

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

BULLETIN 1788

April 19, 1968

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1. COURT DECISIONS - BRUCE ZANE, INC. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1065-66

DIVISION OF ALCOHOLIC BEVERAGE CONTROL
IN THE DEPARTMENT OF LAW AND PUBLIC SAFETY,

Plaintiff-Respondent,

vs.

99 N.J. Super. 196

BRUCE ZANE, INC., trading as SURBURBAN
INN, a corporation of the State of New
Jersey,

Defendant-Appellant.

Argued January 29, 1968 -- Decided February 14, 1968

Before Judges Goldmann, Kilkenny and Carton.

On appeal from decision of the Director of the Division
of Alcoholic Beverage Control.

Mr. Frank M. Lario argued the cause for appellant (Mr. Joseph Pierce Lodge on the brief).

Mr. Franklin D. Renkoff, Deputy Attorney General, argued
the cause for respondent (Mr. Arthur J. Sills, Attorney
General of New Jersey; Mr. Elias Abelson, Deputy Attorney
General, of counsel).

The opinion of the court was delivered by

CARTON, J. A. D.

Defendant tavern owner appeals from an order of the Director
of the Division of Alcoholic Beverage Control suspending its
plenary retail consumption license for 50 days for violation of
Rules 1 and 24 of State Regulation No. 20. (Re Bruce Zane, Inc.,
Bulletin 1740, Item 2). The suspension has been stayed pending
this appeal.

Rule 1 prohibits a licensee from selling any alcoholic
beverage to any person "actually or apparently intoxicated." Rule
24 provides that no licensee shall permit "any actually or
apparently intoxicated person to work in any capacity in and upon
the licensed premises."

The issues in this case are essentially factual. Four
investigators of the Division entered the defendant's establishment
on December 23, 1963. Two of these investigators testified at the
hearing before the Division. At about 10:20 p.m. they declared
that there were approximately 20 persons in the 35 x 20 foot

barroom, some sitting at tables or at the bar and others standing. Their testimony was to the effect that a number of the patrons and also one of the two women who were serving beverages had the appearance of being intoxicated.

Their testimony was clear as to the observed indicia of intoxication. An agent, in describing the five or six patrons positioned at the bar, testified:

"[T]heir eyes were glassy, faces flushed, they were disheveled, hair was mussed up, one fellow had a zipper jacket on that was unzipped, his shirt was out, he went to go in the men's room and bumped into a table or chair on his way to the men's room."

The agent identified one of the patrons who appeared to be intoxicated and described his conduct in some detail. A sample of the beverage seized from this patron was introduced in evidence at the hearing. A chemical analysis showed that this sample contained alcohol suitable for beverage purposes.

The investigator, in describing the conduct and appearance of one of the persons serving beverages, said:

"[H]er face was flushed, her eyes were glassy, she stumbled behind the bar, when pouring drinks she spilled some on the bar, her hair was disheveled. *** She walked and bumped into the bar, and when she was talking her words were running together, her speech was slurred. She attempted to sing."

This witness also averred that he saw her consume some drinks and that she appeared to be intoxicated. He testified further concerning her conduct: "First she poured it, she overflowed the glass, one time she missed the glass and it went on the bar."

On behalf of the licensee, several of the patrons who were present on the night in question insisted that they were not intoxicated and observed no one in the tavern in that condition. Testimony was also offered to the effect that the woman assertedly serving the customers with beverages had not, in fact, served anyone and that she was not intoxicated nor had the appearance of being so. The witnesses on behalf of the tavern owner also contradicted the testimony of the investigators on a number of other points.

On the basis of the evidence, the hearer who conducted the hearing found that the testimony of the agents had been presented in a direct and detailed manner and was not a fabrication, but was factual and credible. He found further that their detailed description of the woman who had been serving at the bar and of the several patrons "clearly established the observable manifestations of apparent or actual intoxication." After a full hearing before the Division, the Director concluded, upon the basis of the evidence, that the defendant-licensee was guilty on these charges.

It is evident that the resolution of the factual issues presented turns upon the credibility of the witnesses. From our review of the record, there was substantial credible evidence to support the Director's determination and based upon the limited scope of our appellate review under such circumstances, we must affirm. Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501, 504 (App. Div. 1956); Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Defendant further argues that Rules 1 and 24 are invalid because of the use of the words "apparently intoxicated." Defendant's claim is that the words are vague and do not adequately define the conduct intended to be proscribed. On this basis defendant appears to claim that these rules are "fundamentally unfair." A similar point was mentioned, but not decided, in Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960) and Grant Lunch Corporation v. Municipal Board of Alcoholic Beverage Control, 64 N.J. Super. 553 (App. Div. 1960). In the present case we are satisfied that the evidence before the Director fully justified the conclusion that the individual charged with serving the drinks and other patrons in the bar were "actually intoxicated," as well as "apparently intoxicated." It is therefore not strictly necessary to pass upon this question. Nevertheless, we deem it desirable to do so.

The Legislature has lodged in the Director the responsibility for insuring the "fair, impartial, stringent and comprehensive administration" of the Alcoholic Beverage Law R.S. 33:1-23. As the court commented in Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373, 385 (1956):

"The statute as a whole is intended to be remedial of abuses inherent in liquor traffic, R.S. 33:11-73, and the discretion of the Director is sufficiently broad to accomplish the purposes intended."

The rules here challenged are clearly in furtherance of that objective. We find nothing ambiguous, vague or unfair in them. They are directed to the possessors of retail consumption licenses and those in their employ--persons who by reason of their occupation may fairly be deemed to possess a certain expertness in this field of endeavor. Indeed, whether a man is sober or intoxicated is a matter of common observation not requiring any special knowledge or skill. See Castner v. Sliker, 33 N.J.L. 95 (E. & A. 1868); State v. Shiren, 9 N.J. 445, 455 (1952); State v. Guerrido, 60 N.J. Super. 505, 511-512 (App. Div. 1960).

When used in conjunction with the words "actually intoxicated," we believe the language challenged provides a sufficiently understandable description of the conduct of persons to whom sale of alcoholic beverages is forbidden. The term "apparently" refers to the observable manifestations or symptoms of excessive indulgence in alcoholic beverages. It portrays a person so far under the influence of alcoholic beverages that his conduct and demeanor have departed from the normal pattern of behavior. To require proof that the patron is "actually intoxicated" may well place an undue burden upon the Director in carrying out the legislative mandate. Nor does this language place the tavern keeper or his employees in any dilemma by being compelled to make a doubtful decision. They may always make suitable inquiries when a person appears to be intoxicated to verify either that he is intoxicated or has reached a point where he ought not to be served alcoholic beverages.

Nor do we find any merit in defendant's further contention that reversible error was committed in the administrative hearing by permitting the president and principal shareholder of the defendant corporation to act as its representative at the hearing, not only in giving testimony, but also in cross-examining witnesses. This contention is based upon R.R. 1:12-1(e) which prohibits a corporation from appearing "in any court of this state except through an attorney."

Handwritten notes on the right margin: "The", "of", "app", "ac", "app".

Zane appeared voluntarily at the hearing and participated actively in his own interest and on behalf of his own corporation. Neither he nor the corporation, after having had the benefit of that activity and after having gambled on its successful outcome, may now for the first time question its propriety on appeal. Jardine Estates v. Koppel, 24 N.J. 536, 541 (1957). The following quotation from Jardine Estates is singularly apposite:

"We have difficulty in subscribing to an interpretation of the rule which renders a judgment void, instead of merely voidable at the option of the opposing party, when a corporation illegally appears through its agent. There is no reason why the prevailing party should have to try the authority of the corporate representative as well as his own case. See Schifrin v. Chenille Mfg. Co., 117 F. 2d 92 (2 Cir. 1941). There is little justification for granting the relief sought here when the court was induced by the plaintiff in interest to permit Mr. Samurine to proceed in its behalf without being obliged to secure a licensed attorney. * * *"

Moreover, the rule, by its terms, is applicable to courts of this State. The hearing involved was conducted by an administrative agency and not by a court. Consequently, the rule has no application in this case. Cf. Mulhearn v. Federal Shipbuilding and Dry Dock Company, 2 N.J. 356 (1949).

Affirmed.

2. DISCIPLINARY PROCEEDINGS -- ORDER REIMPOSING SUSPENSION STAYED DURING PENDENCY OF APPEAL.

In the Matter of Disciplinary Proceedings against:

BRUCE ZANE, INC.
t/a Suburban Inn,
1020 White Horse Pike
Oaklyn
PO Audubon, New Jersey

SUPPLEMENTAL ORDER

Holder of Plenary Retail Consumption License C-6 issued by the Mayor and Council of the Borough of Oaklyn

Frank M. Lario, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On May 17, 1967, Conclusions and Order were entered herein suspending the license for fifty days for sale to intoxicated persons and permitting an employee to work while intoxicated. Re Bruce Zane, Inc., Bulletin 1740, Item 2.

Prior to the effectuation of the suspension, upon appeal filed, the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal.

The court affirmed the Director's action on February 14, 1968. Bruce Zane, Inc. v. Div. of Alcoholic Beverage Control, reprinted in Bulletin 1788, Item 1. Mandate on affirmance

having now been received, the suspension may be reimposed.

Accordingly, it is, on this 4th day of March, 1968,

ORDERED that the fifty-day suspension heretofore imposed and stayed during the pendency of proceedings on appeal be reinstated against Plenary Retail Consumption License C-6, issued by the Mayor and Council of the Borough of Oaklyn to Bruce Zane, Inc., t/a Suburban Inn, for premises 1020 White Horse Pike, Oaklyn, commencing at 2:00 a.m. Tuesday, March 5, 1968, and terminating at 2:00 a.m. Wednesday, April 24, 1968.

JOSEPH M. KEEGAN
DIRECTOR

3. APPELLATE DECISIONS - MURPHY'S TAVERN, INC. v. NEWARK.

#3192 and #3263)	
MURPHY'S TAVERN, INC.,)	
)	
Appellant,)	ON APPEAL
)	ORDER
v.)	
)	
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF NEWARK,)	
)	
Respondent.)	

Louis R. Cerefice, Esq., Attorney for Appellant
Norman N. Schiff, Esq., by Anthony J. Tulliani, Esq.,
Attorney for Respondent

BY THE DIRECTOR:

Appellant appeals from denial by respondent of its applications for renewal for 1966-67 and 1967-68 of plenary retail consumption license for premises 135 Mulberry Street, Newark.

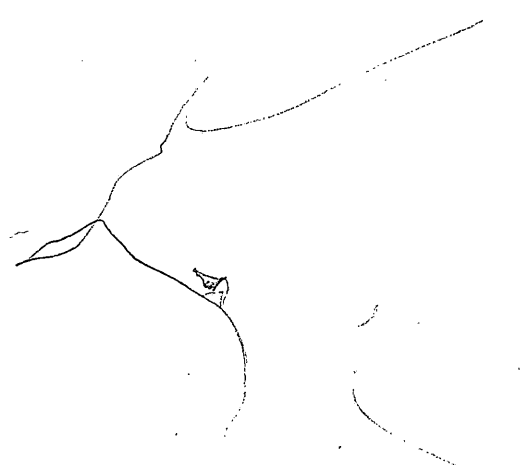
Prior to the hearing of the appeals, appellant's attorney advised by letter dated February 26, 1968. that the appeals were withdrawn.

No reason appearing to the contrary, the appeals will be dismissed.

Accordingly, it is, on this 28th day of February, 1968,

ORDERED that the appeals herein be and the same are hereby dismissed.

JOSEPH M. KEEGAN
DIRECTOR



4. DISCIPLINARY PROCEEDINGS -- ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HAROLD SANDFORD & NORMA SANDFORD t/a Club Norma 331 Straight Street Paterson, N. J.)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-154 issued by the Board of Alcoholic Beverage Control for the City of Paterson)

Licensees, Pro se
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on November 1, 1967, they possessed alcoholic beverages in six bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensees have a previous record of suspension of license by the Director for ten days effective September 14, 1965, for sale in violation of State Regulation No. 38 (Re Sandford, Bulletin 1639, Item 7), by the municipal issuing authority for fifteen days effective November 18, 1965, for sale to minors, and by the Director for thirty-five days effective June 27, 1966, for sale in violation of State Regulation No. 38 (Re Sandford, Bulletin 1687, Item 4).

The license will be suspended for twenty-five days (Re Perona Farms, Inc., Bulletin 1780, Item 8), to which will be added fifteen days by reason of the prior record of three suspensions of license for dissimilar violations occurring within the past five years (Re Causeway Inn, Inc., Bulletin 1744, Item 6), or a total of forty days, with remission of five days for the plea entered, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 4th day of March, 1968,

ORDERED that Plenary Retail Consumption License C-154, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Harold Sandford and Norma Sandford, t/a Club Norma, for premises 331 Straight Street, Paterson, be and the same is hereby suspended for thirty-five (35) days, commencing at 3:00 a.m. Monday, March 11, 1968, and terminating at 3:00 a.m. Monday, April 15, 1968.

JOSEPH M. KEEGAN
DIRECTOR

5. DISQUALIFICATION REMOVAL PROCEEDINGS - ROBBERY - ARMED ROBBERY - ORDER REMOVING DISQUALIFICATION - DEFERRED EFFECTIVE DATE OF ORDER.

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

Case No. 2181

BY THE DIRECTOR:

Petitioner's criminal record discloses that he was convicted in the Essex County Court on February 21, 1951 for robbery and on January 11, 1952 in the Union County Court for armed robbery; that on his first conviction he was sentenced to Bordentown Reformatory and on his last conviction he was sentenced to Bordentown, concurrent with sentence from Essex County Court, and paroled on July 22, 1952.

Since the crimes of which petitioner was convicted involve the element of moral turpitude (Re Case No. 1701, Bulletin 1470, Item 7), he was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing held herein, petitioner (39 years old), testified that he is married and living with his wife and four minor children; that for the past twenty-three years, he has lived in two neighboring municipalities; that between 1952 and November 1966, he had been employed as a truck driver (three and one-half years) and as a machine operator ten years; that in November 1966, he obtained employment with a brewery; that in a Division questionnaire submitted to him by his employer on November 23, 1966, he denied he had ever been convicted of a crime; that in December 1967, his employer apprised him of his false statement, following which he completed a second questionnaire and admitted his armed robbery conviction.

Petitioner further testified that he had been aware of his ineligibility for employment by a licensee in this State because of his convictions; that he had falsified his original questionnaire because he was in need of a job and felt a disclosure of his criminal record would militate against his chances of employment.

Petitioner further testified that he is asking for the removal of his disqualification to be free to continue his present employment and that, ever since his parole in 1952, he has not been convicted of any crime or arrested.

The Police Department of the municipality wherein the petitioner resides reports there are no complaints or investigations presently pending against the petitioner.

Petitioner produced three character witnesses (a chemical processor, a fork machine operator and a bus driver) who testified that they have known petitioner for more than five years last past and that, in their opinion, he is now an honest, law-abiding person with a good reputation.

I hesitate to grant the relief sought herein for two reasons: (1) petitioner although disqualified, worked for a licensee in this State, with knowledge of his ineligibility and (2) his aforesaid

false statement in his original questionnaire. I am, however, favorably influenced by four factors -- (a) that petitioner's criminal record shows his convictions of crime took place over sixteen years ago, (b) the testimony of his character witnesses, (c) his record of employment and (d) his present attitude. I nevertheless cannot ignore petitioner's false statement under oath in his aforesaid original questionnaire.

Considering all of the aforesaid facts and circumstances, I shall grant his application but shall withhold relief until thirty days from the date hereof. Re Case No. 1759, Bulletin 1520, Item 5.

Accordingly, it is, on this 28th day of February, 1968,

ORDERED that petitioner's statutory disqualification because of the convictions described herein, be and the same is hereby removed in accordance with the provisions of R.S. 33:1-31.2, effective March 29, 1968, provided, however, that petitioner shall not in the interim be associated with the alcoholic beverage industry in this State in any manner whatsoever.

JOSEPH M. KEEGAN
DIRECTOR

6. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto. Susp. #314)	
In the Matter of a Petition to Lift)	
the Automatic Suspension of Plenary)	ON PETITION
Retail Consumption License C-7)	ORDER
issued by the Mayor and Council)	
of the Borough of Raritan to)	
)	
Frankie's Bar & Grill, Inc.)	
58 First Avenue)	
Raritan, N. J.)	

Joseph L. Ranzini, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on January 29, 1968, Frank Tosco, president of the licensee-petitioner, was fined \$200 and \$10 costs in the Raritan Borough Municipal Court after pleading guilty to a charge of sale of alcoholic beverages to a minor on November 29, 1967, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioner's license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that disciplinary proceedings are in contemplation but have not yet been instituted by the municipal issuing authority against the licensee because of said sale of alcoholic beverages to the minor. In fairness to petitioner, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Robert Doran, Inc., Bulletin 1762, Item 4.

Accordingly, it is, on this 28th day of February, 1968,

ORDERED that the aforesaid automatic suspension of license C-7 be stayed pending the entry of a further order herein.

JOSEPH M. KEEGAN
DIRECTOR

7. DISQUALIFICATION REMOVAL PROCEEDINGS - BOOKMAKING - MAINTAINING A GAMBLING PLACE - POSSESSION OF LOTTERY SLIPS - ORDER REMOVING DISQUALIFICATION.

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

Case No. 2157

BY THE DIRECTOR:

Petitioner's criminal record discloses that he was convicted in the Special Sessions Court in New York City in 1945 for possession of a gun (sentence suspended), in 1949 for bookmaking (\$50.00 or 5 days), in 1950 for maintaining a place for policy playing (\$100.00 or 10 days), in 1950 for bookmaking (\$150.00 or 90 days), in 1950 for maintaining a place for policy playing (\$100.00 or 10 days), in 1951 for maintaining a place for policy playing (30 days), in 1951 for unlawful possession of policy slips (60 days), in 1952 for maintaining a place for policy playing (\$100.00 or 90 days), and on December 21, 1960 for unlawful possession of policy slips (4 months).

Since the crimes of which petitioner was convicted between 1949 and 1960 involve the element of moral turpitude (Re Elig. No. 749, Bulletin 1697, Item 6; Re Elig. No. 735, Bulletin 1596, Item 8; Re Case 1859, Bulletin 1594, Item 5), he was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

In view of this, it is unnecessary to determine whether or not his other convictions, outlined above, involve that element.

At the hearing held herein, petitioner (42 years old) testified that he is divorced; that he has been voluntarily supporting his wife and child; that for the past twenty years he has lived in the municipality where he presently resides; that on September 26, 1967, he filed an application with the Division for an unlimited employment permit (non-resident) in which he set forth some of his aforesaid convictions and that on the same date filed the within petition.

Petitioner further testified that for about six years prior to September 26 aforesaid, he had been employed as an entertainer (piano player) in licensed premises in New York City; that in connection therewith he had been fingerprinted by its Department of Licenses; that in 1964 the Department had issued a temporary working permit to him and that because of his criminal record the permit had to be and was renewed quarterly.

Petitioner further testified that he has disassociated himself from all gambling activities, that he is asking for the removal of his disqualification to be free to engage in the alcoholic beverage industry in this State and that, ever since his conviction in 1960, he has not been convicted of any crime or arrested.

Petitioner produced three character witnesses (a state employee, a manager of a bar and grill, a hair dresser and musician) who testified that they have known petitioner for more

than five years last past and that, in their opinion, he is now an honest, law-abiding person with a good reputation.

The Police Department of the municipality wherein the petitioner resides reports that there are no complaints or investigations presently pending against the petitioner.

With respect to his gambling activities, petitioner testified he had been employed at a "drop", as a clerk-collector at \$75.00 a week; that policy players brought their betting slips and money to him and that he would later deliver the same to his employer.

The Commissioner of the Department of Licenses of the City of New York reports that temporary I.D. cards were issued to petitioner on November 6, 1964, to expire on March 5, 1965 and on May 6, 1965 to expire on August 5, 1965 neither of which was revoked or suspended.

The only hesitation I have to grant the relief sought herein is based on petitioner's unenviable criminal record. I am, however, favorably influenced by four factors--(a) that petitioner's criminal record shows he was last convicted of crime over seven years ago, (b) his employment record, (c) the testimony of his character witnesses, and (d) his present attitude.

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

Accordingly, it is, on this 1st day of March, 1968,

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

JOSEPH M. KEEGAN
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, WITHOUT REMISSION FOR PLEA UNTIMELY ENTERED AT HEARING.

In the Matter of Disciplinary Proceedings against)

ANDRO RUSIN t/a Rusin's Bar & Grill 174 Third Street Passaic, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-77 issued by the Board of Commissioners of the City of Passaic)

Licensee, Pro se Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

At the time of hearing, licensee pleaded non vult to a charge alleging that on September 29, 1967, he possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for three days effective January 30, 1956, for sale in violation of State Regulation No. 38, for two days effective January 28, 1963, for sale to minors, and for three days effective January 13, 1964 and for six days effective March 17, 1966, for sale in violation of State Regulation No. 38.

The prior record of suspension of license for dissimilar violation in 1956 occurring more than five years ago disregarded, but the record of three suspensions for dissimilar violations within the past five years considered, the license will be suspended for twenty-five days (Re Engel, Bulletin 1571, Item 8) without remission for the plea untimely entered at the hearing (Re Mulhearn, Bulletin 1752, Item 3).

Accordingly, it is, on this 4th day of March, 1968,

ORDERED that Plenary Retail Consumption License C-77, issued by the Board of Commissioners of the City of Passaic to Andro Rusin, t/a Rusin's Bar & Grill, for premises 174 Third Street, Passaic, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. Monday, March 11, 1968, and terminating at 3:00 a.m. Friday, April 5, 1968.

JOSEPH M. KEEGAN DIRECTOR

9. DISCIPLINARY PROCEEDINGS - FRONT (FARMING OUT LICENSE) - FALSE STATEMENT IN LICENSE APPLICATION - UNLAWFUL SITUATION CORRECTED - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ADELEPHIA MILYO)
t/a Cozy Grove)
588 Ramapo Valley Road)
Oakland, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-3 issued by the Mayor and Council of the Borough of Oakland)

James Romeo Napolitano, Esq., Attorney for Licensee
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) and (2) from October 16, 1966, she farmed out her license to one Gerald Buonavita and permitted him to retain all of the profits of the licensed business upon payment of a stipulated rental fee, in violation of R.S. 33:1-25 and 52, and (3) in her current application for license, she falsely stated that she was a resident of New Jersey whereas, in fact, she was then a resident of Florida, in violation of R.S. 33:1-25.

The unlawful situation has now been corrected by resumption of New Jersey residence by the licensee and by discontinuance of any interest of Buonavita in the licensed business.

Absent prior record, the license will be suspended on charges 1 and 2 for twenty days (Re S.S.M. Corporation, Bulletin 1760, Item 9) and on the third charge for ten days (Re Visidor Corporation, Bulletin 1776, Item 6), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 13th day of March, 1968,

ORDERED that Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of Oakland to Adelephia Milyo, t/a Cozy Grove, for premises 588 Ramapo Valley Road, Oakland, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Monday, March 18, 1968, and terminating at 2:00 a.m. Friday, April 12, 1968.

JOSEPH M. KEEGAN
DIRECTOR

11. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto.Susp. #311)	
In the Matter of a Petition to Lift)	
the Automatic Suspension of Plenary)	ON PETITION
Retail Distribution License D-23)	SUPPLEMENTAL
Issued by the Board of Commissioners)	ORDER
of the City of Passaic to)	
)	
BERNARD SLAFF)	
t/a Corner Liquor Store)	
29 Monroe Street)	
Passaic, N. J.)	

 Feder and Rinzler, Esqs., by Joseph A. Feder, Esq., Attorneys
 for Petitioner.

BY THE DIRECTOR:

On October 26, 1967, an order was entered herein temporarily staying statutory automatic suspension of license of petitioner pending determination of appeal from his criminal conviction to the Passaic County Court and pending institution of disciplinary proceedings by the municipal issuing authority, both involving sale to the same minors. Re Slaff, Bulletin 1768, Item 4.

It now appears from supplemental petition filed herein and the records of this Division that the appeal of the criminal conviction has resulted in the affirmance of such conviction. The conviction resulted in the automatic suspension of petitioner's license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that disciplinary proceedings are presently pending before the municipal issuing authority against the licensee because of said sale of alcoholic beverages to the minors. In fairness to petitioner, I conclude that at this time the effect of the automatic suspension should be further stayed. Re Farron, Bulletin 1756, Item 12.

Accordingly, it is, on this 13th day of March, 1968,

ORDERED that the aforesaid automatic suspension of license D-23 be stayed pending the entry of a further order herein.

JOSEPH M. KEEGAN
 DIRECTOR

12. DISCIPLINARY PROCEEDINGS - ORDER LIFTING SUSPENSION FOR BALANCE OF TERM UPON PROOF OF CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Disciplinary Proceedings against)

HUBRO INDUSTRIES, INC.)
t/a Matawan Wine & Liquor Store)
120 Main Street)
Matawan, N. J.)

ORDER

Holder of Plenary Retail Distribution License D-2 issued by the Borough Council of the Borough of Matawan)

Fox, Yanoff and Fox, Esqs., by Leo Yanoff, Esq., Attorneys for Licensee

David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

On January 15, 1968, Conclusions and Order were entered herein suspending the license for the balance of its term effective January 22, 1968, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the unlawful situation (undisclosed interest of non-resident) for lifting of the suspension of the license on or after March 12, 1968, after the license had been suspended for fifty days. Re Hubro Industries, Inc., Bulletin 1783, Item 3.

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

Accordingly, it is, on this 15th day of March, 1968,

ORDERED that the suspension heretofore imposed herein be and the same is hereby terminated, effective 9:00 a.m. Friday, March 15, 1968.

JOSEPH M. KEEGAN
DIRECTOR

13. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto.Susp. #315)
 In the Matter of a Petition to Lift)
 the Automatic Suspension of Plenary)
 Retail Consumption License C-194)
 Issued by the Board of Alcoholic)
 Beverage Control for the City of)
 Paterson to)

 LUCKY'S, A CORP.)
 t/a Lucky's)
 263 Main Street)
 Paterson, N. J.)

ON PETITION
ORDER

Harry Zax, Esq., Attorney for Petitioner


BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on February 8, 1968, Isadore Singer, president of the licensee-petitioner, was fined \$50 and \$5 costs in the Paterson Municipal Court after being found guilty of a charge of sale of alcoholic beverages to a minor on January 31, 1968, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioner's license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that disciplinary proceedings are presently pending before the municipal issuing authority against the licensee because of said sale of alcoholic beverages to the minor. In fairness to petitioner, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Farron, Bulletin 1756, Item 12.

Accordingly, it is, on this 20th day of March, 1968,

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


 Joseph M. Keegan
 Director