

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2360

July 23, 1980

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - GREEN'S TWIN TREE, INC. v. HARRISON et al.
2. APPELLATE DECISIONS - P.A. LACE, INC. v. PASSAIC.
3. STATE LICENSES - NEW APPLICATIONS FILED.

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1. APPELLATE DECISIONS - GREEN'S TWIN TREE, INC. v. HARRISON et al.

#4377

Green's Twin Tree, Inc.,
A Corporation of New Jersey,

}

Appellant,

CONCLUSIONS

v.

}

AND

Mayor and Council of Harrison
& Samuel Paddy and Marie Paddy,

ORDER

Respondents.

}

Joseph F. McCarthy, Esa., Attorney for Appellant.
Walter R. Kennedy, Esq., Attorney for Respondent, Town of
Harrison.

Initial Decision Below

Hon. Gerald I. Jarrett, Administrative Law Judge

Dated: October 24, 1979

Received: October 25, 1979

BY THE DIRECTOR:

No written Exceptions to the Initial Decision were
filed by the parties pursuant to N.J.A.C. 13:2-17.14.

For the reasons hereinafter set forth, I reject
the conclusions of the Administrative Law Judge, and I shall
affirm the denial of appellant's application for a person-to-
person transfer by the Mayor and Council of the Town of
Harrison.

The issue herein is not, as determined by the
Administrative Law Judge, whether the prior activities of
William Green constitute crimes involving moral turpitude to
automatically disqualify him from acquiring a beneficial in-
terest in a liquor license (N.J.S.A. 33:1-25); but rather,
whether the respondent, in the reasonable exercise of its
discretion, could properly conclude that the individual in
question was not a reputable person who would operate the
licensed business in a reputable manner. See Narducci and
Testa v. Atlantic City, Bulletin 2305, Item 3; New Cotton
Club, Inc. v. Carteret, Bulletin 2217, Item 3; Irizarry v.

Passaic, Bulletin 2105, Item 2.

The Mayor and Council, in its judgment, felt that William Green did not satisfy this criterion. As indicated in its Answer, the issuing authority felt that he "did not possess a reputation for prudence and stability of temperament sufficient to allow the respondent to confer on him the privilege of holding a plenary retail consumption license within the town." In support of that conclusion it relied on a "driving while under the influence of alcohol" conviction, an assault and battery conviction, a disorderly persons offense conviction arising out of an act of violence, and a driving while on the revoked list conviction against William Green.

Given such background, I cannot conclude that a denial of licensure to such an individual constitutes a clear abuse of discretion, or arbitrary and capricious action on the part of the Mayor and Council. In such situations, my function is to affirm the determination below. Lyons Farm v. Municipal Board of Alcoholic Beverage Control, Newark, 55 N.J. 292 (1970); Biscamp v. Twp. Council of the Twp. of Teaneck, 5 N.J. Super. 172 (App. Div. 1949); Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946).

The responsibility for the administration of the alcoholic beverage laws relating to retail license transfer applications is primarily committed to municipal authorities, and, I will not substitute my judgment where reasonable support exists for the determination below. Margate Civic Assoc. v. Board of Commissioners, Margate, 132 N.J. Super. 58, 63 (App. Div. 1975).

Accordingly, it is, on this 5th day of December, 1979,

ORDERED that the action of the Mayor and Council of the Town of Harrison be and the same is hereby affirmed, and the appeal be and is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

APPENDIX

Initial Decision Below

In the Matter of:)
GREEN'S TWIN TREE, INC.) INITIAL DECISION
v.) OAL DKT. NO. ABC 2850-79
HARRISON)

Appearances:

Joseph F. McCarthy, Esq., Attorney for Petitioner

Walter Kennedy, Esq., Attorney for Respondent

BEFORE THE HONORABLE GERALD I. JARRETT, A.L.J.:

This is an appeal from an action of the Mayor and Council of the Town of Harrison, which by Resolution and Order dated June 6, 1979, denied the application for a person-to-person transfer of Plenary Retail Consumption License No. 0904-33-015-001 from Samuel and Marie Patty to Green's Twin Tree Inc., for the premises located at 418 Harrison Street, Harrison, New Jersey.

Upon the filing on July 6, 1979 of the Petition of Appeal to the Director of Alcoholic Beverage Control and the matter being forwarded to the Office of Administrative Law as a contested matter pursuant to N.J.S.A. 52:14F-1 et seq., the matter was set down for a hearing. Said matter was heard before the Honorable Gerald I. Jarrett on October 5, 1979 in the Freeholder's Meeting Room at the Hudson County Administration Building.

Appellant's appeal contends that Respondent denied Appellant's application without stating any reasons for denial; that it violated the due process in depriving Appellant of his constitutional rights; that Appellant meets every established criteria through its offices to hold such license and that the action of the Respondent in denying the transfer was arbitrary, capricious, discriminatory and without legal reason in law or in fact.

The Council contends that there was sufficient and competent evidence in the record to support the Resolution and asks that the license transfer be denied.

The City presented one witness, Chief Louis Saporito, Harrison Police Department, who stated that he made an investigation of the Appellant and was able to determine that William Green, President of the corporation, had been convicted of driving while under the influence of an intoxicating beverage in 1974 and assault and battery and disorderly persons violation, tearing a telephone from the wall of his mother-in-law's home in 1975. He stated that based upon these convictions he recommended to the Mayor and Council that the license not be transferred to the Appellant. He further stated that both applicants were young in age and therefore he felt that the establishment would not have the type of clientele he would desire.

The State rested its case and Appellant argued that the reasons stated by Chief Saporito were not sufficient to warrant the Mayor and Council to deny the person-to-person transfer of the plenary retail consumption license.

N.J.A.C. 13:2-14.1 states as follows:

"No licensee shall employ or have connected in any business capacity with the licensee any person who has been convicted of a crime involving moral turpitude unless the statutory disqualification resulting from such conviction has been removed by Order of the Director or such person has first obtained the appropriate rehabilitation employment permit from the Director."

N.J.S.A. 33:1-25 states in part that no license of any class shall be issued to any person under the age of 21 years or to a person who has been convicted of a crime involving moral turpitude. In the appeal of Schneider 12 N.J. Super. 449 it was stated that the liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner.

Black's Law Dictionary defines moral turpitude as an act of baseness, vileness, or the depravity in private and social duties which man owes to his fellow man, or to society in general contrary to the accepted and customary rule of right and duty between man and man.

I find as a fact that William Green, President of the Green's Twin Tree, Inc. was (1) convicted for driving while under the influence of an alcoholic beverage in 1974; (2) for assault and battery in 1975; (3) of a disorderly persons offense for tearing the telephone off the wall in his mother-in-law's home. I also find as a fact that (4) no other individual in the corporation, more specifically his brother Timothy Green, has been convicted of any offenses whatsoever.

After reviewing the case law, the testimony of the witnesses for the State, it is this Court's conclusion that the offenses for which Appellant, William Green, was convicted of do not involve moral turpitude. Operating a motor vehicle while under the influence of an intoxicating liquor, assault and battery and a disorderly persons offense do not involve moral turpitude and therefore is not a valid reason for denying Petitioner's application. In addition the age of the applicants should also not be a governing factor since such reasons for denial are a violation of our discrimination laws.

I find that the decision of the Mayor and Council of the Town of Harrison was arbitrary and capricious in denying Appellant a person-to-person transfer of Plenary Retail Consumption License No. 0904-33-015-001 and hereby Order that said license be transferred to the name of Green's Twin Tree, Inc.

This decision shall not become final until forty-five (45) days after agency receipt of this order unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10.

I HEREBY FILE with the Director of the Alcoholic Beverage Control Commission, Joseph H. Lerner, my Initial Decision in this matter and the record in these proceedings.

2. APPELLATE DECISIONS - P.A. LACE, INC. v. PASSAIC.

#4360

P.A. Lace, Inc.,
t/a The Palace Saloon,

Appellant,

v.

Municipal Board of Alcoholic
Beverage Control of the
City of Passaic,

Respondent.

CONCLUSIONS

AND

ORDER

Tencza & Konopka, Esqs., by Michael A. Konopka, Esq.,
Attorneys for Appellant.
Randolph A. Newman, Esq., Attorney for Respondent.

Initial Decision Below

Hon. Gerald I. Jarrett, Administrative Law Judge

Dated: October 24, 1979

Received: October 25, 1979

BY THE DIRECTOR:

No written Exceptions to the Initial Decision Below were filed by the parties pursuant to N.J.A.C. 13:2-17.14.

I am particularly concerned that the appellant herein has failed to conduct the licensed premises in an appropriate manner. The action by the Board, and the intervention and objections filed by the Passaic County Prosecutor, represents a meaningful effort to scrutinize liquor licensees and cull out those unfit for licensure.

However, I have carefully reviewed the entire record herein, including the transcript of the testimony, the exhibits and the Initial Decision and I concur in the findings and recommendations of the Administrative Law Judge and adopt them as my conclusions herein.

The specific incidents testified to on behalf of the respondent lack sufficient detailed elucidation to attribute same to the appellant, particularly the two stabbing incidents. The reports of the police submitted in evidence are not sufficiently definite to warrant a

conclusion of fact or law that the within premises are a "trouble spot." Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957).

The appellant herein is specifically admonished that the apparent inability to control its patronage will not be condoned by either the local issuing authority or this Division. If detailed, concise reported incidents are presented in any subsequent appeal to this Division establishing a continued lack of compliance with regulatory requirements or conduct amounting to a constant drain on municipal services in responding to incidents at the licensed premises, I would clearly find that the record adequately supports a revocation or non-renewal of license by the local issuing authority.

Accordingly, it is, on this 5th day of December, 1979,

ORDERED that the action of the Municipal Board of Alcoholic Beverage Control of the City of Passaic be and the same is hereby reversed; and it is further

ORDERED that said Board be and is hereby directed to renew the subject license for the 1979-80 license term in accordance with the application filed therefor.

JOSEPH H. LERNER
DIRECTOR

Appendix

Initial Decision Below

In the Matter of:)

P.A. LACE t/a THE PALACE SALOON)
vs. MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF PASSAIC)

INITIAL DECISION

OAL DKT. NO. ABC 2847-79

Appearances:

Michael A. Konopka, Esq., Attorney for Appellant,
P.A. Lace t/a The Palace Saloon

Randolph E. Newman, Esq., Attorney for Respondent,
City of Passaic

BEFORE THE HONORABLE GERALD I. JARRETT, A.L.J.:

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Passaic by Resolution and Order dated June 28, 1979, revoking Petitioner's Plenary Retail Consumption License No. 1607-33-096-001 for premises at 691 Main Avenue, Passaic, New Jersey. Said revocation was to become effective July 1, 1979. Upon the filing on June 28, 1979 of the Petition of Appeal, the Director of the Alcoholic Beverage Control granted a stay of the Order of Revocation pending the determination of this appeal.

Appellants contend that the action of the Council was arbitrary, capricious and not consistent with the evidence adduced. The Council, in its answers, indicate that Appellant received timely notice of the charges against it and that a full preliminary hearing was held in this matter at which time testimony was taken. They also contend that Appellant had a full opportunity to cross-examine the witnesses and present evidence. The Council therefore contends that there is more than sufficient and competent evidence on the record to support its Resolution and asks that the license revocation be affirmed.

This appeal was heard de novo on September 14, 1979. The City presented three witnesses, Detective Richard Wolak, City of Passaic, Detective Joseph Patti, City of Passaic and Investigator Edwin Syrek, Passaic County Prosecutors Office.

Detective Wolak testified that in March of 1978 he visited the premises of the Palace Saloon to investigate an allegation that prostitution was taking place on the premises. He stated that he went to the Palace Saloon on a Friday and Saturday night and spent approximately three or four hours there. He stated that he observed no evidence of prostitution but that when he entered the bathroom he observed crumbled tin foil on the bathroom floor and that based upon his background dealing with narcotics investigations he felt that there was narcotic trafficking taking place on the premises. He also testified that while seated at the bar he overheard conversations pertaining to drug sales and that said conversations were within hearing range of the employees of the premises. He also stated that on the two occasions that he visited the premises he did not observe any drug transactions taking place.

He concluded that the conversations involving drugs were freely taking place with the knowledge of the employees but he did not believe that they were directly involved in the drug discussions, sales or anything of that nature. He testified that on two occasions when he overheard drug conversations, a barmaid was within the vicinity of the first conversation and one of the owners was in the vicinity of the second.

Under cross-examination Detective Wolak stated that he did not arrest anyone with regard to the drug conversations he overheard because it is not illegal for persons to talk about narcotics. The officer, when questioned with regard to the lining of the bathroom shelves and walls, could not recall whether or not they were covered with tin foil.

Detective Joseph Patti testified that on April 29, 1978 he had an occasion to go to the Palace Saloon to investigate a stabbing. He testified that he observed an individual bleeding from the chest and back and that the individual expired. He testified that at the hospital he had an occasion to question the individual prior to his demise and he learned that he was stabbed inside the tavern and then shoved out the door whereupon he was involved in another incident outside the tavern. In addition he stated that a fight broke out inside the tavern and as a result of the fight he received the mortal wound.

He testified that he had occasion to be at the premises on a subsequent time when he was called by one of the owners who complained that a man was menacing people with a knife. He stated that when he arrived at the premise he was directed to the mens room where he found a man with a knife in his possession. He said he took the man out of the bathroom, retrieved the weapon from him, and because the owners did not desire to sign a complaint, released him. He testified, in addition, that there were numerous times that he was called as a backup unit for a disturbance at the premise. He stated that the types of disturbances he responded to were fights at the bar or disputes between the bouncers and the patrons of the bar.

Under cross-examination he testified that the individual involved in the stabbing was apprehended with the assistance of one of the bouncers from the bar. In addition he stated that he could not say with certainty that the individual was stabbed inside or outside bar but was only relying upon the information given to him by the deceased party. He stated that the only other occasion he had to enter the premise was when he was requested by one of the owners and managers of the tavern to respond to the incident involving the patron with the knife. He also testified that he had been to the premises in excess of 10 times but he could not state with certainty over what period of time it was that he had been there.

On redirect the officer testified that in his opinion as a police officer he felt that the tavern was a trouble spot.

Investigator Edwin Syrek testified that he is assigned to the Tavern Task Force of the Passaic County Prosecutors Office. He testified that he had investigated and was able to determine that the owners of the Palace Saloon have an interest in other liquor establishments. He stated that to his knowledge they have an interest in the Stage Coach Lucy and the King Henry VIII, which are both located within the City of Passaic. The investigator then offered into evidence documents which were marked S-1, Passaic Police Department Incident Reports and S-2, Newspaper clippings.

The Respondent then called Detective Richard Wolak for redirect, who testified that in his professional capacity he felt that the location was an eyesore to the City of Passaic and that the tavern should be abolished and no license be issued for that particular location. Under recross-examination he stated that he had no objection to the tavern being located at that premises but felt that it should be run differently.

The Appellant presented two witnesses, Richard Tikijian and Dennis Occhiuzzo, both are partners in the business.

Mr. Tikijian testified that he has owned 80% of the business for approximately four years. He testified that in September or October of 1978 his establishment was cited for lewd dancing by the State Division of Alcoholic Beverage Control and received a 60 day suspension of which they served 48 days for same. He testified that they never received any complaints from the City prior to their being denied a renewal of their license. He stated that he talked with the Town Attorney and the local Alcoholic Beverage Control Board who stated to him that they are attempting to reduce the number of licenses in the City and that he and approximately 15 other licensees were reviewed at renewal time. He testified with regard to the stabbing incident that it took place approximately 100-150 feet from the doorway of his bar, that nothing involved with regard to that matter took place in the bar. He stated that the bar was closed and cleared approximately five to ten minutes

prior to the incident and that it was his partner who informed the police of the disturbance. He stated that the occurrence was closer to 695 Main Avenue, which is a Chinese Food Restuarant, which also bears the name "Palace" in its title. He testified with regard to the assistance that their bar gave in that particular incident, that they had received an accomodation from the police department. He also testified that under normal operating procedures they begin clearing the bar approximately 20 to 25 minutes before 3:00a.m., according to the clock, and that the clock is approximately eight to 12 minutes fast. He also testified that whenever they have any disturbances they contact the police for assistance since they have no authorization to act as a policing authority even in their own premises.

Under cross-examintion he testified that to his knowledge they have had one fight in the bar. He also stated that he is at the bar approximately three to five times during the week. He testified that he is aware of three to five incidents that have occured outside the premises. He stated that he is not aware of any prostitution or narcotic violations taking place on the premises. He stated that he employes a diplomat and two go-go dancers, as well as persons who tend the bar.

Pertaining to the lewd charges he testified that the nature of these charges involved a dancer flashing her breast and allowing patrons to stuff tips into her G-string. He testified that he was not aware of any problems with regard to local Alcoholic Beverage Control Board until March of 1979 when he received a letter from the State Alcoholic Beverage Control Board that had been forwarded to him by the local Board. He testified that in 1978 they had approximately four to six incidents at the bar and in 1977 they had none.

Under redirect he testified that they use tin foil in the bathroom to line the shelves and walls for sanitary purposes. He testified that he requested an informal hearing with the local Alcoholic Beverage Board pertaining to the letter he received from the State Alcoholic Beverage Control Board in March of 1979. He stated he also requested a hearing with the County Prosecutors Office and that he was never afforded a meeting. He also stated that he was never informed that the premises had an alleged record of violence. In addition he stated that in speaking to the local Alcoholic Beverage Control Board they stated that they were pressured into forwarding the letter to the State Alcoholic Beverage Control Board by the County Prosecutors Office.

Mr. Occhiuzzo testified that there is a Chinese Restaurant down the street from their tavern called the Ding Ho Palace. He testified that it was he who called the police to report the stabbing and that he had observed the victim from within his premises. He also testified that he was present at the premises

on the night in question and nothing with regard to the incident took place in the bar. He stated he has been a partner with the Palace Saloon for the past four years and that the City has never brought any charges against them prior to this incident.

He stated with regard to the State Alcoholic Beverage Control Board that they had been brought up on lewd dancing charges for which they paid the penalty of a 48 day closing. He testified that he is normally on the premises six to seven days a week and that if there are any problems that they can not handle themselves they call the local police.

He testified that the premises have had property damage during the working hours as well as after hours and that the premises have been broken into and robbed on several occasions. He testified that he never heard any drug discussions taking place on his premises nor had he ever found any evidence of drug use. He testified that the police have been to his premises this year approximately three or four times as a result of individuals getting drunk and starting fights. He also testified that the police were at the premises approximately five times in 1978. He testified that there have never been any arrests for prostitution or drugs on or near the premises. He admits having an interest in the King Henry VIII but stated that he does not manage that particular property and only occasionally visits same.

Under cross-examination he testified that with regard to the stabbing incident he did not observe it to take place but observed the individual in question to be between the furniture store and the Palace Chinese Restaurant. He stated that the individual was leaning against a window and his legs were stretched out. He also testified that a crowd had gathered around the individual and that as a result of this he called the police. He testified that he was able to determine that the individual had been stabbed after the bouncer had gone outside and come back and informed him with regard to same. He testified that it was his bouncer that was the material witness to the crime and who helped the police to apprehend the assailant.

There was no additional testimony by any of the individuals in this matter.

After having observed all the witnesses for both sides and having considered the entire record, including the testimony and exhibits submitted in evidence, together with the arguments of counsel, the Court makes the following findings of fact:

1. That Petitioner, P.A. Lace, Inc., t/a The Palace Saloon, is the owner of Plenary Retail Consumption License No. 1607-33-096-001 for the premises located at 691 Main Avenue, Passaic, New Jersey.

2. The premise was closed for a period of 48 days in September 1978 for lewd, indecent and immoral acts as a result of a New Jersey Alcoholic Beverage Control investigation.

3. That no action has ever been taken against the licensed premise by the local Alcoholic Beverage Control Board.

4. That Appellants have never received any warning notice from the local Alcoholic Beverage Control Board with regard to the manner in which they operated their premise prior to this occasion.

5. That there was no evidence of prostitution on the premise.

6. That there was insufficient evidence for Detective Wolak to arrive at the conclusion that there was drug trafficking taking place on the premise.

7. That there have been numerous occasions that the police have responded to the premise as a result of drunk and disorderly patrons.

8. That there is insufficient evidence to conclude that the owners of the premise are improperly managing their establishment.

9. That there has only been one serious act of violence resulting in the death of an individual which may or may not have originated on the premise and that the Appellants received an accomodation from the local police department for their assistance in the matter and are now being penalized and held accountable for same by the local Alcoholic Beverage Control Board.

10. That the local Alcoholic Beverage Control Board acted arbitrary and capricious in revoking the license of the premises without ever having cited or taken any other formal action against the premise heretofore.

The grant or denial of an alcoholic beverage license rests in the sound discretion of the City Council in the first instance. In order for the Appellant to prevail he must show unreasonable action upon the part of the Council constituting a clear abuse of discretion. The burden of proof in establishing that the action of the Council was erroneous rests entirely with the Appellant and the decision of the City Council should not be reversed unless the Court finds as a fact there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the Council.

It is clear that the responsibility of the licensee to maintain his premise in an orderly and lawful fashion includes not only the conduct of the licensee, but also conditions not directly attributable to its conduct, but which conditions render continuance of a tavern in a particular location something that is against the public interest. The licensee is responsible for conditions both inside and outside his licensed premise that are caused by the patrons thereof. It is also clear that a licensing authority such as the City Council has a right to exercise discretion to determine what, in light of all the surrounding circumstances and conditions, is good for the City of Passaic.

I therefore CONCLUDE that there is insubstantial evidence in the record before me to support or justify the decision of the City Council of the City of Passaic and that they did not act in a reasonable exercise of its discretion in revoking the Plenary Retail Consumption License #1607-33-096-001 of the Palace Saloon, 691 Main Avenue, Passaic, New Jersey. I make this conclusion based upon the fact that no action has ever been taken against this licensee by the local board in the four years that the tavern has been in operation nor has the City's Alcoholic Beverage Control Board ever sent a warning to them with regard to the manner in which the premises were operated.

Accordingly, IT IS HEREBY ORDERED that the revocation of the license of the Palace Saloon by the City Council of the City of Passaic IS REVERSED.

This decision shall not become final until forty-five(45) days after agency receipt of this order unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10.

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, my Initial Decision in this matter and the record of these proceedings.

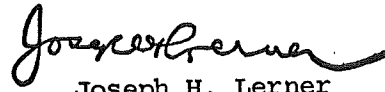
3. STATE LICENSES - NEW APPLICATIONS FILED.

General Beverage Company
t/a The Wine Spectrum
310 North Avenue, N.W.
Atlanta, Georgia

Application filed July 16, 1980
for wine wholesale license.

Kilmer Beverages Inc.
429 Joyce Kilmer Avenue
New Brunswick, New Jersey

Application filed July 17, 1980
for person-to-person and place-
to-place transfer of a state
beverage distributor's license
from Gerard Calabrese, t/a Haledon
Distributing Co., Rear 29 Mangold Street,
Haledon, New Jersey.


Joseph H. Lerner
Director