

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 2375

November 13, 1979

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STATE OF NEW JERSEY  
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BULLETIN 2375

November 13, 1980

1. SPECIAL RULING - IN THE MATTER OF THE PETITION FOR THE REMOVAL OF DISQUALIFICATION OF WILLIAM PFLAUMER.

In the Matter of  
REMOVAL OF DISQUALIFICATION  
PETITION OF WILLIAM PFLAUMER

CONCLUSIONS  
AND  
ORDER

-----  
Shanley and Fisher, Esqs., by L. Bruce Puffer, Jr., Esq.,  
Substituted Attorneys for William S. Greenberg, Esq.  
Mart Vaarsi, Esq., and Leonard Peduto, Esq., Deputies  
Attorney General, Appearing for Division.

Initial Decision Below

Hon. Jack Berman, Administrative Law Judge

Dated: November 8, 1979 - Received: November 16, 1979

BY THE DIRECTOR:

Written Exceptions to the Initial Decision were filed by the Petitioner, and written Answer thereto was submitted on behalf of the Division within the time periods of the extended statutory period in this proceeding, pursuant to N.J.S.A. 33:1-31.2.

The Petitioner was convicted in 1972 and 1974 of crimes of transporting improperly branded beer and corruptly endeavoring to influence, obstruct and impede the due administration of justice in violation of 26 U.S.C.A. § 5683 and 18 U.S.C.A. § 1503. That those offenses embodied elements of "moral turpitude" appeared virtually certain in any cursory review of the prior judicial determinations of the Courts and the Division of Alcoholic Beverage Control. See, DeMoura v. Newark, 90 N.J. Super. 225(App. Div.), cert. denied, 46 N.J. 605 (1966); State Bd. of Medical Examiners v. Weiner, 68 N.J. Super. 468, 483-484 (App. Div. 1961), aff'd 41 N.J. 56 (1963); Severini v. State, etc. Div. Alcoh. Bev. Cont., 82 N.J. Super. 1, 4 (App. Div. 1964); Re Kobylarz, Bulletin 688, Item 6; Re Application, Bulletin 2, Item 1.

Petitioner in this context, however, embarked upon a course of activity to acquire the stock of two existing New Jersey corporate Limited Wholesale licensees, culminating in April and May of 1976, a little less than three years before such individual could have applied for a disqualification removal pursuant to N.J.S.A. 33:1-31.2. The acquisition of

stock of an existing licensee in New Jersey does not require prior Division approval, nor does it permit prior Division investigation or review. The acceptance of the transfer of stock is a unilateral act by the transferee, who then notifies the Division of such fact by amendments to the existing license application (N.J.A.C. 13:2-2.14 and N.J.S.A. 33:1-34) and publication thereof (N.J.A.C. 13:2-15 and N.J.A.C. 13:2-16).

Because of the recognition of the concepts set forth in State of New Jersey, Div. of Alc. Bev. Control v. McNally, 91 N.J. Super. 513, 518 (App. Div.) cert. denied, 48 N.J. 605 (1966), the Division afforded Petitioner an eligibility hearing to determine whether, on the particular facts relating to his criminal convictions, the crimes involved moral turpitude. Neither this proceeding nor anything prior or subsequent thereto encompassed a recognition of the right of Petitioner to exercise an interest in an alcoholic beverage license in New Jersey.

On August 25, 1976, the Director ruled that the 1972 and 1974 offenses did involve moral turpitude. This determination, as well as other issues, raised in connection thereto, was affirmed by the Superior Court - Appellate Division, and the New Jersey Supreme Court. In re Disciplinary Proceedings Against Schmidt, et al., 158 N.J. Super. 595 (App. Div. 1978), aff'd in part, rev'd in part, 79 N.J. 344 (1979).

Since the Petitioner had, in effect, licensed himself by acquiring stock of an existing licensee, the only remedies available to the Division were: (a) to institute a disciplinary proceeding to cancel, suspend, or revoke the New Jersey Limited Wholesale licenses of C. Schmidt & Sons, Inc. and C. Schmidt & Sons, Inc. of New Jersey pursuant to the "due process" requirements of N.J.S.A. 33:1-31; and (b) to deny applications for renewal of these licenses and the issuance of a Limited Transportation License to Wm. H.P. Inc., of N.J. The legal proceedings attendant to these sole options available to the Division, and the subsequent appellate reviews by the Courts, encompassed a period of approximately two years and eight months.

In practical effect, the Petitioner "licensed himself" in May and April, 1976 and it took the Division over three years to "delicense" the three business entities the Petitioner owned outright as a designated stockholder or indirectly in a "subterfuge" arrangement.

I find it necessary to provide this overview so that a discussion of the Exceptions of the Petitioner or the Answer to the Exceptions submitted thereto do not obscure or confuse the general context under which the within application for disqualification removal must be viewed.

Petitioner, in his first two Exceptions to the Initial Decision argues that the findings that (1) the Director's Order of August 25, 1976 was self-executing, and (2) the Petitioner has not been law-abiding since January 29, 1974 because of his association with a licensee since August 25, 1976, are erroneous.

I concur in the Petitioner's argument in the first Exception only insofar as it constitutes a procedural recognition that the Declaratory Ruling of August 25, 1976 was not "self-executing". Although the Division indicated in its letter of June 11, 1976 that it expected the Petitioner to divest himself of his interests in the license upon such ruling, the only statutory remedy available to the Director at that time was a disciplinary proceeding pursuant to N.J.S.A. 33:1-31. In substance, however, the Declaratory Ruling of August 25, 1976 formally affirmed that the Petitioner was not qualified for licensure in New Jersey, not only from August 25, 1976 but from April and May of that year when he acquired the stock of the corporate licensees.

I reject the second Exception, as without basis in law or fact. Despite the various assertions that the Petitioner "voluntarily" disclosed information and, thereafter pursued his available legal remedies, or that the Division didn't act aggressively in this matter, the ultimate determinative fact is that, contrary to N.J.S.A. 33:1-25, the Petitioner exercised privileges in licenses, during a period in which he was not qualified. As noted in the Answer to Exceptions, the law is not that a person need not comply with a law until ordered to do so, but rather, the law exists and activity is unlawful from its inception.

In Petitioner's third and fourth Exceptions, he argues that his association with Wm. H. P. Inc. of N.J. was not a "subterfuge" or a "front"; and, specifically, that the references to "subterfuge" was not warranted in the Director's Conclusion and Order of March 10, 1977; and the "front" Division precedents cited by Judge Berman are not applicable sub judice. For the reasons set forth in the Answer to Exceptions which are incorporated herein by reference, I find these Exceptions to be without merit.

The withdrawal of applications for transportation licenses in April 1976 by two entities of which Petitioner was a record owner, the emergence of Wm. H. P. Inc. of N.J., in conjunction with the various lease agreements, and the contested nature of that licensure proceeding clearly support the categorization of that application as a "subterfuge." Had the procedure not been one of licensure, but rather, a disciplinary proceeding, the categorization of such activities as a "front" would have been clearly warranted. I find the "front" Bulletin determinations of this Division denying disqualification removal petitions appropriate and applicable. Supra, at page 7 and 8 of the Initial Decision.

Petitioner's fifth and sixth Exceptions are directed to findings No. 5 and 6 by the Administrative Law Judge. As provided in N.J.A.C. 13:2-15.3, the Division requires two character witnesses in a hearing to determine removal of the statutory criminal disqualification. Such requirement and the right to inquire into the reputation of the applicant is appropriate. The effect of a removal of disqualification is tantamount to a finding that the individual is entitled, absent other statutory provisions and disqualifications, to have an interest in a license.

It is a basic tenet of the Alcoholic Beverage Law that, in licensure, character inquiry is proper to ascertain whether the applicant is a reputable person who will operate the licensed business in a reputable manner. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946); Florence Methodist Church v. Florence Tp., 38 N.J. Super. 85 (App. Div. 1955); Narducci and Testa v. Atlantic City, Bulletin 2305, Item 3.

Whether I consider the testimony of the two witnesses appearing at the Division who attested to his good reputation in his "business" or the twelve character witnesses testifying before the Pennsylvania Liquor Authority who attested to his good reputation in 1976, or both, I agree with the finding of the Administrative Law Judge that Petitioner has "not shown that he has a good community reputation for honesty, integrity and good citizenship." Nor has Petitioner conducted himself in a law-abiding manner in New Jersey, as previously noted. Thus, I reject these Exceptions.

While not raised by specific Exception or in the Answer, I reject the finding of the Administrative Law Judge that the Petitioner's crimes cannot form a basis for denial of the disqualification petition, to wit, the theory that he had paid his penalty. The criminal offenses of Petitioner go to the

very heart of the alcoholic beverage industry, the integrity of the law and regulations of the appropriate governmental legislative and regulatory bodies, and reflect adversely on the moral character and fitness of the individual.

Where an individual exhibits a series of continual illegal activity arising out of the abuse of privileges of a liquor license, and then compounds the same by attempting to obstruct the system of justice, must such a disqualification removal petition be automatically approved merely because of a lapse of five years? If so, then the provisions of N.J.S.A. 33:1-31.2 requiring a finding that a person's "association with the alcoholic beverage industry will not be contrary to the public interest" is meaningless and rendered nugatory. I concur that no situation is susceptible to per se denial, but in the present posture, I do not hesitate for a moment in alternatively predicating a compelling denial of the within petition on this basis also.

While not provided for in Division regulations, the Petitioner filed a written Reply to the Answer to the Exceptions wherein Petitioner reiterated arguments in rebuttal which have been considered and resolved in my Conclusions and Order herein. Petitioner also attributes error to the alleged "late" filing of the Answer to the Exceptions.

Petitioner was afforded an extended time to file its Exceptions without objection by this Division. Fifty-one page written Exceptions, with voluminous exhibits, were submitted by Petitioner. The Deputy Attorney General who handled the matter left State service, and a substituted Deputy Attorney General was required to review the entire proceeding in preparing the said Answer. This was substantially for the same reason that Petitioner was afforded an extended time within which to file its Exceptions. In fairness, I see no basis to limit the Answer to Exceptions to five business days in this context, nor has Petitioner shown any prejudice in consequence of the time of filing the Answer to Exceptions.

Therefore, I reject the argument that I cannot consider the Answer to Exceptions filed on behalf of the Division.

The Petitioner has not demonstrated that he has been law-abiding for five years since his last disqualifying conviction on January 29, 1974.

Nothing in this Order precludes the citizens of New Jersey from availing themselves of the products of C. Schmidt & Sons, Inc. It was acknowledged that Schmidts beer could be sold to New Jersey customers without the Philadelphia brewery's wholesale license.

Thus, Pflaumer's Philadelphia brewery will still earn him a profit on his investment in New Jersey operations, according to the testimony, although the total profit may not be quite as large.

Finally, I conclude that Petitioner's association with the alcoholic beverage industry in New Jersey would be contrary to the public interest.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the legal memoranda and the summations of the parties, the Initial Decision, the written Exceptions filed thereto by Petition, and the written Answer thereto submitted on behalf of the Division, and the subsequent Reply to the Answer, I concur, except as heretofore noted, in the findings and conclusions of the Administrative Law Judge and adopt them as my conclusions herein.

Accordingly, it is, on this 29th day of January, 1980,

ORDERED that Petitioner's application for an Order lifting his statutory disqualification because of the conviction of crimes involving moral turpitude be and the same is hereby denied.

JOSEPH H. LERNER  
DIRECTOR

APPENDIX

INITIAL DECISION BELOW

In the Matter of: )

REMOVAL OF DISQUALIFICATION OF )  
WILLIAM PFLAUMER )

INITIAL DECISION

OAL DKT. NO. ABC 1561-79

Appearances:

William S. Greenberg, Esq., Attorney for  
Petitioner, William H. Pflaumer

Mart Vaarsi, Esq., Deputy Attorney General  
for Respondent, The Division of Alcoholic  
Beverage Control

BEFORE THE HONORABLE JACK BERMAN, A.L.J.:

On August 25, 1976, the Director of the Division of Alcoholic Beverage Control rendered a Declaratory Ruling that the 1972 plea of guilty by William H. Pflaumer (Petitioner) for unlawfully mislabelling beer (26 U.S.C. Sec. 5683) and the 1974 plea of guilty by Petitioner of Count Four of Ind. No. 73-646 for corruptly endeavoring to influence, obstruct and impede the due administration of justice (18 U.S.C.A. Sec. 1503) constituted crimes involving moral turpitude. Thereafter, Petitioner filed a petition for removal of the statutory disqualification pursuant to N.J.S.A. 33:1-31.2.

A hearing de novo was held on September 24, 1979 pursuant to the provisions of N.J.S.A. 52:14F-1 et seq.

The following exhibits were marked into evidence:

- J-1 Disqualification Petition of William Pflaumer
- J-2 I/M/O Application of William Pflaumer, Inc. of New Jersey, Superior Court of New Jersey, Appellate Division, Order staying proceedings dated March 16, 1977

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- J-3 Disciplinary Proceedings against Schmidt & Sons and C. Schmidt & Sons, Inc. of New Jersey, Superior Court of New Jersey, Appellate Division, Docket No. A442-76, Order staying proceedings dated March 16, 1977
- J-4 Indictment - U.S. v. William H. Pflaumer, U.S. District Court #73-646, Summary sheet (15 pages)
- J-5 U.S. District Ct. Indictment #70-697 True copy dated June 1, 1976 (7 pages)
- R-1 Declaratory Ruling dated August 25, 1976 re: Wm. Pflaumer, C. Schmidt & Son and C. Schmidt & Sons, N.J.
- R-2 Conclusion and Order of Joseph H. Lerner dated March 10, 1977 In re: William H. Pflaumer, Inc. of New Jersey
- R-3 Conclusion and Order of Joseph H. Lerner dated March 10, 1977 In re: C. Schmidt & Sons, Inc. of New Jersey and C. Schmidt & Sons, Inc.
- R-4 Supplemental Conclusion and Order dated March 29, 1979 In re: C. Schmidt & Sons, Inc. and C. Schmidt & Sons, Inc. of New Jersey
- R-5 Supplemental Conclusions and Order dated March 29, 1979 In re: William H. P., Inc. of New Jersey
- A-1 Decision of Supreme Court June 25, 1979 Sp'1 Term N.Y. In re: Schmidt & Son
- A-2 Letter dated November 12, 1977 from Dept. of Liquor Control to C. Schmidt & Sons enclosing Order of Chairman and Vice Chairman of Liquor Control of Ohio dated April 28, 1977
- A-3 Letter dated April 27, 1976 from the Commissioner of PA. Liquor Control Board to C. Schmidt & Sons
- A-4 Letter dated January 5, 1978 by Davis, Director Bureau of Tobacco of the Treasury of U.S. with order of Director reversing Regional Director

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- A-5 Three page letter dated June 11, 1976 from Director Lerner to Stern & Greenberg, Esqs.
- A-6 Application for Transportation License #614 William H. Pflaumer, Inc. June 8, 1976
- A-7 Certificate of Income of Wm. H. Pflaumer, Inc. of New Jersey
- A-8 Application for Transportation License by Wm. H. P., Inc. of N.J. dated May 17, 1976
- A-9 Letter dated June 15, 1976 from Greenberg to Lerner
- A-10 Transcript of proceedings - Alcoholic Beverage Control, Cranford, New Jersey Re: Eligibility hearing, William H. P., Inc., of New Jersey June 22, 1976
- A-11 Transcript dated July 26, 1976 Re: Wm. H. P. Inc. of New Jersey (ABC) testimony of Gilles & Rugero
- A-12 Transcript dated October 29, 1976 before Wm. Lovell - Hearing Examiner Re: Schmidt & Son, of New Jersey and William H. P. Inc., of New Jersey
- A-13 Statement of Chas. A. Gillan (4 pages ) dated June 7, 1976
- A-14 Statement of Ralph Ruggerio (3 pages) dated June 7, 1976
- A-15 Statement of William Pflaumer dated January 16, 1976 (3 pages)
- A-16 Fingerprint record dated June 26, 1979 re: William Pflaumer - no criminal record
- A-17 Letter dated September 10, 1976 to C. Schmidt & Sons, Inc. signed by Donald Newmark, Esq. for the Director of Alcoholic Beverage Control (3 pages)
- A-18 Letter to C. Schmidt & Sons, Inc. of New Jersey dated September 10, 1976 from Director Lerner by Donald Newmark, Esq. (3 pages)
- A-19 Letter to Greenberg dated September 10, 1976 from Alcoholic Beverage Control re: Application for Transportation of Wm. H. P. Inc., of New Jersey (1 page)

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A-20 Transcript before Penn. Liquor Control Board of proceeding held on April 26 and 28, 1976.

In April 1976 Petitioner obtained control of C. Schmidt & Sons, Inc. and C. Schmidt & Sons, Inc. of New Jersey, holders of New Jersey Limited Wholesale Licenses.

Thereafter, also in 1976, Petitioner sought a determination from the New Jersey Division of Alcoholic Beverage Control as to his eligibility to be associated with the alcoholic beverage industry in New Jersey.

By virtue of the August 25, 1976 Declaratory Ruling, Petitioner was rendered ineligible to hold a New Jersey Alcoholic Beverage license. No stay was sought of this order, which was self-executing and of immediate effect.

On September 10, 1976, disciplinary charges were filed against C. Schmidt & Sons and C. Schmidt & Sons, Inc. of New Jersey, alleging violation of N.J.S.A. 33:1-25 and N.J.S.A. 33:1-31(i) and N.J.S.A. 33:1-32, for the failure of Petitioner to terminate his connection with the licensees as required by the above statutes. On March 10, 1977, the Director found the two Schmidt companies guilty of the charges and ordered suspension of the two Schmidt licenses for the balance of their terms.

Previously, on July 26, 1976, a hearing was held on an application for a transportation license filed by an entity known as William H.P., Inc. of New Jersey. This application was rejected by the Director on March 10, 1977 in which it was determined that Petitioner held an undisclosed interest in William H.P., Inc. of New Jersey and that "the corporate arrangement here is obviously one with the intent of subterfuge."

On March 16, 1977, a temporary stay of the Director's Orders in the Schmidts' disciplinary matters and William H.P. Inc. of New Jersey was granted by the Honorable John W. Fritz, a judge of the Appellate Division, pending determination of the appeals from the Director's Order.

In 1978 the Appellate Division (a) affirmed the Director's determination that the criminal convictions of Petitioner involved moral turpitude, (b) affirmed the finding that "Pflaumer actually controlled Wm. H.P. Inc. " and (c) reversed the Director's determination that the Rehabilitated Convicted Offenders Act (R.C.O.A.) N.J.S.A. 20:16A-1 et seq. was not applicable to the ABC. In re Schmidt & Sons, 158 N.J. Super. 595 (App. Div. 1978).

On further appeal to the New Jersey Supreme Court, (In re Disciplinary Proceedings against Schmidt, 79 N.J. 344 (1979)) the Court affirmed the agency's determinations that (a) the two crimes at issue involved moral turpitude and (b) that William H.P.

Inc. of New Jersey was a "front for Pflaumer", 79 N.J. at 353. It reversed the Appellate Division holding that the R.C.O.A. was applicable to the A.B.C. Consequently, it affirmed the agency's determination that Petitioner was ineligible to hold an alcoholic beverage license.

At the hearing before this Court, Petitioner offered three witnesses and introduced into evidence the transcript of proceedings held April 26 and 28, 1976 before the Pennsylvania Liquor Control Board.

The three witnesses were William T. Elliot, President of C. Schmidt & Son, Inc., Robert L. Welty, highest in-house legal officer of Schmidt's and William H. Pflaumer, the Petitioner.

Mr. Elliot has known the Petitioner for 17 years. He stated that he has worked closely with Petitioner and has the highest regards for Petitioner's business ability and moral character. He stated that Petitioner has established through Schmidt's a charitable foundation which has donated over \$250,000 to various charities. He testified that he has observed Petitioner frequently giving people looking for assistance money out of his own pocket without any expectation of ever getting it back. One incident in particular was described wherein Petitioner sent a plane to pick up one of his employees who was injured in a motorcycle accident while on vacation in Florida.

Mr. Elliot testified that Petitioner is a person of good character and a person who has real concern for his fellow man.

Robert Welty testified that he has known Petitioner for 10 years and that Petitioner has an excellent reputation as being a peaceful, law-abiding, honorable and honest citizen.

A review of the transcript of proceedings before the Pennsylvania Liquor Control Board in April 1976 reveals that 12 character witnesses consisting of two bankers, a union leader, Petitioner's former probation and parole officer, two employees, three wholesale beer distributors, a real estate broker, a member of the Philadelphia Police Force and a neighbor, who knew the reputation of Petitioner in the financial, labor, business, charitable and neighborhood communities, testified as to Petitioner's excellent reputation for honesty, integrity, truthfulness and responsible citizenship.

Respondent did not offer any witnesses to counter the testimony of Petitioner's witnesses.

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Therefore, based on a review of the entire record in this matter, THE COURT FINDS:

1. On August 25, 1976, the Director of the Division of Alcoholic Beverage Control determined that Petitioner pled guilty to crimes in 1972 and 1974 involving moral turpitude and was therefore rendered ineligible to hold a New Jersey alcoholic beverage license.

2. On March 10, 1977, the Director of the Division of Alcoholic Beverage Control determined that Petitioner held an undisclosed interest in Wm. H.P., Inc. of New Jersey and that the corporate arrangement is "obviously one with the intent of subterfuge".

3. More than five years have elapsed from the date of the last conviction of a crime involving moral turpitude.

4. Petitioner has not been law-abiding since January 29, 1974 in that he continuously has been associated with a licensee since August 25, 1976 wherein the Director of the Alcoholic Beverage Control rendered Petitioner ineligible to be associated with the alcoholic beverage industry and in having the application of Wm. H.P., Inc. of New Jersey filed as a "front" to hide his true interest in the applicant corporation.

5. Petitioner has not shown that he has a good community reputation for honesty, integrity and good citizenship.

6. Petitioner's association with the alcoholic beverage industry will be contrary to the public interest.

The relevant removal of disqualification statute is N.J.S.A. 33:1-31.2 which states:

"Any person convicted of a crime involving moral turpitude, may after the lapse of five years from the date of conviction, apply to the Commissioner for an order removing the resulting statutory disqualification from obtaining or holding any license or permit under this chapter. Whenever any such application is made and it appears to the satisfaction of the Commissioner that at least five years have elapsed from the date of conviction, that the applicant has conducted himself in a law-abiding manner during that period and that his association with the alcoholic beverage industry will not be contrary to the public interest, the Commissioner may, in his discretion and subject to rules and regulations, enter an order removing the applicant's disqualification from obtaining or holding a license or permit because of the conviction.

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On and after the date of the entry of such order, the person therein named shall be qualified to obtain and hold a license or permit under this chapter, notwithstanding the conviction therein referred to, provided he is, in all other respects, qualified under this chapter."

It is the Respondent's position that since Petitioner failed to divorce himself from his association with Schmidts subsequent to the Director's Declaratory Ruling of August 25, 1976 which rendered Petitioner "ineligible to hold a New Jersey alcoholic beverage license" that Petitioner is not considered to have "conducted himself in a "law-abiding manner". Respondent cites the statement of former Governor, (then Commissioner) Driscoll that:

"The use of the words 'law-abiding manner' by the legislature is, in my opinion, significant. It is evident that the legislature intended to required not only that the Petitioner's record be free from technical criminal convictions during the required period, but also that his standard of conduct during the period be such as to permit the Commissioner to find that, in general, he had lived in a 'law-abiding manner'." Bulletin 597, Item 7 (1943).

It is the opinion of the Court that during the required period Petitioner did not live in a law-abiding manner in that he has conducted his association with Schmidts contrary and in violation of the Director's Ruling. This Court observes that from the date of the Director's Declaratory Ruling up until the Supreme Court's decision this year affirming the Director's Ruling, Schmidts obtained stays of all proceedings but for seven months (August 26, 1976 to March 10, 1977). It is to be noted that at every stage of the Appeal proceedings the Director's ruling was upheld.

Likewise the statute (N.J.S.A. 33:1-31.2) has always been construed to bar removal of the disqualification of one who continues his association with the liquor industry after being advised of his ineligibility to do so. Bulletin 1323, Item 13 (1960); Bulletin 921, Item 11 (1951); Bulletin 334, Item 6 (1939); Bulletin 968, Item 13 (1953); Bulletin 861, Item 3 (1949); Bulletin 860, Item 8 (1950); Bulletin 921, Item 11 (1951); Bulletin 1323, Item 13 (1960); and Bulletin 1025, Item 2 (1954).

Administrative interpretation of a statute is entitled to great weight and is a substantial factor to be considered in its construction by a reviewing court. Feper v. Princeton University Bd. of Trustees, 77 N.J. 55 (1978).

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Respondent further states that by the very nature and seriousness of the crimes committed by Petitioner, he should not be entitled to have his disqualification removed. Respondent asserts that "the crimes of which Pflaumer was convicted go to the heart of his suitability or lack thereof to hold an alcoholic beverage license". This Court does not minimize the seriousness of the crimes to which Petitioner pled guilty, but feels that Petitioner has paid his penalty for them in full and that to debar him from having an alcoholic license indefinitely would be contrary to the intent and purpose of the "removal" statute. The Court refers Respondent to the myriad of Bulletins cited in Petitioner's brief where removal of disqualifications were achieved for crimes committed far more serious than those committed by the Petitioner. The statute does not designate certain types of crimes committed as not qualifying for removal of the disqualification. Nor will this Court disregard the law-abiding manner in which an individual conducts himself because, per se, he committed certain types of crimes. The statute will be applied in its entirety based on all facts and circumstances presented to the Court.

Respondent's argument that Petitioner be denied licensure because the Director found on March 10, 1977 that Petitioner held an undisclosed interest in William H.P., Inc. and that "the corporate arrangement here is obviously one with the intent of subterfuge" and is a "front" for Pflaumer, is convincing to this Court.

It has long been held that one who seeks to hide his beneficial interest in a liquor license or aid and abet others to act as a front for his interest, may not have his disqualification removed. Bulletin 1545, Item 4 (1963); Bulletin 397, Item 4 (1940); Bulletin 352, Item 13 (1939); Bulletin 513, Item 1 (1942); Bulletin 890, Item 4 (1950); and Bulletin 880, Item 11 (1950).

Pflaumer's action both in having the application of William H.P., Inc. of New Jersey filed as a "front" to hide his true interest in the applicant corporation and his action in continuing his association with the two Schmidt corporations, in blatant and willful violation of the Director's ruling holding him ineligible for licensure, plainly demonstrates that he has not conducted himself in a law-abiding manner.

Petitioner has failed to show that he has a good reputation in his community for honesty, integrity, truthfulness and responsible citizenship. His two witnesses, employees of Petitioner, attested to his good reputation in Petitioner's business. ~~The twelve character witnesses who testified before the Pennsylvania Liquor Authority in 1976 attested to the Petitioner's reputation at that time, not for the five years following Petitioner's convictions of crimes involving moral turpitude. No independent character witnesses who~~

could attest to Petitioner's good reputation in the community since 1974 until the present were presented to the Court.

Therefore, THE COURT CONCLUDES that Petitioner has not met his burden of proof of each of the elements of Section 33:1-31.2 of the New Jersey Statutes: more than five years have elapsed from the date of the last conviction of a crime involving moral turpitude, he has not been law-abiding for at least five years, and his association with the alcoholic beverage industry will be contrary to the public interest. It is therefore ORDERED that Petitioner's disqualification from obtaining or holding a license or permit because of his convictions NOT BE REMOVED. Accordingly, the Petition is DISMISSED.

This action cannot be effected prior to the effective date of this order, which is forty-five (45) days from the date of 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.

THE COURT HEREBY FILES with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, its Initial Decision in this matter and the record of these proceedings.

- 2. DISCIPLINARY PROCEEDINGS - LICENSEE PLEADED NON VULT TO CHARGES - PREDECESSOR IN INTEREST FAILED TO DISCLOSE THAT OTHERS HAD AN INTEREST IN THE LICENSE AND FAILED TO KEEP TRUE BOOKS OF ACCOUNT and HINDERED AN INVESTIGATION - LICENSE SUSPENDED FOR 56 DAYS.

In the Matter of Disciplinary Proceedings against

Sebastian Arnone  
501 Garden Street  
Hoboken, N.J. 07030

Holder of Plenary Retail Consumption License No. 0905-33-039-002 issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.

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Robert S. Eisenberg, Esq., Attorney for Licensee.

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S-12,459  
H-7179-145  
X-53,783  
CONCLUSIONS

AND  
ORDER

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that, from on or about March 3, 1979, his predecessor-in-interest, Desmond Ferrante, failed to disclose that Gail Burke and Raymond Burke had an interest, directly or indirectly, in the license, and that the licensed business had been leased to them, such evasion and suppression of material facts being in violation of N.J.S.A. 33:1-25; that, from on or about March 3, 1979 to June 30, 1979, his predecessor-in-interest knowingly aided and abetted Gail Burke and Raymond

Burke to exercise, contrary to N.J.S.A. 33:1-26, the rights and privileges of his plenary retail consumption license, in violation of N.J.S.A. 33:1-52; that, from on or about March 3, 1979 to date, his predecessor-in-interest failed to have and keep a true book or books of account in connection with his licensed business, viz., a record of all monies invested in the licensed business and the source of all such investments, of all monies received and a record of the source of all monies expended from his receipts and the name of the person receiving such monies and the purpose for which such expenditures were made, in violation of N.J.A.C. 13:2-23.-32; and that, from on or about July, 1979 to date, his predecessor-in-interest directly or indirectly, failed to facilitate, hindered, delayed, caused the hindrance and delay and attempted to hinder, delay and cause the hindrance and delay of an investigation of his licensed business, viz., he failed to fully comply with the requests made to him concerning his licensed business; in violation of N.J.A.C. 13:2-23.30.

The predecessor-in-interest conveyed his interest in the licensed premises to the licensee by agreement dated November 9, 1979, on which date the licensee received the Notice of Charges. The agreement states that monies deposited thereunder are to be held in escrow pending final action by the Director on the charges. Thus, the licensee had knowledge of the said charges, and was not an innocent purchaser.

Licensee has a prior record of thirty-two days suspension, effective June 15, 1978 for "refilled" bottles.

The license will be suspended sixty-five days on the charges herein, to which will be added five days for the prior dissimilar violation within the past five years, with remission of fourteen days for the plea entered, leaving a net suspension of fifty-six days.

Accordingly, it is, on this 5th day of February, 1980,

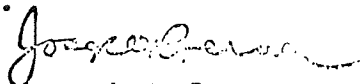
ORDERED that Plenary Retail Consumption License No. 0905-33-039-002 issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Sebastian Arnone for premises 501 Garden Street, Hoboken, New Jersey be and the same is hereby suspended for fifty-six (56) days commencing 2:00 a.m. on Tuesday, February 19, 1980 and terminating 2:00 a.m. on Tuesday, April 15, 1980.

JOSEPH H. LERNER  
DIRECTOR

3. STATE LICENSES - NEW APPLICATIONS FILED.

The Thirst Quencher, Inc., 1066 Ringwood Ave., Wanaque, N. J.  
Application filed October 24, 1980 for state beverage distributor's license.

Massie Simms Associates, Inc., 213 King Street, Hackensack, N. J.  
Application filed October 21, 1980 for transfer of a plenary wholesale license from 691A Clifton Ave., Clifton, N. J.

  
Joseph H. Lerner  
Director