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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 769 JUNE 30, 1947.

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ITEM

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 769 JUNE 30, 1947

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

In the Matter of Disciplinary Proceedings against

WILLIAM L. RAMSEY and MARY M. RAMSEY
T/a ACE HIGH CAFE
208 Main Street
Dover Township
P.O. Toms River, N. J.,

Holder of Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Dover.

CONCLUSIONS AND ORDER

William L. Ramsey and Mary M. Ramsey, Defendant-licensees, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants pleaded guilty to a charge alleging that they sold, served and delivered alcoholic beverages to three minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

On Friday, May 23, 1947, three minor sailors, each eighteen years of age, were served alcoholic beverages by the defendants' bartender. During the two and a half hours between 11:00 p.m. and 1:30 a.m. that the minors remained at the premises, two of them had about seven glasses of beer and the other had about ten glasses of beer.

The bartender admitted the service in a written statement, in which he further stated that he "just did not pay enough attention" to the minors.

The attendant circumstances, including the number of minors involved and the amount of beverages served, warrants the imposition of a fifteen-day penalty instead of the ten-day penalty imposed for the usual unaggravated violation of sale to a minor where there is no previous record. Five days will be remitted for the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 17th day of June, 1947,

ORDERED that Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Dover to William L. Ramsey and Mary M. Ramsey, t/a Ace High Cafe, for premises 208 Main Street, Dover Township, P.O. Toms River, N. J., be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 23, 1947; and it is further

ORDERED that if any license be issued to these licensees or any other person for the premises in question for the 1947-48 fiscal year, such license shall be under suspension until 2:00 a.m. July 3, 1947.

ERWIN B. HOCK
Commissioner.

2. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATE FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON REOPENING OF BUSINESS.

In the Matter of Disciplinary Proceedings against

OVER-LOOK HOTEL, INC.
Portland Road & Highland Ave.
Highlands, N. J.,

Holder of Plenary Retail Consumption License C-23 issued by the Borough Council of the Borough of Highlands.

ORDER

BY THE COMMISSIONER:

It appearing that by Order dated November 20, 1946, defendant's license was suspended for a period of ten days, and that the effective dates of said suspension were not fixed because the premises were closed (Re Over-Look Hotel, Inc., Bulletin 739, Item 3), and

It further appearing that defendant's premises have been reopened for business;

It is, on this 18th day of June, 1947,

ORDERED that the ten-day suspension heretofore imposed herein shall commence at 2:00 a.m. June 23, 1947, and terminate at 2:00 a.m. July 3, 1947.

ERWIN B. HOCK
Commissioner.

3. APPELLATE DECISIONS - NEW JERSEY TAVERN ASSOCIATION ET AL. v. WHITE TOWNSHIP AND WASHBURN.

NEW JERSEY TAVERN ASSOCIATION and WARREN COUNTY TAVERN ASSOCIATION,

Appellants,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WHITE, and FREDERICK A. WASHBURN, trading as WILDWOOD,

Respondents

ON APPEAL

ORDER

William C. Egan, Esq., Attorney for Appellants.
Wilbur M. Rush, Esq., Attorney for Respondent Township Committee.
Harry Runyon, Esq. and Saul N. Schechter, Esq., Attorneys for Respondent Frederick A. Washburn.

BY THE COMMISSIONER:

This is an appeal from the action of respondent Township Committee on December 6, 1946, whereby it issued a plenary retail consumption license to respondent Frederick A. Washburn for premises on Route 6, Manunka Chunk, White Township.

Prior to the hearing scheduled to be held herein, the attorney for appellants advised me that his clients desire to withdraw said appeal.

No reason appearing to the contrary,

It is, on this 18th day of June, 1947,

ORDERED that the appeal herein be and the same is hereby discontinued.

ERWIN B. HOCK

4. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL PARTS AND MOTOR VEHICLE FOUND THEREWITH ORDERED FORFEITED - OWNER OF VEHICLE FAILED TO ESTABLISH HIS GOOD FAITH AND UNKNOWING VIOLATION OF THE LAW - BOND POSTED BY OWNER TO SECURE RETURN OF MOTOR VEHICLE ENFORCED - PADLOCKING WAIVED.

In the Matter of the Seizure on November 26, 1946, of various still parts and a Chrysler coupe at 11-13 West 53rd Street, in the City of Bayonne, County of Hudson and State of New Jersey.	Case No. 7075 ON HEARING CONCLUSIONS AND ORDER

James F. McGovern, Esq., Attorney for Spedito DeLuca and Anileo DeLuca.
Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 2 of the Revised Statutes, to determine whether various still parts and a Chrysler coupe, seized on November 26, 1946 at 11-13 West 53rd Street, Bayonne, New Jersey, constitute unlawful property and should be forfeited and whether I should proceed to enforce the obligation of a certain bond, given to secure the return of the motor vehicle to Spedito DeLuca, and further, to determine whether the premises should be padlocked.

It appears that a Bayonne police officer, who had Spedito DeLuca and his Chrysler coupe under surveillance, observed DeLuca in conversation with the driver of a truck which was parked at premises where he suspected there was an illicit still.

Accordingly, on November 26, 1946, ABC agents accompanied Bayonne police officers to 11-13 West 53rd Street, Bayonne, the address on the motor vehicle registration of the Chrysler coupe, to check on the activities of DeLuca there. A two-family dwelling and a garage are on the premises. Anileo DeLuca, father of Spedito DeLuca, is the owner of such premises and occupies one apartment, and Angello Bellero, son-in-law of Anileo DeLuca, occupies the other apartment.

The officers identified themselves to Mrs. Bellero and Anileo DeLuca and told them they were checking Spedito DeLuca's activities, whereupon Mrs. Bellero and Anileo DeLuca consented to the search of the cellar of the building. On making such search the officers observed various still parts in a locked bin or shed in the cellar. Both Anileo DeLuca and Mr. Bellero, who had arrived at the scene, claimed they did not have the key for the lock.

Accordingly, two of the officers left and obtained a search warrant while the other two officers remained at the premises. When the officers returned with the warrant, they removed the lock of the bin or shed and there found four sections of copper columns and 17 copper column baffles, and some tools owned by Mr. Bellero. Both Anileo DeLuca and Mr. Bellero disclaimed ownership of the still parts or even knowledge that they were stored there. Anileo DeLuca said that his son Spedito visited the cellar from time to time and had last been there the previous week.

The officers had also gone to the garage, where they found Spedito's Chrysler coupe. In the trunk of the car was an empty 5-gallon can with an odor which indicated that it had contained an alcoholic liquid.

The ABC agents then seized the still parts, the automobile and the 5-gallon can, and arrested Anileo DeLuca and Angello Bellero on charge of possessing unregistered still parts. Thereafter, Spedito DeLuca was also arrested on the same charge, at which time he likewise disclaimed ownership of the still parts, knowledge that they were in his father's dwelling, or that he had recently visited the cellar.

After the seizure and pending seizure hearing, Spedito DeLuca obtained the return of the motor vehicle on posting in its stead a surety bond made by himself, as principal, and the National Surety Corporation, as surety, to the State Commissioner of Alcoholic Beverage Control.

When the matter came on for hearing pursuant to R.S. 33:2-4, Spedito DeLuca appeared with counsel and requested to be relieved of forfeiture of the motor vehicle and that enforcement of the bond be waived. In addition, application was made on Anileo DeLuca's behalf that padlocking be waived.

The still parts were not registered with the State Commissioner of Alcoholic Beverage Control as required by R. S. 33:2-1. Hence, such still parts and the motor vehicle seized therewith on the premises constitute unlawful property and are subject to forfeiture. R. S. 33:2-5. The use made, or intended to be made, of the automobile is immaterial. Re Tricoli, Bulletin 164, Item 9. The cases on this subject in the Federal courts, referred to by counsel, are not controlling. In any event, there cannot be any contention that the motor vehicle is not related to the illicit still activities because such motor vehicle is obviously adaptable for use in the transportation of the illicit still parts. Hence, there cannot be any question that the motor vehicle is subject to forfeiture on that account. See Patrick v. Driscoll, 132 N. J. L. 478. In addition, the premises are subject to padlocking.

Under the provisions of R. S. 33:2-7, I have the discretionary authority to return seized or forfeited property to a person who has established to my satisfaction that he acted in good faith and unknowingly violated the provisions of the law.

I have not received any satisfactory explanation as to who was responsible for the presence of the illicit still parts in the cellar of the building. Each of the parties involved disclaims any knowledge concerning the matter. Obviously, one or more of these persons knows how the still parts came to be there. At the hearing Mrs. Antonette Rozniak, a daughter of Anileo DeLuca, at one time said her father frequently went to the dump and must have placed the still parts in the cellar. At another time she quoted her father, who was unable to be present because of illness, as saying that he had found the still parts on the dump. This is equally absurd inasmuch as the still parts are brand new.

The unexplained presence of the illicit still parts, the conflicting stories as to when Spedito DeLuca last visited the cellar and the empty 5-gallon can, of the type commonly used to transport illicit alcoholic beverages, combine to form a picture which is highly suspicious of illicit still activities. To suspect that Spedito DeLuca engaged in such activities is to deny him relief from forfeiture because it inevitably leads to the conclusion that he has not established, to my satisfaction, that he acted in good faith and was quite unaware that the still parts were in the dwelling when he parked his car in the garage even though, according to the evidence presented on his behalf, his background is otherwise clear of any liquor law violations.

Padlocking is a matter left to my discretion. R. S. 33:2-5. It is evident that the still parts were merely stored in the cellar; there was nothing to indicate that the place was to be used for the manufacture of illicit beverages. Anileo DeLuca has owned the premises and occupied the second-floor apartment for 35 years. He is 76 years of age and in ill health. He does not own any other dwelling and is supported by his children. Bellero, the tenant of the first floor, pays his father-in-law a monthly rental of $25.00. Neither DeLuca nor Bellero appear to have any previous record of bootlegging. These circumstances and the current housing shortage influence me to waive padlocking.

Consequently, I shall enforce the obligation of the parties to the bond to pay to the State Commissioner of Alcoholic Beverage Control the full retail value of the Chrysler coupe, for the use of the State.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" hereinafter set forth, constitutes unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:2-5 and that all of such property, excepting the Chrysler coupe, which was returned under bond, be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the State Commissioner of Alcoholic Beverage Control; and it is further

ORDERED that the application of Spedito DeLuca to be relieved from his obligation on the bond be and the same is hereby denied.

ERWIN B. HOCK
Commissioner.

Dated: June 16, 1947.

SCHEDULE "A"

4 - sections of copper column
17 - copper column baffles
1 -empty 5-gallon can
1 - Chrysler coupe - 1941 - Serial No. 7716450, Engine No. C 28104273, 1946 N. J. reg. IA-32-M

5. APPELLATE DECISIONS - DERSCH v. EAST GREENWICH.

WILLIAM H. DERSCH,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF EAST GREENWICH,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

John J. Kitchen, Esq., Attorney for Appellant.
Lynwood Lord, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's refusal to grant appellant's application for a plenary retail consumption license for premises at the southeast corner of Salem Avenue and Tomlin Road, East Greenwich Township.

The appellant formerly held a consumption license for premises located in an entirely different section of the municipality than where he presently proposes to locate. He disposed of his property during the 1945-46 licensing year and permitted the license which he then held to lapse on June 30, 1946. In March 1947, after purchasing another parcel of land in the township, he filed his present application, accompanied by plans and specifications of a building not yet constructed. The instant application, therefore, is not one for a renewal, but one for a new license. See R. S. 33:1-96.

The application was denied by the unanimous vote of the three members of the Committee. Two of these members testified at the hearing and stated that there was no public need for a licensed establishment at appellant's proposed site. The appellant's premises are situated in a completely isolated area, the nearest concentration of residences or businesses being two and a half miles distant. In addition to the objection to the location, the chairman of the Township Committee testified that an additional consumption license at the location in question would necessitate an increase in the present limited police force of the municipality.

Under the recited facts, respondent's determination appears neither unreasonable nor arbitrary and, therefore, is affirmed.

Accordingly, it is, on this 20th day of June, 1947,

ORDERED that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 25 DAYS - CHARGES AS TO FALSE STATEMENTS AND FRONT DISMISSED.

In the Matter of Disciplinary Proceedings against FRANK DAILEY'S MEADOWBROOK, INC. T/a THE MEADOWBROOK Pompton Avenue Cedar Grove, N. J., Holder of Plenary Retail Consumption License C-6 issued by the Board of Commissioners of the Township of Cedar Grove; -and- FRANK DAILEY'S MEADOWBROOK, INC. T/a FOUR TOWERS Pompton Avenue Cedar Grove, N. J., Holder of Plenary Retail Consumption License C-7 issued by the Board of Commissioners of the Township of Cedar Grove.	CONCLUSIONS AND ORDER

Edward R. McGlynn, Esq. and M. Harold Higgins, Esq., Attorneys for Licensee.

Emerson A. Tschupp, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleads not guilty to thirteen charges which may be summarized as follows:

(1) That at its premises known as "The Meadowbrook", on various dates, it sold alcoholic beverages to various minors, in violation of R. S. 33:1-77 (Meadowbrook charges 1 to 6);

(2) That at its Meadowbrook premises, it allowed, suffered and permitted the sale, service and delivery of alcoholic beverages to those minors and consumption of such beverages by those minors, in violation of Rule 1 of State Regulations No. 20 (Meadowbrook charge 7);

(3) That it falsified its applications for licenses for The Meadowbrook and Four Towers premises by failing to disclose that Frank Dailey was the real and beneficial owner of the licensed business, notwithstanding his holding of only 1/3% of the corporate stock, in violation of R. S. 33:1-25 (Meadowbrook charge 8; Four Towers charge 1);

(4) That it falsified its applications for licenses by listing Margaret Wikstrom as the holder of 98% of its corporate stock, whereas Frank Dailey was the real owner of all of said stock, in violation of R. S. 33:1-25 (Meadowbrook charge 9; Four Towers charge 2);

(5) That it aided and abetted Frank Dailey to exercise the privileges of its licenses, in violation of R. S. 33:1-26 and R. S. 33:1-52 (Meadowbrook charge 10; Four Towers charge 3).

At the outset it should be stated, in fairness to the licensee, that these alleged violations occurred during the fiscal year ending June 30, 1942, and in connection with its applications for licenses for that year. It will be recalled that one of the minor incidents of the war in which our nation was then engaged was gasoline rationing and resulting restriction of travel. As a result of these and other war-connected factors, both of defendant's licensed premises mentioned in these proceedings were closed because of their suburban location. To have decided this case during that period might well have proved an empty gesture since no one knew when, or even if, the lights would go on again. They have now; business has resumed; disposition of these charges will now be made.

With respect to the charges involving sale to minors, the prosecution produced eight minors (a charge as to the ninth being nolle prossed because of his unavailability as a witness) ranging in age from fifteen to twenty years. All testified that they had been served or had consumed alcoholic beverages at The Meadowbrook on various dates between October 1941 and March 8, 1942. It was established that on the latter date four high school girls, one aged fifteen, two aged sixteen, and one aged seventeen, ordered, were served and drank one or more Rum Collins, Tom Collins or Cuba Libres. Their testimony was corroborated by that of two ABC agents who were present at the time, overheard one order given to the waiter, saw him serve the drinks and seized two of the drinks served to two of the girls. Department chemist's report of analysis showed the drinks to be alcoholic beverages.

The violations being thus established beyond dispute, the licensee offered, by way of defense or mitigation, the facts that huge crowds (on occasion as many as 1,500 people) patronized The Meadowbrook; that all waiters are initially instructed and reminded weekly not to serve alcoholic beverages to minors; that on all tables there are maintained printed cards stating that minors will not be served alcoholic beverages; that in doubtful cases patrons are requested to represent in writing that they are over age; and that the alcoholic beverage business comprises only forty per cent of the licensee's gross business. Admittedly, defendant did not obtain from the minors any written representation of age as required by R. S. 33:1-77.

Notwithstanding the precautions taken by the licensee, the fact remains that eight minors were served, were not questioned as to their ages, were not required to make written representation of age, and that to the impartial eye of the Hearer these minors appeared to be minors. Perhaps the very size and volume of defendant's operation precludes that rigid control which is necessary to assure that no minors are served. But there cannot be one law for the small tavern and another for the large night club. Both hold the same kind of license, issued under the same Alcoholic Beverage Law. That law which confers the privilege of selling alcoholic beverages is the same law which prohibits the sale of such beverages to minors. With the benefits must go the burdens.

I have considered the motion to dismiss the charges herein. Finding no merit in any of the reasons alleged, the motion to dismiss is denied.

It follows that the licensee must be found guilty of sale and service of alcoholic beverages to minors and permitting consumption of such beverages by minors as charged, except in so far as the charges involve Herbert L--- on January 4, 1942. The circumstances considered, the license of The Meadowbrook premises will be suspended for twenty-five days because of the charges set forth herein as (1) and (2).

In so far as the remaining "front" charges involving both The Meadowbrook and the Four Towers are concerned, it appears that the licensee readily admitted at the hearing and at the time of investigation that Frank Dailey is the real owner of all of its corporate stock and that the issue of 99-1/3% (98% stated in application) of its stock to Margaret Wikstrom was effected merely as a matter of business convenience, motivated perhaps by a desire to protect Dailey's personal assets. Further, it appears that Dailey is, in all respects, qualified to hold a license as an individual and that he derives no benefit from the licensed business except by way of salary and/or dividends on the stock he holds in his own name and that owned by him although issued to others. Nothing in the record indicates anything to the contrary. However, the remaining charges against both licenses (set forth herein as (3), (4) and (5) must be dismissed for the following reasons:

(1) Question 28 in the license application asks, "Has any individual....other than the applicant any interest directly or indirectly in the license applied for or in the business to be conducted under said license?" The charge alleges that this question was falsely answered "No" by reason of the fact that Frank Dailey was the real and beneficial owner of the licensed business and had such an interest. Although it is true that Dailey owned, directly or indirectly, all of the corporate stock, that fact alone does not mean that he was interested in the licensed business (as distinguished from the corporation) as an individual. His interest appears solely to be that of stockholder, officer, director and employee of the corporation. It must be borne in mind that the law has always recognized that a corporation is a legal entity distinct from the stockholders composing it. This is true even where all of the corporate stock is owned by one person. The mere fact that an individual may own 100% of the stock of a corporation does not, as a matter of law, make him legally identical with the corporation unless, of course, the corporate device is adopted as a means of perpetrating a fraud. Re McNair, Bulletin 368, Item 14; Jackson v. Hooper, 76 N. J. Eq. 592; Hackensack Trust Co. v. Hackensack, 116 N.J.L. 343; White v. Evans, 117 N. J. Eq. 1. In this case no fraudulent motive appears which requires that the corporate veil be pierced. So far as this charge is concerned, the inquiry is whether Frank Dailey, as an individual, was interested in the corporate license, not whether his stockholdings represented his true quantum of stock ownership. I find that the licensed business was that of the corporation and that Frank Dailey as an individual was not interested therein as alleged.

(2) Another charge alleges in substance that the license application was falsified by listing Margaret Wikstrom as the holder of 98% of the corporate stock in answer to Question 22, which required a listing of the number of shares of all stockholders holding one or more per cent of the corporate stock. While it is true that Dailey owned 100% of the corporate stock, Margaret Wikstrom was actually the holder of 98% of that stock. The question did not ask for the percentage of stock owned; it asked for stock holdings and, hence, was truthfully answered. In this connection it may be noted that, starting with the fiscal year 1942-43, the form of application for license was amended to incorporate a question (presently Question 24) which inquires whether any stockholder of an applicant corporation has any beneficial interest, directly or indirectly, in the stock of any other stockholder of the applicant corporation. Had that question been in the application for license here under consideration, and had that question been answered "No", and had the corporation been charged with falsifying its answer to that question, then a finding of guilt could have been made on the facts. However, as charged, the finding must be not guilty.

(3) Another charge alleges that the licensee aided and abetted Frank Dailey, a non-licensee, to exercise the rights and privileges of its license. This is a customary companion charge to the two previous charges and normally represents the gravamen of the offense. In this case, having found that no falsification as alleged has occurred, and, further, in view of the fact that all of the evidence indicates that the licensed business was conducted solely and exclusively by the corporation, a finding of not guilty as to this charge must necessarily follow.

Since the institution of these proceedings, the license of The Meadowbrook premises, against which charges were originally brought, has been renewed from year to year and is presently Plenary Retail Consumption License C-6 for the fiscal year 1946-47. The penalty imposed herein is effective against the current license and any renewal thereof. State Regulations No. 16.

Accordingly, it is, on this 24th day of June, 1947,

ORDERED that the renewed license issued for the fiscal year 1947-48, in renewal of Plenary Retail Consumption License C-6, by the Board of Commissioners of the Township of Cedar Grove, to Frank Dailey's Meadowbrook, Inc., t/a The Meadowbrook, for premises on Pompton Avenue, Cedar Grove, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at midnight, June 30, 1947, and terminating at midnight, July 25, 1947.

ERWIN B. HOCK
Commissioner.

7. NEW LEGISLATION - CONCERNING SECRETARIES TO MUNICIPAL BOARDS OF ALCOHOLIC BEVERAGE CONTROL ESTABLISHED PURSUANT TO REVISED STATUTES, 33:1-5.

Assembly Bill No. 9 was approved by Governor Driscoll on June 11, 1947, and thereupon became Chapter 269 of the Laws of 1947. The new Act (applicable not as to secretaries of all municipal boards of alcoholic beverage control but solely as to secretaries of boards established pursuant to Revised Statutes, 33:1-5) reads as follows:

"AN ACT concerning secretaries to municipal boards of alcoholic beverage control in certain municipalities of this State, and supplementing chapter one of Title 33 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Any board of alcoholic beverage control established pursuant to section 33:1-5 of the Revised Statutes may, with the approval of the governing board or body of the municipality, appoint a secretary, who shall receive such annual salary as shall be fixed by such governing board or body of the municipality; but any person now serving any such board with the title of clerk to the chairman shall be designated as secretary to such board.

"2. This act shall take effect immediately."

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8. DISQUALIFICATION - APPLICATION TO LIFT - FIVE YEARS' GOOD CONDUCT SINCE APPLICANT RULED INELIGIBLE - APPLICATION GRANTED.

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

Case No. 615.

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In 1942 petitioner was advised that he was ineligible to be connected in any way with the holder of a liquor license because of his conviction of a crime involving moral turpitude, within the meaning of R. S. 33:1-25, 26. Re Case No. 444, Bulletin 520, Item 10.

Petitioner was released from the confinement resulting from his conviction in May, 1942.

The above recited conviction appears to have been petitioner's only digression from the path of rectitude.

Petitioner, who was under twenty-one at the time of his arrest in connection with the above crime, namely, possession of marijuana cigarettes, tells a story that tends to indicate that his violation of the law was more the result of a childish attempt to be a "big shot" than by reason of any unlawful propensities.

He produced three witnesses who have known him for about twenty years. They all testify that his reputation in his home community is of the best.

Petitioner, since May 1942, has been gainfully employed -- winters during the war years in various shipyards -- summers in the taxicab business. Since the war he has been in business for himself. I am advised by the Police Department of his home city that "we have nothing current against this subject."

I find that petitioner has conducted himself in a law-abiding manner for at least five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 24th day of June, 1947,

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.

ERWIN B. HOCK
Commissioner.

9. APPELLATE DECISIONS - DIAMOND ET ALS. v. PARAMUS AND HANDWERG.

HARRY DIAMOND, JAMES DIAMOND and HARRY CONTRYS, partners, trading and doing business under the firm name and style of SEVENTEEN GRILL DINER,

Appellants,

-vs-

MAYOR AND COUNCIL OF THE BOROUGH OF PARAMUS, and JOHN HANDWERG, trading as JERSEY SPORTS ARENA,

Respondents

ON APPEAL
CONCLUSIONS AND ORDER

Peter Cohn, Esq., Attorney for Appellants.
Walter T. Wittman, Esq., Attorney for Respondent Mayor and Council.
James H. White, Esq., Attorney for Respondent John Handwerg.

BY THE COMMISSIONER:

This is an appeal from the action of respondent Mayor and Council in (a) granting the application of respondent John Handwerg for a plenary retail consumption license for premises to be constructed at S. 38 Forest Avenue, Borough of Paramus, and (b) from the denial of appellants' application for a plenary retail consumption license for premises on Route 17 near East Ridgewood Avenue, Borough of Paramus.

Appellants allege in effect that (1) the granting of the license to Handwerg and the denial of a license to them was unfair, unjust and discriminatory, and (2) respondent Mayor and Council was without power and authority to grant said license to respondent Handwerg.

On April 28, 1943, the Mayor and Council of the Borough of Paramus adopted an ordinance whereby the number of plenary retail consumption licenses which might be issued in the Borough was limited to thirty. For the fiscal year 1946-47, thirty licenses of this type were issued in the Borough.

On March 12, 1947, respondent John Handwerg filed with the Mayor and Council an application for a plenary retail consumption license. The application was accompanied by plans and specifications for a sports arena which Handwerg proposes to erect at S. 38 Forest Avenue. On the same day respondent Mayor and Council passed, on first reading, an amendment to the existing ordinance whereby the permissible number of plenary retail consumption licenses would be increased from thirty to thirty-one.

On March 26, 1947, appellants filed their application for a plenary retail consumption license for premises on Route 17. On the same day a public hearing was held upon the proposed amendment to the ordinance. At the public hearing the attorney for appellants appeared and suggested that the limit be set at thirty-five plenary retail consumption licenses instead of thirty-one, as proposed by the amendment. However, the amendment increasing the number to thirty-one was passed on second reading. The minutes show that Councilmen Bogert, Eisberg, Geering and Schwarz voted for the adoption of the amendment and Behnke and Lawson against the adoption of the amendment. The amendment thereafter became effective when advertised.

On April 9, 1947, the Mayor and Council considered the application filed by Handwerg and passed a resolution reading substantially as follows:

"WHEREAS, JOHN HANDWERG, t/a JERSEY SPORTS ARENA, has applied to the Mayor and Council of the Borough of Paramus for the issuance of a Plenary Retail Consumption License for premises to be constructed at No. S-38 Forest Avenue, Paramus, New Jersey, and

"WHEREAS, there has been filed with the said application a set of plans and specifications for the building to be constructed at No. S-38 Forest Avenue, which plans and specifications are hereby approved; and

"WHEREAS, the governing body of the Borough of Paramus does hereby determine that best interest and public welfare of the Borough of Paramus will be furthered by the issuance of said license;

"NOW, THEREFORE, BE IT RESOLVED By the Mayor and Council of the Borough of Paramus, that *** a Plenary Retail Consumption License be granted to JOHN HANDWERG, t/a JERSEY SPORTS ARENA, *** PROVIDED HOWEVER, that the granting of said license is and shall be subject to the special condition that the premises and building at No. S-38 Forest Avenue, as described in the plans and specifications annexed to the said application shall be built and completed in accordance therewith and that the aforesaid license shall not become effective with respect to said premises at No. S-38 Forest Avenue until said special condition has been complied with."

Councilmen Bogert, Eisberg and Schwarz voted in favor of said resolution, and Lawson voted against said resolution. Immediately thereafter the Mayor and Council adopted a resolution denying appellants' application "by reason of the fact that the number of plenary retail consumption licenses now issued and outstanding total thirty-one (31) and constitutes the maximum number of all plenary retail consumption licenses that may be issued by the Borough of Paramus." Before either of the above resolutions had been adopted, the attorney for appellants advised the members of the local issuing authority that he felt his clients were being discriminated against because his clients' premises were in existence whereas Handwerg's premises had not been erected. No one is entitled to a license as a matter of right. Bumball v. Burnett, 115 N. J. L. 254.

From the evidence taken at the hearing held herein, it is apparent that the ordinance was amended solely to permit the granting of the license to Handwerg. Mayor Haase testified that it had been the opinion of the Council that "we did not desire any more taverns in town." However, he stated that, in his opinion, the arena was an entirely different proposition. The testimony of Handwerg indicates that, if and when the arena is completed, it will cost approximately $500,000.00; that it will consist of a building 350 feet long by 320 feet wide, with 9,000 permanent seats for hockey or basketball and about 12,000 seats for fights. He indicated that it would attract patrons residing within 100 miles of the arena. Mayor Haase stated that in his opinion the arena, if completed, would bring at least $6,500.00 annually in taxes to the Borough and would result in the employment of many people residing in the Borough.

Apparently no one objects to the issuance of the license to Handwerg. The appellants themselves have no objection to the issuance of a license to him, but they contend that, since the number of municipal licenses had been increased, the additional license should have been issued to them instead of Handwerg. With this contention I cannot agree. It is apparent that the number of licenses would not have been increased in order to grant an additional license to appellants, especially in view of the fact that nine plenary retail consumption licenses have been already issued on Route 17. It is true that the ordinance was amended to permit the issuance of a license to Handwerg but, under the circumstances of this case, I do not believe that such action constituted any unjust discrimination against the appellants.

Appellants also contend that respondent Mayor and Council was without power and authority to grant a license to respondent Handwerg. This contention is based upon the admitted fact that at the present time no building has been erected upon the premises for which the license was granted. This situation was first considered by Commissioner Burnett on June 5, 1937. At that time, in Re Harris, Bulletin 183, Item 11, he ruled as follows:

> "A liquor license must be issued for particular premises. The operation and effect of every license is confined to the licensed premises. Before actually issuing a license, the municipal license issuing authority must find the applicant personally qualified and the premises suitable. The premises cannot be examined or found suitable if they are not yet in existence.
>
> "The most that the municipal license issuing authority may do where application is made for building not yet constructed is to grant the application subject to the express condition that the premises as described in the plans and specifications prepared, submitted and found acceptable by the municipality, shall first be built. The license, of course, will not become effective until the special condition has been complied with."

Under well established precedents consistently followed for a period of almost ten years, respondent Mayor and Council had the power and authority to grant the license to Handwerg subject to the condition imposed.

For the reasons aforesaid, the action of respondent Mayor and Council will be affirmed. Attention is called to the provisions of Bulletin 762, Item 5, as to renewal of the Handwerg license.

Accordingly, it is, on this 26th day of June, 1947,

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

ERWIN B. HOCK
Commissioner.

10. APPELLATE DECISIONS - BODINE v. HOPE.

R. ARNOLD BODINE,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HOPE,
Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Edward E. Stover, Esq., Attorney for Appellant.
Irwin Kobler, Pro Se, an Objector.
Rev. Robert Lukens, Pro Se, an Objector.
Andrew Y. Drake, Pro Se, an Objector.

BY THE COMMISSIONER:

This is an appeal from the action of respondent in denying appellant's application for a plenary retail consumption license.

Hope Township is a rural community with a population, according to the 1940 census, of 640. There is a slight increase in the population in the summer season when some few summer cottages and cabins are occupied. It does not appear, however, that the population is ever much in excess of 1,000.

Hope Township is presently served by one plenary retail consumption licensed establishment located in the approximate geographic center, and probably in the center of population of the township.

Appellant's premises are situate on a main road 1.6 miles distant from the other licensed premises. At present said premises are part of a farm operated by appellant's family and are surrounded by other farms.

At the hearing herein, no one appeared officially for the respondent.

It is, however, necessary that appellant affirmatively establish that the action of the respondent issuing authority was erroneous. Rule 6 of State Regulations No. 15.

Personal appearance by one of the members of the Township Committee and by two objectors is noted. The testimony of the Township Committeeman discloses that the application was denied because of the presentation of a petition asking such action. This petition contained some 137 names, a number characterized by one witness as representing "a majority of the voters" in the township, and the objectors testified that the existing license is sufficient to serve all the public need and convenience. There is no testimony or other indication that any resident of the township (except the appellant) favored the granting of the license.

Some question is raised regarding the failure of respondent to notify appellant of its action. Such notice is desirable but failure to give such notice cannot be ground for reversal. The principal purpose of such notice would seem to be that of fixing the day from which the thirty-day limitation on appeals starts to run. R. S. 33:1-22.

It is also noted that appellant did not deposit the fee. This of itself was sufficient to justify respondent in denying the license. Dries v. Hainesport, Bulletin 191, Item 6. An application is not effectively "filed" unless the application is accompanied by a proper fee.

Without considering any of the technical matters raised herein, I find from a careful review of all the evidence on the appeal hearing, a hearing de novo, that appellant has failed to establish even the slightest public need for the issuance of the license.

Accordingly, it is, on this 26th day of June, 1947,

ORDERED that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

11. STATE LICENSES - NEW APPLICATIONS FILED.

G. Krueger Brewing Company
57 & 75 Belmont Ave. & 25 Belmont Ave. & 65-73 Belmont Ave.
Newark, N. J.
Application for Limited Wholesale License (1947-48) filed June 26, 1947.

All States Freight, Inc.
5501 Tonnele Ave.
North Bergen, N. J.
Application for Transportation License (1947-48) filed June 26, 1947.

Anton Nichyparowich and Andrew Verbesky
310 Chadwick Ave.
Newark, N. J.
SS "Victory II"
Application for Plenary Retail Transit License (1947-48) filed June 26, 1947.

Erwin B. Hock
Commissioner.