

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2184

May 14, 1975

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1. COURT DECISIONS - ELIZABETH v. ANWAR CORP. - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-2797-73

CITY COUNCIL OF THE CITY OF  
ELIZABETH,

Appellant,

v.

ANWAR CORP., t/a THE SEMINOLE,

Respondent.

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Submitted March 25, 1975 - Decided April 14, 1975.

Before Judges Halpern, Crahay and Wood.

On appeal from the Department of Law and Public Safety,  
Division of Alcoholic Beverage Control.

Mr. Frank Trocino, attorney for appellant.

Messrs. Stern & Weiss, attorneys for respondent  
(Mr. Harvey L. Weiss on the brief).

PER CURIAM.

(Appeal from the Director's decision in Re Anwar Corp. v. Elizabeth, Bulletin 2152, Item 5. Director affirmed. Opinion not approved for publication by the Court Committee on Opinions).

2. APPELLATE DECISIONS - WILDRICK v. VILLAGE OF LOCH ARBOUR, ET. AL.

Robert A. Wildrick,	)	
	)	
Appellant,	)	On Appeal
	)	
v.	)	CONCLUSIONS
	)	AND
Board of Trustees of the	)	ORDER
Village of Loch Arbour, and	)	
Joseph B. Marinaccio,	)	
	)	
Respondents.	)	

George S. Skokos, Esq., Attorney for Appellant  
 Harold Feinberg, Esq., Attorney for Respondent Village of Loch  
 Arbour  
 Thomas F. Shebell, Esq., Attorney for Respondent Marinaccio

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Board of Trustees of the Village of Loch Arbour (Board) which, by a vote of four to one, granted a plenary retail distribution license to respondent Joseph B. Marinaccio for premises 541 Main Street, Loch Arbour.

The resolution granting the license reads as follows:

"WHEREAS, the Board of Trustees of the Village of Loch Arbour has received applications for a Plenary Retail Distribution License from the following persons at the indicated locations, to wit:

- (1) Joseph B. Marinaccio - vacant store at 541 Main Street.
- (2) Robert Wildrick - Suites 6 and 7 on main floor, facing Main Street, at 560 Main Street.

- (3) James E. Vandervort, for south section of existing building at 537 Main Street, formerly known as 539 Main Street; and

WHEREAS, objections to the applications were received by the Board of Trustees and pursuant to Statute the Board held a hearing thereon on August 15, 1974 and heard all applicants and their witnesses, and objectors and their witnesses, and the Board has viewed the various premises and reviewed the testimony, and considered the three applications;

NOW, THEREFORE, BE IT RESOLVED, on this 5th day of September, 1974, a plenary retail distribution license be issued to Joseph B. Marinaccio for the period from September 16, 1974 to June 30, 1975, both dates inclusive, for the premises located at 541 Main Street, Loch Arbour, New Jersey."

In his petition of appeal, appellant challenged the Board's action, alleging that the issuance of the license to Marinaccio was erroneous in that:

"(a) The Village Board of Trustees, by issuance of the license to JOSEPH B. MARINACCIO, abused its discretion in that preference was given to said applicant when, in fact, his application for issuance of a license was deficient in that the lease and proposed plans or sketch of the demised business premises used as a liquor store had not been filed, but subsequently delivered to the Clerk after the Public Hearing of August 15, 1974;

(b) Cross examination and inquiry was limited and prohibited by reason of said defective application by counsel for other applicants;

(c) The action of the Village Board of Trustees was capricious and arbitrary in that the evidence produced at the public hearing of August 15, 1974 was not considered and was a sham. The resolution granting the license to JOSEPH B. MARINACCIO and

rejecting the application of Appellant did not set forth grounds or reasons thereto.

(d) The successful applicant, JOSEPH B. MARINACCIO, does not have the complete financial interest in the license, but is acting for an undisclosed principal; and the interest of said JOSEPH B. MARINACCIO is subject and subordinate to the control of said undisclosed principal in that payment for the license application was made by him.

(e) At the public hearing of August 15, 1974, said applicant was unfamiliar with the terms of the lease, plans, or specifications, or of any details pertinent to the application allegedly filed by him with the Clerk of the Village of Loch Arbour.

(f) The public hearing conducted by the Village Board of Trustees permitted introduction of extraneous issues prejudicial to the rights and interests of appellant, resulting in discrimination in approval of the application of the successful applicant, JOSEPH B. MARINACCIO.

(g) There was no showing at the public hearing that the said successful applicant complied with regulations of the Division of Alcoholic Beverage Control or the municipality in that no consideration was given to the actual location of the proposed licensed premises.

In their respective answers, the Board and Marinaccio denied these contentions.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. Additionally, by stipulation of counsel, the transcript of the hearing below and the file of the municipal clerk containing the applications submitted by the three applicants who applied for the subject license with supporting documents were received as joint exhibits.

The transcript of the hearing held by the Board on August 15, 1974 reveals that all three applicants appeared at the said hearing, submitted documents and were subjected to cross-examination with respect to their respective applications.

Marinaccio, not having his lease and sketch of the proposed establishment, was directed by Board's attorney to and did present those documents to the Village clerk on the following day. Marinaccio stated that he received assistance from his father because his father had prior experience as a liquor licensee in Asbury Park. However, he denied acting as a front for anyone.

Julius Pearlman, who objected to the issuance of any liquor licenses at all, objected, in particular to the grant of a liquor license to Marinaccio because, in his opinion, Marinaccio was not a responsible person. Furthermore, he felt that the liquor store may become a "trouble spot".

In order to afford the members of the Board the benefit of examining the transcript of the hearing, the Board postponed a decision on these applications until September 5, 1974. At the meeting of September 5, 1974, the Board adopted the resolution herein above set forth.

At the de novo hearing, Roberta L. Wildrick, wife of appellant, Robert A. Wildrick, testified that, pursuant to discussion had with her husband over a period of at least several months, an application and documents in support thereof, were filed with the Village clerk.

Claire Weintraub, Village clerk, testified that, at no time, did she request Marinaccio to submit a sketch and a lease or a letter of a lease. However, he filed those documents the day following the hearing conducted by the Board.

Myrtle Robertson, a member of the Board testified that its members were furnished with a copy of the transcript of the hearing conducted by it on August 15, 1974. Thereafter, the Board was convened, in caucus, at which time two relevant issues were presented for determination. First, a poll of the Board indicated that it favored the issuance of a plenary retail distribution license. A poll was then taken with respect to the applications. Four members of the Board favored the grant of the license to the respondent, Marinaccio; Robertson favored the grant of the license to appellant.

Subsequent to the taking of the poll, each member expressed his or her views concerning the respective merits of each applicant. The discussion, did not, in anywise, alter the respective opinions uttered by the various members of the Board.

The witness then testified, as follows:

"Q Prior to the vote was there any

discussion of the merits or demerits of any applicant discussed? A No. In fairness to the Board, I don't think a discussion was absolutely necessary. We had been at the public hearing, we had read the testimony, and I think we all formed an opinion."

No resolution concerning either the issuance of a liquor license or the individual to whom it should be granted was prepared prior to the aforementioned caucus.

At the hearing de novo held herein, Julius Pearlman, an objector, reasserted his objection, to the issuance of any liquor license and in particular, to the issuance of a license to Marinaccio.

Basically, appellant argues that the Board's decision was the result of favoritism and an abuse of discretion.

The governing legal principle has long been established in Fanwood v. Rocco, 33 N.J. 404, 414 (1960), wherein the court stated:

"...The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him...Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable...."

Since the Council's action in matters of this kind is discretionary, appellant, to prevail on appeal, must show manifest error or clear abuse of discretion. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super, 598 (App. Div. 1955).

Upon examining the entire record herein, I fail to detect any semblance of favoritism or abuse of discretion. On the other hand, I am impressed by the testimony of Board member Robertson which, in my view, vitiates appellant's stated objections.

Additionally, I observe that, although it is obvious that Marinaccio relied upon the experience gained by his father while he was in the liquor business, there is not a

scintilla of evidence presented to prove that he is acting as an undisclosed principal in his father's behalf.

Appellant further alleges that Marinaccio failed to file plans, or specifications and a lease with the Village Clerk concomitant with the filing of his application.

This contention is without substance. Rule 1 of State Regulation No. 2 deals with the necessity of filing plans for a building not yet constructed. [Emphasis supplied] See Hudson - Bergen Package Stores Association v. Bayonne, et al, Bulletin 2012, Item 1 where this issue was discussed. It is uncontradicted that the proposed transfer is to an existing structure. In any event, it is apparent from the testimony of the Village Clerk, that Marinaccio filed the plans and the lease the day following the hearing and that the Board had those documents before them prior to making its ultimate determination herein.

In sum, I find all of appellant's contentions lacking in merit.

Upon considering the totality of the record herein, and the precedents cited, I find that the Board has, in my opinion, understood its full responsibility, has acted circumspectly and in the reasonable exercise of its discretion; and further, that neither manifest error nor abuse of discretion by the Board has been shown. Zicherman v. Driscoll, 133 N.J.L. 586; (Sup. Ct. 1946); Blanck v. Magnolia; 33 N.J. 484 (1962).

Accordingly, I find that the appellant has failed to meet the burden of establishing that the action of the Board was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

It is, therefore, recommended that the action of the Board be affirmed, and the appeal be dismissed. It is further recommended that the license not be actually delivered to respondent, Marinaccio, until the premises are completed in accordance with the plans and specifications filed therefor.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the argument of counsel in summation, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 21st day of March 1975,

ORDERED that the action of respondent Board of Trustees of the Village of Loch Arbour be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Leonard D. Ronco  
Director

3. APPELLATE DECISIONS - GREEN v. ELIZABETH.

Henry Green,	:	
	:	
Appellant,	:	On Appeal
	:	
v.	:	CONCLUSIONS
	:	AND
	:	ORDER
City Council of the City	:	
of Elizabeth,	:	
	:	
Respondent.	:	

Leon Sachs, Esq., Attorney for Appellant  
Frank P. Trocino, Esq., by Luis Bello, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the City Council of the City of Elizabeth (hereinafter Council) which, on November 25, 1974, denied appellant's application for a person-to-person transfer of Plenary Retail Consumption License C-51 for premises 187 First Street, Elizabeth from Sanford Silverman, Assignee, to him.

Appellant contends that the action of the Council was arbitrary and capricious in that the Council failed to take into consideration all of the facts pertinent to his application and did not conduct a plenary hearing on the matter. The Council

denied these contentions, and averred that its determination was based on its judgment that the granting of appellant's application would not have been in the best interests of the community.

The appeal was heard de novo in this Division pursuant to Rule 6 of State Regulation No. 15 with full opportunity afforded the parties to introduce evidence and to cross-examine witnesses.

At the outset of the hearing, appellant focused his attack upon the Council's failure to set forth the grounds of its action within the adopted resolution as required by Rule 10 of State Regulation No. 6. The Council answered that, as a matter of policy, when the grounds of rejection result from an examination of an applicant's criminal record, it discusses such record with the applicant or counsel in camera, rather than embarrass an applicant with a public disclosure. This policy was followed in the instant matter.

Counsel for appellant further argued that the Council did not give proper cognizance to a recent order by the Director of this Division (Case Disqual. #2817 - October 22, 1974) in which appellant's prior disqualification to engage in the alcoholic beverage industry was removed (N.J.S.A. 33:1-31.2), and that, as appellant's prior disqualification had been removed, the Board should have examined appellant's prior record more favorably.

Board Secretary, Thomas J. Garvey, testifying on its behalf, stated that the Council had before it the reports of investigation made by the Elizabeth Police Department; that report contained numerous convictions against appellant, all of which the Council considered. The report of investigation was accepted into evidence.

Appellant, Henry U. Green, testified in connection with the alleged police record against him. While denying that a recent arrest on suspicion of homicide had, in fact, been against him, (and the record disclosed that such suspicions were not confirmed), he admitted the following record:

<u>Date</u>	<u>Charge</u>	<u>Disposition</u>
August 7, 1966	Driving as unlicensed driver	Fine Paid
December 2, 1965	Traffic warrants	Fine Paid
April 28, 1962	Gambling	Fine Paid
August 6, 1954	Creating Disturbance	Fine Paid
October 3, 1952	Robbery (3rd offender)	2 - 3 years
July 27, 1944	Assault with intent to rob	Indefinite term
November 3, 1941	Breaking and entry	Probation - 3 years

He described himself as fifty-six years of age, separated from his wife, a disabled war veteran, generally unemployed save for the task of taking care of realty owned by his brother. He managed to save two thousand dollars over a period of time with which he purchased the subject license. He admitted he is on the motor vehicle revoked list since 1965. He retracted an initial impression given that it was he who was convicted as an unlicensed driver in 1966, and claimed that the conviction was, in fact, against another person of similar name.

At the conclusion of the hearing, the appellant urged that the action of the Board was violative of recent legislation (N.J.S.A. 2A:168A-1- Chapter 161, P.L. 1974) which prohibits an issuing authority from discriminating against one because of a prior criminal record.

In matters involving transfer of a liquor license, the responsibility of the municipal issuing authority is "high", its discretion is "wide" and its guide "the public interest". Lubliner v. Paterson, 33 N.J. 428 (1960). Hence, in order to meet the burden required by Rule 6 of State Regulation No. 15, appellant must show manifest error and that the action of the Board was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502 (1947); G.E.L.L., Inc. v. Newark, Bulletin 1911, Item 1; Irizarry v. Passaic, Bulletin 2105, Item 2.

The municipal action based upon its discretion will not be disturbed in the absence of clear abuse. Blanck v. Magnolia, 38 N.J. 484 (1962). No one has a right to demand a license. A license is a special privilege granted to the few, denied to the many. Paul v. Gloucester County, 50 N.J.L. 585(1888).

It is entirely competent for a municipal issuing authority to confine its selection of licensees to those who have clearly demonstrated that they are worthy to receive the privilege of a license, and its determination should be given considerable weight on appeal. Eana, Inc. v. Pleasantville, Bulletin 1024, Item 2; Clark v. West Orange, Bulletin 631, Item 7; Foster v. Passaic, Bulletin 2134, Item 1.

Persons who have been convicted of a crime involving moral turpitude have been, since the initial passage of the alcoholic beverage law, restricted from connection with the alcoholic beverage industry. (N.J.S.A. 33:1-25). However, that proscription has been recently eroded by the passage of the several criminal rehabilitation acts (N.J.S.A. 2A:168A-1 et seq.).

Five years subsequent to the passage of the Alcoholic Beverage Law (N.J.S.A. 33:1 et seq.), the Act was amended to include a means by which persons previously convicted of a crime involving moral turpitude could, upon certain conditions, obtain removal of such disqualification, N.J.S.A. 33:1-31.2.

By such act, persons who would be otherwise barred from employment or enjoying a license in the alcoholic beverage industry could, after a five year period of rehabilitation, have that barrier removed. An order of the Director of this Division, removing such disqualification did not confer any rights to employment or for licensing; employment is still discretionary with an employer and licensing lies within the discretion of the issuing authority.

The limitation of five years from a conviction before which disqualification proceedings could be implemented was effectively reduced by the passage of N.J.S.A. 2A:168A-1, which statute has been most recently amended on November 15, 1974. This act, entitled "Rehabilitated Convicted Offenders Act" asserted a public interest in the early employment of persons who, by virtue of former statutes, were precluded from obtaining employment or obtaining licenses respecting some forty-nine occupations or professions. Rehabilitated convicted offenders can not be discriminated against solely upon the existence of a criminal record.

Appellant vigorously contends that he was rejected by the Board solely upon his "police record" and, thus, the Council acted erroneously. By the previous removal of disqualification by the Director of this Division, appellant believes that his prior record was expunged and the Council, not considering any other factors respecting his ability or inability to qualify as a licensee, prejudiced him by basing its determination solely on his former record.

The Board caused no hearing to be held; no witnesses were heard. There was no determination as to what other factors, if any, in addition to appellant's prior record were considered, nor was appellant provided an opportunity to support his application by any testimony concerning his character, or produce

"...any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendations of persons who have or have had the applicant under their supervision". (N.J.S.A. 2A:168A-1).

It must be noted, nevertheless, that the concluding section of the above cited statute provides:

"7. This act shall not be applicable to any law enforcement agency; however, nothing herein shall preclude a law enforcement agency in its discretion from adopting the policies and procedure set forth herein."

A law enforcement agency is one whose duty it is to preserve the peace. Frazier v. Elmore, 173 S.W. 2nd. 565. Certainly, in an oblique manner, the alcoholic beverage law is, in addition to control of the consumption of alcoholic beverage, is geared toward the maintenance of public peace. Hence, the Board, as an enforcement agency of the alcoholic beverage law, clearly falls within the exclusion cited.

Hence, I find that although the Council may not discriminate against a convicted offender solely on the ground that he has had a police record of convictions, it is nevertheless, not bound to accept an application from such offender merely because his prior record has been expunged. He is, in short, in the same position as all other applicants; the Board is statutorily mandated to accept or reject such applicants based upon its determination as to what is best for the public welfare.

In that context, appellant appeared and gave testimony at the hearing in this Division. Although a pensioner from World War II, he appears not to have regular employment. He receives no regular wages and offers no explanation of his alleged employment. He shows no experience in the alcoholic beverage industry nor, in fact, in any business whatever.

Although he contended that he had saved the sum of two thousand dollars from his modest pension, he produced nothing in support of that contention. He gave no explanation of his disability or, having had his driving privilege revoked, whether he was dependent upon public transportation to come from Newark to Elizabeth, the license situs. He further failed to reveal what capitalization he had, or the source of availability to such additional capital as would be needed to commence the business operation. In short, the burden was upon him to establish that he was a worthy person to whom a license should be issued.

As stated hereinabove, a basic criterion in these applications is the worthiness of persons applying for a license, a matter which resides in the rational and reasonable discretion of the issuing authority. Where, as here, the Council did not consider the applicant clearly worthy of holding a license and was of the conviction that the public interest would be best served by the denying of his application for transfer, its decision will not be lightly disturbed. Barresi v. Ridgefield, Bulletin 1770, Item 2.

"The test in the establishment and issuance of liquor licenses is whether the public good requires it. Paul v. Gloucester County, supra, 50 N.J.L. 585. In Zicherman v. Driscoll, 133 N.J.L. 586, 588 (Sup. Ct. 1946) the court said: 'The common interest of the general public should be the guide post in the issuing and renewing of licenses.' " Blanck v. Magnolia, supra, at 490.

I conclude that appellant has failed to maintain his burden of establishing that the action of the Council was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

Consequently, it is recommended, that the action of the Council be affirmed, and the appeal be dismissed.

Conclusions and Order

No exceptions to the Hearer's Report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's Report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 31st day of March 1975,

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

Leonard D. Ronco  
Director

4. APPELLATE DECISIONS - BUSH-COLEMAN ASSOCIATES, INC. v. TUCKERTON.

Bush-Coleman Associates, Inc.,	)	
t/a The Gang Plank Pub,	)	On Appeal
	)	
Appellant,	)	CONCLUSIONS
	)	and
v.	)	ORDER
	)	
Mayor and Council of the	)	
Borough of Tuckerton,	)	
	)	
Respondent.	)	

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Citta, Carluccio & Holzapfel, Esqs., by Daniel J. Carluccio, Esq.,  
Attorneys for Appellant.  
John Douglas Crowley, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant appeals from the alleged failure of the respondent Borough of Tuckerton to renew its plenary retail consumption license for the 1974-75 licensing period. At the de novo hearing in this Division, counsel for the parties hereto stipulated the following:

- (1) Respondent, Mayor and Council of the Borough of Tuckerton will renew appellant's license for the 1974-75 licensing period nunc pro tunc which said license shall not actually be delivered to appellant until it;
  - (a) submits a proposal satisfactory to respondent showing the situs, location and plans of a building in which the licensed premises will be housed; and
  - (b) constructs the said premises in accordance with such proposal, and approved by respondent.
- (2) Appellant shall, upon the said renewal of license, forthwith request the Director of this Division to enter an Order dismissing this appeal.

The attorney of appellant, by letter dated November 12, 1975, advises that the aforesaid license has been renewed, and that delivery of said license has been withheld pursuant to the above stipulation. Good cause appearing, I shall enter an Order of dismissal in accordance with the terms of the said stipulation.

Accordingly, it is, on this 11th day of March, 1975  
ORDERED that the appeal herein be and the same is hereby  
dismissed.

*Leonard D. Ronco*  
Leonard D. Ronco  
Director