ninety-day suspended sentence and on his second conviction he was placed on probation for one year and fined \$52 (paid).

The crime of petty larceny involves the element of moral turpitude (Raphalides v. N.J. Dept. of Civil Service, 80 N.J. Super. 407 (App.Div. 1963)) and by reason thereof the applicant was rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26. Applicant's conviction of violation of a municipal ordinance is not conviction of a crime.

At the hearing held herein, applicant (48 years old) testified that he had been convicted of the crime of larceny as above outlined; that for the past twenty-six years the Division has issued solicitors' permits to him; that in two of his applications for such permits filed with the Division in 1962 and 1963 he swore that he had never been convicted of any crime because he felt it would militate against his chances for being continued in his employment and that his then attorney had advised him it would not be necessary to disclose the aforesaid criminal conviction in his applications for permits in view of the nature of the offense; and that his 1963-64 solicitor's permit has been cancelled.

A report received by the Division from the local police director discloses that applicant's conviction on January 10, 1961, was based on a complaint that applicant, in company with a Mr. X, "did take merchandise valued at \$97.47 from a store without paying for the same;" that Mr. X is a part-time employee at the store; that Mr. X handed the merchandise to applicant and that applicant was apprehended outside the store.

Effective December 5, 1962, the State Legislature passed an act (Laws of 1962, ch. 178, N.J.S. 2A:170-97 et seq.), to wit:

"'Shoplifting' shall consist of any one or more of the following acts:

"a. For any person willfully to take possession of any merchandise offered for sale by any store or other retail mercantile establishment with the intention of converting the same to the use of such person without paying to the owner the value thereof."

N.J.S. 2A:170-98 states that any person found guilty of shoplifting, as the same is defined in section 1(a) of the act, is a disorderly person.

It appears from the aforesaid police report that the basis of the complaint on which applicant was convicted on January 10, 1961, comes within the four corners of section 1(a) above. In view thereof, it is my opinion that, if applicant had committed the particular offense for which he was convicted subsequent to December 5, 1962, he would in all probability have been prosecuted as a "shoplifter" under 2A:170-98.

Under the circumstances, it is recommended that applicant be advised that, in the opinion of the Director, he is not disqualified by statute because of said conviction from being associated with the alcoholic beverage industry in this State.

I cannot, however, ignore applicant's false statements in his applications for solicitor's permit. "Advice of counsel" is no excuse for violating the liquor regulations. Re Eva's Tavern, Inc., Bulletin 1037, Item 3.

Hence, I further recommend that, if a license or solicitor's permit is granted to applicant, such license or permit be not issued prior to June 15, 1965.

I. EDWARD AMADA,
ATTORNEY

Dated: May 11, 1965

APPROVED:

(sd) Joseph P. Lordi

JOSEPH P. LORDI
DIRECTOR

6. DISQUALIFICATION REMOVAL PROCEEDINGS - OPEN LEWDNESS - 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. 1909)

BY THE DIRECTOR:

Petitioner's criminal record discloses that on December 4, 1950, following a plea of non vult in the Criminal Judicial District Court of Bergen County to a charge of open lewdness, he was fined \$300 and placed on probation for three years. Since a conviction of the crime of open lewdness involves the element of moral turpitude (Re Elig. No. 583, Bulletin 688, Item 3), petitioner was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing held herein, petitioner (51 years old) testified that he is married and living with his wife; that for the past ten years he has lived in two neighboring municipalities; that he has been employed as a bartender on various licensed premises for the past twenty-six years and that, until recently when notified by the local police department, he did not know that he was ineligible for such employment.

Petitioner further testified that he is asking for the removal of his disqualification to be free to engage in the alcoholic beverage industry in this State and that, ever since his conviction on December 4, 1950, he has not been convicted of any crime or arrested.

Petitioner produced three character witnesses (a truck driver, a city fireman and a photographer) 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 there are no complaints or investigations presently pending against the petitioner.

The only hesitation I have to grant the relief sought herein is based on the fact that the petitioner, although disqualified, worked on licensed premises in this State. I am, however, favorably influenced by three factors -- (a) the testimony of his character witnesses, (b) the fact that petitioner's criminal record shows only one conviction of crime which took place about fifteen years ago, and (c) his sworn testimony that he was unaware of his ineligibility to be employed by a licensee. Knowledge of the law, moreover, is not an essential prerequisite to removal of disqualification in these proceedings. Re Case No. 1840, Bulletin 1577, Item 9.

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

Accordingly, it is, on this 18th day of May 1965,

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.

JOSEPH P. LORDI
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - ORDER TERMINATING SUSPENSION FOR BALANCE OF TERM ON PROOF OF CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Disciplinary Proceedings against
 CAUSEWAY INN, INC.
 t/a CAUSEWAY INN
 15 Jackson Street
 South River, N. J.
 Holder of Plenary Retail Consumption License C-34, issued by the Borough Council of the Borough of South River.

SUPPLEMENTAL ORDER

 Adler, Mezey & Pressler, Esqs., by Louis A. Mezey, Esq.,
 Attorneys for Licensee.
 Morton B. Zemel, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On April 19, 1965, I entered an order herein suspending the license for the balance of its term commencing on April 26, 1965, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the unlawful situation (undisclosed interest in the license) for lifting of the suspension on or after 2:00 a.m. May 21, 1965, after the license had been suspended for twenty-five days. Re Causeway Inn, Inc., Bulletin 1618, Item 5.

It appearing from verified petition submitted by the licensee that the unlawful situation has been corrected, I shall grant the petition requesting termination of the suspension.

Accordingly, it is, on this 12th day of May, 1965,

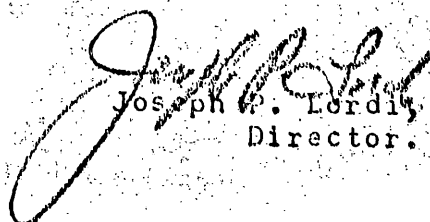
ORDERED that the suspension heretofore imposed herein be and the same is hereby terminated effective 2:00 a.m. Friday, May 21, 1965.

JOSEPH P. LORDI,
 DIRECTOR

8 STATE LICENSES - NEW APPLICATIONS FILED

F & A Distributing Company, 15 Pulaski Street, Bayonne, N. J.
 Application filed July 2, 1965 for place-to-place transfer of Plenary Wholesale License W-54 from 235 West First St. Bayonne, N.

Farber Distributing Corporation, 661 South 11th St. Newark, N.J.
 Application filed July 9, 1965 for person-to-person transfer of State Beverage Distributor's License SBD-118 from Sam Farber, Harry Farber and Norman Farber, t/a Farber Bros.



Joseph P. Lordi,
 Director.