New York
State Liquor Authority

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TOPICS
related to
WRITTEN MATERIALS

Alcohol Training
Awareness Program
For
On Premises Licensees

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DIRECT DELIVERY PROHIBITED: a delivery made by the licensee or server. The law forbids a licensee or server to deliver alcohol to an underage person. ("No person shall sell, deliver or give away *** any alcoholic beverage to any person actually, or apparently, under the age of twenty-one years.")	Alcoholic Beverage Control Law §65.1 [1 page]	
INDIRECT PERMISSIVE DELIVERY PROHIBITED: a delivery permitted by the licensee or server. The law forbids a licensee or server to permit another individual to deliver alcohol to an underage person. ("No person shall *** cause or permit or procure to be sold, delivered or given away any alcoholic beverage to any person actually, or apparently, under the age of twenty-one years.")	Alcoholic Beverage Control Law §65.1 [1 page]	
DUTY OF REASONABLE SUPERVISION. The statutory directive that the licensee not permit the delivery of alcohol to underage persons imposes a duty of reasonable supervision. The licensee or server must, through the exercise of reasonable diligence, keep aware of conditions within the licensed establishment. "[T]here is no safety in ignorance if proper inquiry would avail. *** Whatever reasonable supervision by oneself or one's agents would discover and prevent, that, if continued, will be taken as suffered" Beverly Lanes, 12 A.D.2d at 160 (dissent), quoting from People ex rel. Price v. Sheffield Farms Co., 225 N.Y. 25, 30-31.	Alcoholic Beverage Control Law §65.1 [1 page]	Matter of Beverly Lanes, Inc. v. Rohan, 12 A.D.2d 156, 160 (dissenting opinion), reversed for the reasons stated in the dissenting opinion 11 N.Y.2d 909 (1962). [6 pages]

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INDIRECT PERMISSIVE DELIVERY MADE IN THE AREA WITHIN THE LICENSEE'S OR SERVER'S REASONABLE APPREHENSION. The licensee and server are legally responsible for any subsequent redelivery of an alcoholic beverage made by an individual to whom the server has made a single or multiple delivery, where such redelivery is made in the area within the licensee's or server's reasonable apprehension. If the licensee or server knows -- or if the licensee or server, in the exercise of reasonable diligence, should know -- that another individual (usually, but not necessarily, a patron) is delivering or has delivered alcohol to an underage person, and if the licensee or server does not act to stop or withdraw such delivery, then the licensee or server has, by his or her inaction, permitted that other individual to deliver alcohol to an underage person, and the licensee and/or the server will be held responsible for the delivery. (Charges may also be brought against the patron for delivering alcohol to an underage person.) --- In each of the following cases, the Court upheld a State Liquor Authority determination that the licensee and server had permitted the delivery of alcohol to an underage person: Al Ronick, Inc. The server sold two alcoholic drinks to an adult male at the bar. The adult male then handed one of the drinks to a female seated next to him at the bar. The female was under the legal age. Austin Lemontree, Inc. An alcoholic drink was sold to a male patron at the bar. The patron then gave the drink to a female located three feet from the bar. Four or five bartenders were working at the bar at the time. The female was under the legal age. Jo Mar Jo Restaurant Corp. The server sold two alcoholic drinks to an adult male at the bar. The male returned to a table a where a female was seated, and gave her one of the drinks. The bartender had an unobstructed view of the table. The female was under the legal age. [If the view of the bartender had been obstructed, the charge could have been sustained as a result of a "multiple delivery". Please consider the "multiple delivery" topic discussed at page 3 of this table.] Culligan's Pub, Inc. The server sold two pitchers of beer at the bar, and provided five glasses. The beer was consumed by five males at a table situated seven or eight feet from the bar. The bartender had an unobstructed view of the table. One of the males was under the legal age. [If the view of the bartender had been obstructed, the charge could have been sustained as a result of a "multiple delivery". Please consider the "multiple delivery" topic discussed at page 3 of this table.]	Alcoholic Beverage Control Law §65.1 [1 page]	Matter of Al Ronick, Inc. v. New York State Liquor Authority, 157 A.D.2d 656 [1 page] Matter of Austin Lemontree, Inc., v. New York State Liquor Authority, 147 A.D.2d 476, affirmed, 74 N.Y.2d 869 [3 pages] Matter of Jo Mar Jo Restaurant Corp. v. New York State Liquor Authority, 197 A.D.2d 625 [1 page] Matter of Culligan's Pub, Inc. v. New York State Liquor Authority, 170 A.D.2d 506 [2 pages]

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INDIRECT PERMISSIVE DELIVERY MADE AS THE RESULT OF A MULTIPLE DELIVERY MADE TO A SINGLE INDIVIDUAL. A "multiple delivery" is, in premises licensed to sell alcoholic beverages for consumption on the premises, the delivery of more than one alcoholic beverage to an individual patron in a single transaction. "Multiple delivery" includes the delivery of a quantity of alcohol which would reasonably be consumed by more than one person, such as, for example, one pitcher of an alcoholic beverage, or more than one glass, cup, mug, bottle, can, shot, or other individual serving of an alcoholic beverage. In premises licensed to sell alcoholic beverages for consumption off the premises, a "multiple delivery" is the delivery of more than one bottle, can, or individual container of an alcoholic beverage. A licensee and the server for on-premises consumption are legally responsible for any subsequent redelivery of an alcoholic beverage made by an individual to whom the server has made a multiple delivery. When a licensee or server for on-premises consumption delivers, in a single delivery made to a single individual, a quantity of alcohol which would be reasonably be consumed by more than one person, the licensee or server is obligated to accompany such individual to the area of consumption and make sure that no alcohol is given to a person under the legal age. If an on-premises licensee or server makes a multiple delivery to an individual patron, and fails to accompany the patron to the area of consumption to make sure that none of the items is intended for an underage person, then the licensee or server, by his or her inaction, has permitted the patron to deliver alcohol to whomever the patron chooses. If the patron actually delivers the alcohol to an underage person, then the licensee and/or the server will be held responsible for the delivery. If an off-premises licensee or store clerk makes an alcohol delivery to an adult customer under circumstances which would indicate to a reasonable person that the alcohol is likely to be shared with or redelivered to a person under the legal age; and if the adult customer actually does share the alcohol with a person under the legal age, or actually does redeliver the alcohol to a person under the legal age -- then the licensee or store clerk will be held to have permitted the delivery of alcohol to a person under the legal age, in violation of ABCL § 65.1.	Alcoholic Beverage Control Law §65.1 [1 page]	Matter of Beverly Lanes, Inc. v. Rohan, 12 A.D.2d 156, 160 (dissenting opinion), reversed for the reasons stated in the dissenting opinion 11 N.Y.2d 909 (1962). [6 pages]
A LICENSEE OR SERVER MAY LEGALLY REFUSE TO DELIVER AN ALCOHOLIC BEVERAGE IF THE LICENSEE OR SERVER IS NOT CERTAIN THAT THE PERSON SEEKING THE ALCOHOL DELIVERY IS OF LEGAL AGE. The first sentence of subdivision 4 of section 65 of the Alcoholic Beverage Control Law provides: "Neither such person so refusing to sell or deliver under this section nor his employer shall be liable in any civil or criminal action or for any fine or penalty based upon such refusal, except that such sale or delivery shall not be refused, withheld from or denied to any person on account of race, creed, color or national origin."	Alcoholic Beverage Control Law §65.4 [1 page]	

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THE AFFIRMATIVE DEFENSE. THE LICENSEE'S OR SERVER'S REASONABLE RELIANCE UPON A PHOTOGRAPHIC IDENTIFICATION CARD APPARENTLY ISSUED BY A GOVERNMENTAL ENTITY. If a licensee or server is charged with delivering alcohol to an underage person, the licensee or server is entitled to offer an affirmative defense to the charge. The defense is called an affirmative defense because the licensee or server has the affirmative burden of presenting evidence which will satisfy all required elements of the defense. In order to establish the affirmative defense, the licensee or server must present evidence which proves that, in connection with the specific underage alcohol delivery which is being charged, the licensee or server reasonably relied upon the underage youth's presentation of a photographic identification card apparently issued by a governmental agency. **THE LICENSEE'S OR SERVER'S HOLDING OF A VALID CERTIFICATE OF COMPLETION FROM AN AUTHORIZED ATAP PROGRAM.** If a licensee or server is charged with delivering alcohol to an underage person or to a person that appears visibly intoxicated, and the licensee has had a clean disciplinary record for at least five years, and the licensee or employee alleged to have committed the violation has a valid certificate of completion (or renewal) from an approved ATAP program, the civil penalty related to such offense will be limited to $1,000.00. In addition, if a licensee or server is charged with delivering alcohol to an underage person or to a person that appears visibly intoxicated, and the licensee has had a clean disciplinary record for at least five years, but the licensee or employee alleged to have committed the violation does not hold a valid certificate of completion (or renewal) from an approved ATAP program at that time, the licensee will be given a period of 90 days from the imposition of any civil penalty arising from same to submit written proof that all of the licensee's employees involved in the direct sale or service of alcoholic beverages have obtained a valid certificate of completion (or renewal) from an approved ATAP program in return for which the civil penalty will be reduced by 25% by the liquor authority.	Alcoholic Beverage Control Law §§65.6 and 65.7 [2 pages]	

ONLY THE FORMS OF IDENTIFICATION LISTED IN THE ALCOHOLIC BEVERAGE CONTROL LAW CAN BE ACCEPTED AS WRITTEN EVIDENCE OF AGE. Paragraph (b) of subdivision 2 of section 65-b of the Alcoholic Beverage Control Law provides (emphasis by underlining and italics is added): No licensee, or agent or employee of such licensee shall accept as written evidence of age by any such person for the purchase of any alcoholic beverage, any documentation other than: (i) a *valid* driver's license or non-driver identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government within the United States or a provincial government of the dominion of Canada, or (ii) a *valid* passport issued by the United States government or any other country, or (iii) an identification card issued by the armed forces of the United States. Upon the presentation of such driver's license or non-driver identification card issued by a governmental entity, such licensee or agent or employee thereof may perform a transaction scan as a precondition to the sale of any alcoholic beverage. Nothing in this section shall prohibit a licensee or agent or employee from performing such a transaction scan on any of the other documents listed in this subdivision if such documents include a bar code or magnetic strip that that may be scanned by a device capable of deciphering any electronically readable format.	Alcoholic Beverage Control Law §65-b.2(b) [3 pages]	

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REASONABLE RELIANCE: THE IDENTIFICATION PRESENTED BY THE PATRON MUST BE CURRENTLY VALID AND IN EFFECT. A driver's license, non-driver identification card, or passport presented as written evidence of age must be currently valid. If the identification offered as written evidence of age has expired, the licensee or server cannot reasonably rely upon the identification.	Alcoholic Beverage Control Law 65-b.2(b) [3 pages]	
REASONABLE RELIANCE: THE AFFIRMATIVE DEFENSE CANNOT BE ESTABLISHED UNLESS THE IDENTIFICATION WAS EXAMINED ON THE SAME OCCASION AS THE UNDERAGE ALCOHOL DELIVERY BEING PROSECUTED. The affirmative defense of reasonable reliance upon a photographic identification apparently issued by a governmental agency is not established unless the licensee and server prove that "the photographic identification was presented *on the occasion of the specific sale or delivery underlying the alleged violation*" (Lakeside Inn Supper Club, 147 A.D.2d at 901-902) [emphasis by italics has been added].		Matter of Lakeside Inn Supper Club, Inc. v. New York State Liquor Authority, 147 A.D.2d 901 [1 page]
REASONABLE RELIANCE: CAREFUL AND CRITICAL EXAMINATION. The defense of reasonable reliance is not established unless a reviewing court would find that the licensee making the alcohol delivery or the server making the alcohol delivery -- after having made a careful and critical examination of the identification -- reasonably concluded that the identification belonged to the person presenting the identification, and reasonably concluded that the identification had not been altered.	Alcoholic Beverage Control Law § 65.4 [1 pages]	Matter of Dark Horse Tavern, Inc. v. New York State Liquor Authority, 232 A.D.2d 947 [1 page]
REASONABLE RELIANCE: IT IS THE PERSON DELIVERING THE ALCOHOL WHO MUST EXAMINE AND REASONABLY RELY UPON THE PHOTOGRAPHIC IDENTIFICATION CARD APPARENTLY ISSUED BY A GOVERNMENTAL AGENCY. ABCL § 65.4 provides, in relevant part (word "underage" in brackets has been added; emphasis by underlining has been added): " *** It shall be an affirmative defense that such [underage] person had produced a photographic identification card apparently issued by a governmental entity and that the alcoholic beverage had been sold, delivered or given away to such person in reasonable reliance upon such identification." An employee who delivers an alcoholic beverage to an underage patron cannot take advantage of the affirmative defense unless the delivering employee has personally examined and reasonably relied upon the photographic identification produced by the underage patron.	Alcoholic Beverage Control Law § 65.4 [1 pages]	

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CRIMINAL PENALTIES. Delivering or permitting the delivery of alcohol to a person under the legal age in violation of ABCL § 65.1 is an unclassified misdemeanor. The Penal Law directs that an unclassified misdemeanor be treated as a class A misdemeanor. Unlawfully Dealing with a Child in the First Degree, in violation of Penal Law §260.20, is a class A misdemeanor. A person convicted of a class A misdemeanor may be sentenced to a term of imprisonment of up to one year, and fined up to $1,000. In addition, the corporation for which the person works may be fined up to $5,000. **THE LICENSEE'S OR SERVER'S HOLDING OF A VALID CERTIFICATE OF COMPLETION FROM AN AUTHORIZED ATAP PROGRAM.** If a licensee or server is charged with Unlawfully Dealing with a Child in the First Degree, and the licensee or server has not been convicted of same within the preceding five years, the licensee or server is entitled to offer an affirmative defense to the charge that he or she is in possession of a valid certificate of completion (or renewal) from an approved ATAP program. In addition, the licensee or server involved is supposed to have the ability to obtain a "reasonable" adjournment to obtain a valid certificate of completion (or renewal) from an approved ATAP program.	Alcoholic Beverage Control Law § 65.1 and § 130.5 --- Penal Law § 260.20 § 55.10.2(b) § 70.15.1 § 80.05 § 80.10.1(b) [1 page each]	
CIVIL LIABILITY FOR INJURIES CAUSED BY THE INTOXICATION OF A PERSON UNDER THE AGE OF TWENTY-ONE YEARS. A licensee or server who delivers alcohol to a person under the legal age may subsequently be found to have caused the intoxication of a person under the age of twenty-one. Where such liability is established, the licensee and/or server may be obligated to pay money damages to innocent third parties to compensate them for injuries, including personal injury, injury to property, and injury to means of support.	General Obligations Law § 11-100 and § 11-101 [1 page]	

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CIVIL ADMINISTRATIVE PENALTIES WHICH THE STATE LIQUOR AUTHORITY MAY IMPOSE AGAINST THE ALCOHOLIC BEVERAGE LICENSE HOLDER. In connection with a violation of law, the State Liquor Authority may impose civil administrative penalties against a licensee. Penalties which may be imposed against the holder of a retail alcoholic beverage license include revocation, cancellation, or suspension of the alcoholic beverage license; a civil money penalty of up to ten thousand dollars; a bond claim of up to one thousand dollars; and a two-year ban against the future licensure of the building containing the licensed premises.	Alcoholic Beverage Control Law § 17.3, § 112 and § 113 [1 page each]	
FIRST HAND ACCOUNTS OF PERSONS WHO HAVE SUFFERED A LOSS ATTRIBUTABLE TO PERSONS DRIVING A MOTOR VEHICLE WHILE INTOXICATED. Pamphlet issued by STOP DWI New York "Shattered Lives"		

Alcoholic Beverage Control Law
Section 17.3

Alcoholic Beverage Control Law § 17.3 Powers of the authority

The authority shall have the following functions, powers and duties:

* * *

3. To revoke, cancel or suspend for cause any license or permit issued under this chapter and/or to impose a civil penalty for cause against any holder of a license or permit issued pursuant to this chapter. Any civil penalty so imposed shall not exceed the sum of ten thousand dollars as against the holder of any retail permit issued pursuant to sections ninety-five, ninety-seven, ninety-eight, ninety-nine-d and paragraph f of subdivision one of section ninety-nine-b of this chapter and as against the holder of any retail license issued pursuant to sections fifty-two, fifty-three-a, fifty-four, fifty-four-a, fifty-five, fifty-five-a, sixty-three, sixty-four, sixty-four-a, sixty-four-b, sixty-four-c, seventy-nine, eighty-one and eighty-one-a of this chapter, and the sum of thirty thousand dollars as against the holder of a license issued pursuant to sections fifty-three, seventy-six, seventy-six-a and seventy-eight of this chapter, provided that the civil penalty against the holder of a wholesale license issued pursuant to section fifty-three of this chapter shall not exceed the sum of ten thousand dollars where that licensee violates provisions of this chapter during the course of the sale of beer at retail to a person for consumption at home, and the sum of one hundred thousand dollars as against the holder of any license issued pursuant to sections fifty-one, sixty-one and sixty-two of this chapter. Any civil penalty so imposed shall be in addition to and separate and apart from the terms and provisions of the bond required pursuant to section one hundred twelve of this chapter.

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New York
Alcoholic Beverage Control Law
Section 65

Alcoholic Beverage Control Law § 65. Prohibited sales

No person shall sell, deliver or give away or cause or permit or procure to be sold, delivered or given away any alcoholic beverages to

1. Any person, actually or apparently, under the age of twenty-one years;

2. Any visibly intoxicated person;

3. Any habitual drunkard known to be such to the person authorized to dispense any alcoholic beverages.

4. Neither such person so refusing to sell or deliver under this section nor his or her employer shall be liable in any civil or criminal action or for any fine or penalty based upon such refusal, except that such sale or delivery shall not be refused, withheld from or denied to any person on account of race, creed, color or national origin.
[As amended by Laws 2010, Ch. 435]

5. The provisions of subdivision one of this section shall not apply to a person who gives or causes to be given any such alcoholic beverage to a person under the age of twenty-one years, who is a student in a curriculum licensed or registered by the state education department and is required to taste or imbibe alcoholic beverages in courses which are part of the required curriculum, provided such alcoholic beverages are used only for instructional purposes during classes conducted pursuant to such curriculum.

6. In any proceeding pursuant to section one hundred eighteen of this chapter to revoke, cancel or suspend a license to sell alcoholic beverages, in which proceeding it is alleged that a person violated subdivision one of this section;
a) it shall be an affirmative defense that such person had produced a photographic identification card apparently issued by a governmental entity and that the alcoholic beverage had been sold, delivered or given to such person in reasonable reliance upon such identification. In evaluating the applicability of such affirmative defense, the authority shall take into consideration any written policy adopted and implemented by the seller to carry out the provisions of paragraph (b) of subdivision two of section sixty-five-b of this article; and
b) it shall be an affirmative defense that at the time of such violation such person who committed such alleged violation held a valid certificate of completion or renewal from an entity authorized to give and administer an alcohol training awareness program pursuant to subdivision twelve of section seventeen of this chapter. Such licensee shall have diligently implemented and complied with all of the provisions of the approved training program. In such proceeding to revoke, cancel or suspend a license pursuant to section one hundred eighteen of this chapter, the licensee must prove each element of such affirmative defense by a preponderance of the credible evidence. Evidence of three unlawful sales of alcoholic beverages by any employee of a licensee to persons under twenty-one years of age, within a two year period, shall be considered by the authority in determining whether the licensee had diligently implemented such an approved program.
[As amended by Laws 2010, Ch. 435]

7. In any proceeding pursuant to section one hundred eighteen of this chapter to revoke, cancel or suspend a license to

sell alcoholic beverages, in which proceeding a charge is sustained that a person violated subdivision one or two of this section and the licensee has not had any adjudicated violation of this chapter at the licensed premises where the violation occurred within the previous five year period; and

(a) at the time of such violation the person that committed such violation held a valid certificate of completion or renewal from an entity authorized to give and administer an alcohol training awareness program pursuant to subdivision twelve of section seventeen of this chapter, the civil penalty related to such offense shall be recovery of, as provided for in section one hundred twelve of this chapter, the penal sum of the bond on file during the period in which the violation took place; or

(b) at the time of such violation the licensee has not had any adjudicated violations of this chapter at the licensed premises where the violation occurred within the previous five year period, any civil penalty imposed shall be reduced by twenty-five percent if the licensee submits written proof, within ninety days of the imposition of such civil penalty, that all of the licensee's employees involved in the direct sale or service of alcoholic beverages to the public at the licensed premises where the violation occurred have obtained a valid certificate of completion or renewal from an entity authorized to give and administer an alcohol training awareness program pursuant to subdivision twelve of section seventeen of this chapter.

For the purposes of this subdivision, the five year period shall be measured from the dates that the violations occurred.

[As amended by Laws 2010, Ch. 435]

New York
Alcoholic Beverage Control Law
Section 65-b

Alcoholic Beverage Control Law § 65-b Offense for one under age of twenty-one years to purchase or attempt to purchase an alcoholic beverage through fraudulent means.

1. As used in this section: (a) "A device capable of deciphering any electronically readable format" or "device" shall mean any commercial device or combination of devices used at a point of sale or entry that is capable of reading the information encoded on the magnetic strip or bar code of a driver's license or non-driver identification card issued by the commissioner of motor vehicles;

(b) "Card holder" means any person presenting a driver's license or non-driver identification card to a licensee, or to the agent or employee of such licensee under this chapter; and

(c) "Transaction scan" means the process involving a device capable of deciphering any electronically readable format by which a licensee, or agent or employee of a licensee under this chapter reviews a driver's license or non-driver identification card presented as a precondition for the purchase of an alcoholic beverage as required by subdivision two of this section or as a precondition for admission to an establishment licensed for the on-premises sale of alcoholic beverages where admission is restricted to persons twenty-one years or older.

2. (a) No person under the age of twenty-one years shall present or offer to any licensee under this chapter, or to the agent or employee of such licensee, any written evidence of age which is false, fraudulent or not actually his own, for the purpose of purchasing or attempting to purchase any alcoholic beverage.

(b) No licensee, or agent or employee of such licensee shall accept as written evidence of age by any such person for the purchase of any alcoholic beverage, any documentation other than: (i) a valid driver's license or non-driver identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government within the United States or a provincial government of the dominion of Canada, or (ii) a valid passport issued by the United States government or any other country, or (iii) an identification card issued by the armed forces of the United States. Upon the presentation of such driver's license or non-driver identification card issued by a governmental entity, such licensee or agent or employee thereof may perform a transaction scan as a precondition to the sale of any alcoholic beverage. Nothing in this section shall prohibit a licensee or agent or employee from performing such a transaction scan on any of the other documents listed in this subdivision if such documents include a bar code or magnetic strip that that may be scanned by a device capable of deciphering any electronically readable format.

(c) In instances where the information deciphered by the transaction scan fails to match the information printed on the driver's license or non-driver identification card presented by the card holder, or if the transaction scan indicates that the information is false or fraudulent, the attempted purchase of the alcoholic beverage shall be denied.

3. A person violating the provisions of paragraph (a) of subdivision two of this section shall be guilty of a violation and shall be sentenced in accordance with the following:

(a) For a first violation, the court shall order payment of a fine of not more than one hundred dollars and/or an appropriate amount of community service not to exceed thirty hours. In addition, the court may order completion of an alcohol awareness program established pursuant to section 19.25 of the mental hygiene law.

(b) For a second violation, the court shall order payment of a fine of not less than fifty dollars nor more than three hundred fifty dollars and/or an appropriate amount of community service not to exceed thirty hours. The court also shall order completion of an alcohol awareness program as referenced in paragraph (a) of this subdivision if such program has not previously been completed by the offender, unless the court determines that attendance at such program is not feasible due to the lack of availability of such program within a reasonably close proximity to the locality in which the offender resides or matriculates, as appropriate.

(c) For third and subsequent violations, the court shall order payment of a fine of not less than fifty dollars nor more than seven hundred fifty dollars and/or an appropriate amount of community service not to exceed thirty hours. The court also shall order that such person submit to an evaluation by an appropriate agency certified or licensed by the office of alcoholism and substance abuse services to determine whether the person suffers from the disease of alcoholism or alcohol abuse, unless the court determines that under the circumstances presented such an evaluation is not necessary, in which case the court shall state on the record the basis for such determination. Payment for such evaluation shall be made by such person. If, based on such evaluation, a need for treatment is indicated, such person may choose to participate in a treatment plan developed by an agency certified or licensed by the office of alcoholism and substance abuse services. If such person elects to participate in recommended treatment, the court shall order that payment of such fine and community service be suspended pending the completion of such treatment.

(d) Evaluation procedures. For purposes of this subdivision, the following shall apply:

(i) The contents of an evaluation pursuant to paragraph (c) of this subdivision shall be used for the sole purpose of determining if such person suffers from the disease of alcoholism or alcohol abuse.

(ii) The agency designated by the court to perform such evaluation shall conduct the evaluation and return the results to the court within thirty days, subject to any state or federal confidentiality law, rule or regulation governing the confidentiality of alcohol and substance abuse treatment records.

(iii) The office of alcoholism and substance abuse services shall make available to each supreme court law library in this state, or, if no supreme court law library is available in a certain county, to the county court law library of such county, a list of agencies certified to perform evaluations as required by subdivision (f) of section 19.07 of the mental hygiene law.

(iv) All evaluations required under this subdivision shall be in writing and the person so evaluated or his or her counsel shall receive a copy of such evaluation prior to its use by the court.

(v) A minor evaluated under this subdivision shall have, and shall be informed by the court of, the right to obtain a second opinion regarding his or her need for alcoholism treatment.

4. A person violating the provisions of paragraph (b) of subdivision two of this section shall be guilty of a violation punishable by a fine of not more than one hundred dollars, and/or an appropriate amount of community service not to exceed thirty hours. In addition, the court may order completion of an alcohol training awareness program established pursuant to subdivision twelve of section seventeen of this chapter where such program is located within a reasonably close proximity to the locality in which the offender is employed or resides.

5. No determination of guilt pursuant to this section shall operate as a disqualification of any such person subsequently to hold public office, public employment, or as a forfeiture of any right or privilege or to receive any license granted by public authority; and no such person shall be denominated a criminal by reason of such determination.

6. In addition to the penalties otherwise provided in subdivision three of this section, if a determination is made sustaining a charge of illegally purchasing or attempting to illegally purchase an alcoholic beverage, the court may suspend such person's license to drive a motor vehicle and the privilege of an unlicensed person of obtaining such license, in accordance with the following and for the following periods, if it is found that a New York state driver's license was used for the purpose of such illegal purchase or attempt to illegally purchase; provided, however, that where a person is sentenced pursuant to paragraph (b) or (c) of subdivision three of this section, the court shall impose such license suspension if it is found that a New York state driver's license was used for the purpose of such illegal purchase or attempt to illegally purchase:

(a) For a first violation of paragraph (a) of subdivision two of this section, a three month suspension.

(b) For a second violation of paragraph (a) of subdivision two of this section, a six month suspension.

(c) For a third or subsequent violation of paragraph (a) of subdivision two of this section, a suspension for one year or until the holder reaches the age of twenty-one, whichever is the greater period of time.

Such person may thereafter apply for and be issued a restricted use license in accordance with the provisions of section five hundred thirty of the vehicle and traffic law.

7. (a) In any proceeding pursuant to subdivision one of section sixty-five of this article, it shall be an affirmative defense that such person had produced a driver's license or non-driver identification card apparently issued by a governmental entity, successfully completed the transaction scan, and that the alcoholic beverage had been sold, delivered or given to such person in reasonable reliance upon such identification and transaction scan. In evaluating the applicability of such affirmative defense, the liquor authority shall take into consideration any written policy adopted and implemented by the seller to carry out the provisions of this chapter. Use of a transaction scan shall not excuse any licensee under this chapter, or agent or employee of such licensee, from the exercise of reasonable diligence otherwise required by this section. Notwithstanding the above provisions, any such affirmative defense shall not be applicable in any other civil or criminal proceeding, or in any other forum.

(b) A licensee or agent or employee of a licensee may electronically or mechanically record and maintain only the information from a transaction scan necessary to effectuate the purposes of this section. Such information shall be limited to the following: (i) name, (ii) date of birth, (iii) driver's license or non-driver identification number, and (iv) expiration date. The liquor authority and the state commissioner of motor vehicles shall jointly promulgate any regulation necessary to govern the recording and maintenance of these records by a licensee under this chapter. The liquor authority and the commissioner of health shall jointly promulgate any regulations necessary to ensure quality control in the use of transaction scan devices.

8. A licensee or agent or employee of such licensee shall only use the information recorded and maintained through the use of such devices for the purposes contained in paragraph (a) of subdivision seven of this section, and shall only use such devices for the purposes contained in subdivision two of this section. No licensee or agent or employee of a licensee shall resell or disseminate the information recorded during such scan to any third person. Such prohibited resale or dissemination includes, but is not limited to, any advertising, marketing or promotional activities. Notwithstanding the restrictions imposed by this subdivision, such records may be released pursuant to a court ordered subpoena or pursuant to any other statute that specifically authorizes the release of such information. Each violation of this subdivision shall be punishable by a civil penalty of not more than one thousand dollars.

[*As amended by Laws 1999, Ch. 519*]

Alcoholic Beverage Control Law
Section 112

Alcoholic Beverage Control Law § 112 Bonds of licensees and permittees

The liquor authority may require the licensees and permittees of one or more of the kinds or classes described in this chapter to file with it a bond to the people of the state of New York issued by a surety company, approved by the superintendent of insurance as to solvency and responsibility and authorized to transact business in this state, in such penal sum as the liquor authority may heretofore have prescribed or hereafter shall prescribe, conditioned that such licensee or permittee will not suffer or permit any violation of the provisions of this chapter and that all fines and penalties which shall accrue, during the time the license or permit shall be in effect, will be paid, together with all costs taxed or allowed in any action or proceeding brought or instituted for a violation of any of the provisions of this chapter. A suit to recover on any bond filed pursuant to chapter one hundred eighty of the laws of nineteen hundred thirty-three [FN1] or this chapter may be brought by the liquor authority or on relation of any party aggrieved, in a court of competent jurisdiction and in the event that the obligor named in such bond has violated any of the conditions of such bond, recovery for the penal sum of such bond may be had in favor of the people of the state.

[FN1] Alcoholic Beverage Control Law of 1933 which was repealed by section 162 of this chapter.

Alcoholic Beverage Control Law
Section 113

Alcoholic Beverage Control Law § 113 Premises for which no license shall be granted

1. Where a license for any premises licensed has been revoked, the liquor authority in its discretion may refuse to issue a license under this chapter, for a period of two years after such revocation, for such licensed premises or for any part of the building containing such licensed premises and connected therewith.

2. In determining whether to issue such a license for such two year period, in addition to any other factors deemed relevant, the liquor authority shall, in the case of a license revoked due to the illegal sale of alcohol to a minor, determine whether the proposed subsequent licensee has obtained such premises through an arm's length transaction, and, if such transaction is not found to be an arm's length transaction, the liquor authority shall deny the issuance of such license.

3. For purposes of this section, "arm's length transaction" shall mean a sale of a fee or all undivided interests in real property, or lease of any part thereof, in the open market, between an informed and willing buyer and seller where neither is under any compulsion to participate in the transaction, unaffected by any unusual conditions indicating a reasonable possibility that the sale was made for the purpose of permitting the original licensee to avoid the effect of the revocation. The following sales shall be presumed not to be arm's length transactions unless adequate documentation is provided demonstrating that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original licensee to avoid the effect of the revocation:

(a) a sale between relatives;

(b) a sale between related companies or partners in a business; or

(c) a sale or lease affected by other facts or circumstances that would indicate that the sale or lease is not entered into for the primary purpose of permitting the original licensee to avoid the effect of the revocation.

New York
Alcoholic Beverage Control Law
Section 130, subdivision 5

Alcoholic Beverage Control Law § 130 Penalties for violations of chapter

* * *

5. Any violation by any person of the alcoholic beverage control law for which no punishment or penalty is otherwise provided shall be a misdemeanor, provided, however, that the provisions of this subdivision shall not apply to the prohibitions provided for in subdivision six-a of section one hundred six of this chapter.

New York
General Obligations Law
Sections 11-100 and 11-101

General Obligations Law § 11-100 Compensation for injury or damage caused by the intoxication of a person under the age of twenty-one years

1. Any person who shall be injured in person, property, means of support or otherwise, by reason of the intoxication or impairment of ability of any person under the age of twenty-one years, whether resulting in his death or not, shall have a right of action to recover actual damages against any person who knowingly causes such intoxication or impairment of ability by unlawfully furnishing to or unlawfully assisting in procuring alcoholic beverages for such person with knowledge or reasonable cause to believe that such person was under the age of twenty-one years.

2. In case of the death of either party, the action or right of action established by the provisions of this section shall survive to or against his or her executor or administrator, and the amount so recovered by either a husband, wife or child shall be his or her sole and separate property.

3. Such action may be brought in any court of competent jurisdiction.

4. In any case where parents shall be entitled to such damages, either of such parents may bring an action therefor; but that recovery by either one of such parties shall constitute a bar to suit brought by the other.

General Obligations Law § 11-101 Compensation for injury caused by the illegal sale of intoxicating liquor

1. Any person who shall be injured in person, property, means of support, or otherwise by any intoxicated person, or by reason of the intoxication of any person, whether resulting in his death or not, shall have a right of action against any person who shall, by unlawful selling to or unlawfully assisting in procuring liquor for such intoxicated person, have caused or contributed to such intoxication; and in any such action such person shall have a right to recover actual and exemplary damages.

2. In case of the death of either party, the action or right of action given by this section shall survive to or against his or her executor or administrator, and the amount so recovered by either a husband, wife or child shall be his or her sole and separate property.

3. Such action may be brought in any court of competent jurisdiction.

4. In any case where parents shall be entitled to such damages, either the father or mother may sue alone therefor, but recovery by one of such parties shall be a bar to suit brought by the other.

New York
Penal Law
Section 55.10

Penal Law § 55.10 Designation of offenses

1. Felonies.

(a) The particular classification or subclassification of each felony defined in this chapter is expressly designated in the section or article defining it.

(b) Any offense defined outside this chapter which is declared by law to be a felony without specification of the classification thereof, or for which a law outside this chapter provides a sentence to a term of imprisonment in excess of one year, shall be deemed a class E felony.

2. Misdemeanors.

(a) Each misdemeanor defined in this chapter is either a class A misdemeanor or a class B misdemeanor, as expressly designated in the section or article defining it.

(b) Any offense defined outside this chapter which is declared by law to be a misdemeanor without specification of the classification thereof or of the sentence therefor shall be deemed a class A misdemeanor.

(c) Except as provided in paragraph (b) of subdivision three, where an offense is defined outside this chapter and a sentence to a term of imprisonment in excess of fifteen days but not in excess of one year is provided in the law or ordinance defining it, such offense shall be deemed an unclassified misdemeanor.

3. Violations. Every violation defined in this chapter is expressly designated as such. Any offense defined outside this chapter which is not expressly designated a violation shall be deemed a violation if:

(a) Notwithstanding any other designation specified in the law or ordinance defining it, a sentence to a term of imprisonment which is not in excess of fifteen days is provided therein, or the only sentence provided therein is a fine; or

(b) A sentence to a term of imprisonment in excess of fifteen days is provided for such offense in a law or ordinance enacted prior to the effective date of this chapter but the offense was not a crime prior to that date.

4. Traffic infraction. Notwithstanding any other provision of this section, an offense which is defined as a "traffic infraction" shall not be deemed a violation or a misdemeanor by virtue of the sentence prescribed therefor.

New York
Penal Law
Section 70.15

Penal Law § 70.15 Sentences of imprisonment for misdemeanors and violation

1. Class A misdemeanor. A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed one year; provided, however, that a sentence of imprisonment imposed upon a conviction of criminal possession of a weapon in the fourth degree as defined in subdivision one of section 265.01 must be for a period of no less than one year when the conviction was the result of a plea of guilty entered in satisfaction of an indictment or any count thereof charging the defendant with the class D violent felony offense of criminal possession of a weapon in the third degree as defined in subdivision four of section 265.02, except that the court may impose any other sentence authorized by law upon a person who has not been previously convicted in the five years immediately preceding the commission of the offense for a felony or a class A misdemeanor defined in this chapter, if the court having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such sentence would be unduly harsh and that the alternative sentence would be consistent with public safety and does not deprecate the seriousness of the crime.

2. Class B misdemeanor. A sentence of imprisonment for a class B misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed three months.

3. Unclassified misdemeanor. A sentence of imprisonment for an unclassified misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall be in accordance with the sentence specified in the law or ordinance that defines the crime.

4. Violation. A sentence of imprisonment for a violation shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed fifteen days.

In the case of a violation defined outside this chapter, if the sentence is expressly specified in the law or ordinance that defines the offense and consists solely of a fine, no term of imprisonment shall be imposed.

New York
Penal Law
Section 80.05

Penal Law § 80.05 Fines for misdemeanors and violations

1. Class A misdemeanor. A sentence to pay a fine for a class A misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding one thousand dollars, provided, however, that a sentence imposed for a violation of section 215.80 of this chapter may include a fine in an amount equivalent to double the value of the property unlawfully disposed of in the commission of the crime.

2. Class B misdemeanor. A sentence to pay a fine for a class B misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding five hundred dollars.

3. Unclassified misdemeanor. A sentence to pay a fine for an unclassified misdemeanor shall be a sentence to pay an amount, fixed by the court, in accordance with the provisions of the law or ordinance that defines the crime.

4. Violation. A sentence to pay a fine for a violation shall be a sentence to pay an amount, fixed by the court, not exceeding two hundred fifty dollars.

In the case of a violation defined outside this chapter, if the amount of the fine is expressly specified in the law or ordinance that defines the offense, the amount of the fine shall be fixed in accordance with that law or ordinance.

5. Alternative sentence. If a person has gained money or property through the commission of any misdemeanor or violation then upon conviction thereof, the court, in lieu of imposing the fine authorized for the offense under one of the above subdivisions, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense; provided, however, that the amount fixed by the court pursuant to this subdivision upon a conviction under section 11-1904 of the environmental conservation law shall not exceed five thousand dollars. In such event the provisions of subdivisions two and three of section 80.00 shall be applicable to the sentence.

6. Exception. The provisions of this section shall not apply to a corporation.

New York
Penal Law
Section 80.10

Penal Law § 80.10 Fines for corporations

1. In general. A sentence to pay a fine, when imposed on a corporation for an offense defined in this chapter or for an offense defined outside this chapter for which no special corporate fine is specified, shall be a sentence to pay an amount, fixed by the court, not exceeding:

(a) Ten thousand dollars, when the conviction is of a felony;

(b) Five thousand dollars, when the conviction is of a class A misdemeanor or of an unclassified misdemeanor for which a term of imprisonment in excess of three months is authorized;

(c) Two thousand dollars, when the conviction is of a class B misdemeanor or of an unclassified misdemeanor for which the authorized term of imprisonment is not in excess of three months;

(d) Five hundred dollars, when the conviction is of a violation;

(e) Any higher amount not exceeding double the amount of the corporation's gain from the commission of the offense.

2. Exception. In the case of an offense defined outside this chapter, if a special fine for a corporation is expressly specified in the law or ordinance that defines the offense, the fine fixed by the court shall be as follows:

(a) An amount within the limits specified in the law or ordinance that defines the offense; or

(b) Any higher amount not exceeding double the amount of the corporation's gain from the commission of the offense.

3. Determination of amount or value. When the court imposes the fine authorized by paragraph (e) of subdivision one or paragraph (b) of subdivision two for any offense the provisions of subdivision three of section 80.00 shall be applicable to the sentence.

New York
Penal Law
Sections 260.20 and 260.21

§ 260.20 Penal. Unlawfully dealing with a child in the first degree.

A person is guilty of unlawfully dealing with a child in the first degree when:

1. He knowingly permits a child less than eighteen years old to enter or remain in or upon a place, premises or establishment where sexual activity as defined by article one hundred thirty, two hundred thirty or two hundred sixty-three of this chapter or activity involving controlled substances as defined by article two hundred twenty of this chapter or involving marihuana as defined by article two hundred twenty-one of this chapter is maintained or conducted, and he knows or has reason to know that such activity is being maintained or conducted; or

2. He gives or sells or causes to be given or sold any alcoholic beverage, as defined by section three of the alcoholic beverage control law, to a person less than twenty-one years old; except that this subdivision does not apply to the parent or guardian of such a person or to a person who gives or causes to be given any such alcoholic beverage to a person under the age of twenty-one years, who is a student in a curriculum licensed or registered by the state education department, where the tasting or imbibing of alcoholic beverages is required in courses that are part of the required curriculum, provided such alcoholic beverages are given only for instructional purposes during classes conducted pursuant to such curriculum.

It is no defense to a prosecution pursuant to subdivision two of this section that the child acted as the agent or representative of another person or that the defendant dealt with the child as such.

It is an affirmative defense to a prosecution pursuant to subdivision two of this section that the defendant who sold, caused to be sold or attempted to sell such alcoholic beverage to a person less than twenty-one years old, had not been, at the time of such sale or attempted sale, convicted of a violation of this section or section 260.21 of this article within the preceding five years, and such defendant, subsequent to the commencement of the present prosecution, has completed an alcohol training awareness program established pursuant to subdivision twelve of section seventeen of the alcoholic beverage control law. A defendant otherwise qualifying pursuant to this paragraph may request and shall be afforded a reasonable adjournment of the proceedings to enable him or her to complete such alcohol training awareness program.

Unlawfully dealing with a child in the first degree is a class A misdemeanor.

(As amended by Laws 2010, ch. 435, Sec. 5, eff. Sept. 29, 2010.)

Penal Law § 260.21 Unlawfully dealing with a child in the second degree

A person is guilty of unlawfully dealing with a child in the second degree when:

1. Being an owner, lessee, manager or employee of a place where alcoholic beverages are sold or given away, he permits a child less than sixteen years old to enter or remain in such place unless:

(a) The child is accompanied by his parent, guardian or an adult authorized by a parent or guardian; or

(b) The entertainment or activity is being conducted for the benefit or under the auspices of a non-profit school, church or other educational or religious institution; or

(c) Otherwise permitted by law to do so; or

(d) The establishment is closed to the public for a specified period of time to conduct an activity or entertainment, during which the child is in or remains in such establishment, and no alcoholic beverages are sold, served, given away or consumed at such establishment during such period. The state liquor authority shall be notified in writing by the licensee of such establishment, of the intended closing of such establishment, to conduct any such activity or entertainment, not less than ten days prior to any such closing; or

2. He marks the body of a child less than eighteen years old with indelible ink or pigments by means of tattooing; or

3. He sells or causes to be sold tobacco in any form to a child less than eighteen years old.

It is no defense to a prosecution pursuant to subdivision three of this section that the child acted as the agent or representative of another person or that the defendant dealt with the child as such.

Unlawfully dealing with a child in the second degree is a class B misdemeanor.

(Cite as: 11 N.Y.2d 909) 11 N.Y.2d 909 (Mem) 182 N.E.2d 813, 228 N.Y.S.2d 469

►► *In this decision, the seven Judges of the Court of Appeals (the State's highest Court), reversed the majority decision of the lower court (the Appellate Division), and reinstated the State Liquor Authority's determination. The Authority had found that the restaurant-bowling alley operated by Beverly Lanes, Inc., had permitted the delivery of alcoholic beverages to a person under the legal age (then 18). In reinstating the State Liquor Authority's determination, the Court of Appeals stated that it was reversing the Order of the Appellate Division "for the reasons stated in the dissent." The dissent, written by Justice Bastow, begins at page 5 of this item.* ◄◄

In the Matter of Beverly Lanes, Inc., Respondent,
v.
Thomas E. Rohan et al., Constituting the State Liquor Authority, Appellants.

Court of Appeals of New York

Argued April 3, 1962;

Decided April 26, 1962.

HEADNOTES

Intoxicating liquors--licenses--sale to minor--State Liquor Authority suspended restaurant liquor license on charge of illegal sale to minor-- testimony that, on three occasions, adult who was accompanying minor at petitioner's bowling alley purchased beer at bar and took it to minor who consumed it in bowling area of premises some 70 feet distant from bar--no employee of petitioner delivered beer to minor or observed her receiving or consuming it--Appellate Division annulled determination of Authority--order reversed, determination reinstated, and petition dismissed for reasons stated in dissenting opinion at Appellate Division.

Matter of Beverly Lanes v. Rohan, 12 A D 2d 156, reversed.

SUMMARY

Appeal from an order of the Appellate Division of the Supreme Court in the Fourth Judicial Department, entered ***910** January 5, 1961, in a proceeding under article 78 of the Civil Practice Act (transferred to the Appellate Division by an order of the Supreme Court at Special Term, entered in Erie County) which (1) annulled a determination of the State Liquor Authority suspending petitioner's restaurant liquor license for a period of 10 days, and (2) rescinded the suspension. The determination was based on a finding that, on three occasions during September of 1957, petitioner violated subdivision 1 of section 65 of the Alcoholic Beverage Control Law in that it sold, delivered or gave away alcoholic beverages to a minor actually or apparently under 18 years of age. The licensed premises were a bowling alley and restaurant owned by petitioner and located at No. 1340 Military Road in the City of Niagara Falls. There was testimony that on a week end in the latter part of September, 1957 one Emma Johnston, then 16 years, 10 months of age, was engaged in bowling on petitioner's premises and was accompanied by one Jack A. Hopkins, an adult, and two other persons; that, on two or three occasions during the evening, Hopkins purchased four bottles of beer at the bar, which was some 70 feet distant from the area where the group was bowling, and carried them back to that area, which was not visible to the person in charge of the bar; that Emma Johnston consumed the contents of at least one of these bottles; that she and Hopkins had been on petitioner's premises on two prior occasions, on each of which Hopkins had purchased two bottles of beer at the bar and carried them to the bowling area, and that on each of these prior occasions Emma Johnston consumed the contents of a bottle of beer. Petitioner's general manager testified that petitioner had a rule that, on week ends, only one bottle of beer could be served to a customer at the bar and that a waitress had to deliver the order if a customer wanted more than one bottle. Police officers, employed by petitioner during their off-duty hours to keep order and check on minors, testified that they did not see Emma Johnston, Hopkins or the others in their group and that traffic at the bowling alley was very heavy on week ends. It was conceded that no employee of petitioner actually delivered beer to Emma Johnston at any time or observed her receiving or consuming it.

APPEARANCES OF COUNSEL

Emanuel D. Black and Hyman Amsel for appellants.

Philip S. Gellman and Robert I. Millonzi for respondent. ***911**

Order reversed, determination of the State Liquor Authority reinstated and petition dismissed, with costs in this court and in the Appellate Division, for the reasons stated in the dissenting opinion at the Appellate Division. No opinion.

Concur: Chief Judge Desmond and Judges Dye, Fuld, Froessel, Burke and Foster. Judge Van Voorhis dissents and votes to affirm (Matter of Sheibar v. New York State Liq. Auth., 4 A D 2d 442, affd. 4 N Y 2d 984).

N.Y. 1962.

Matter of Beverly Lanes v. Rohan

END OF DOCUMENT

12 A.D.2d 156 209 N.Y.S.2d 98

►► *The majority opinion drafted by Justice Goldman was reversed by the State's highest court, the Court of Appeals, at 11 N.Y.2d 909 (pages 1-2 of this item), for the reasons stated in the dissent written by Justice Bastow.* ◄◄

In the Matter of Beverly Lanes, Inc., Petitioner,
v.
Thomas E. Rohan et al., Constituting the State Liquor Authority, Respondents.

Supreme Court, Appellate Division, Fourth Department, New York

January 5, 1961

HEADNOTES

Intoxicating liquors--licenses--State Liquor Authority's 10-day suspension of petitioner's license for violation of Alcoholic Beverage Control Law (§ 65, subd. 1) was unsupported by substantial evidence and was annulled.

(1) A determination of the State Liquor Authority suspended for 10 days the license of petitioner which, incidental to its operation of 32 bowling alleys, sold alcoholic beverages at a bar on the premises. The determination was predicated upon a finding that petitioner (in violation of Alcoholic Beverage Control Law, §65, subd. 1) had on three separate occasions sold, delivered or given away, or permitted such sale, delivery or giving away, bottled beer to a 16-year-old girl who consumed it on the premises. There was no substantial evidence to support such administrative determination under the circumstances disclosed by testimony that an adult, who was accompanying the minor and two other persons, had purchased the beer at the bar and had taken it to the minor who consumed it in the bowling alley area of the establishment at least 70 feet from the bar, and it was conceded that no employee of petitioner ever delivered beer to the minor or ever observed her receiving and drinking it. The rule of absolute responsibility -- that despite any circumstances a licensee violates section 65 if a minor somehow obtains alcoholic beverages on licensed premises -- is not supported by authority. Although lack of knowledge of age is no defense, lack of knowledge of presence is a different matter and is one of many elements which should have been considered. The statutory language should be construed according to a common-sense rule in its ordinary and usual meaning so as to absolve the petitioner in the fact situation here presented. Accordingly, the Authority's determination was required to be annulled and the suspension rescinded.

SUMMARY

Proceeding under article 78 of the Civil Practice Act (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by an order of the Supreme Court at Special Term, entered in Erie County) to review a determination of respondents, constituting the State Liquor Authority, suspending petitioner's restaurant liquor license.

APPEARANCES OF COUNSEL

Gellman & Gellman (Philip S. Gellman of counsel), for petitioner.

Richard R. Jenczka and Hyman Amsel for respondents.

OPINION OF THE COURT

Goldman, J.

This is an article 78 proceeding to review the determination of the State Liquor Authority which suspended petitioner-appellant's license for a period of 10 days, predicated upon a finding that in violation of subdivision 1 of section 65 of the Alcoholic Beverage Control Law appellant sold, delivered, or gave away or permitted to be sold, delivered or given away alcoholic beverages to a minor under the age of 18 years on three different occasions during the latter part of September, 1957. ***157**

The appellant operates a bowling establishment in Niagara Falls, New York. The primary purpose of appellant's business is the renting of some 32 bowling alleys to persons engaging in the game of bowling. Incidental to that main purpose, appellant offers for sale alcoholic beverages from a bar which is located at least 70 feet from the area where the infant and others were bowling. The testimony discloses that the minor, a female 16 years, 10 months of age, was in the company of her escort, an adult male and two other persons. The adult purchased bottled beer at the bar, allegedly on three different dates and delivered one or two bottles on each of the occasions to the minor. The hearing officer found this as a fact and also found that the bar at which the beer was purchased was "seventy odd feet distant from the bowling alleys but not visible to the person in charge of the bar". It is conceded that no employee of appellant at any time actually delivered the beer to the minor and that no employee of the appellant observed the minor receiving or consuming the beer. Under these circumstances we can find no substantial evidence to support the administrative determination. (Matter of Humphrey v. State Ins. Fund, 298 N. Y. 327, 331-332; Matter of Miller v. Kling, 291 N. Y. 65; Matter of Stork Restaurant v. Boland, 282 N. Y. 256.)

The rule of absolute responsibility, i.e., that, despite any circumstances a licensee violates section 65 of the Alcoholic Beverage Control Law if a minor in some form or manner obtains alcoholic beverage on licensed premises is not supported by the decisions dealing with this question. (Matter of Sheibar v. New York State Liq. Auth., 4 A D 2d 442, affd. 4 N Y 2d 984; Matter of Erin Wine & Liq. Store v. O'Connell, 283 App. Div. 443, affd. 307 N. Y. 768.) We recognize that the absence of intention to violate the law does not relieve the licensee of the responsibility and burden of ascertaining the age of a youthful patron. (Matter of Ward v. O'Connell, 280 App. Div. 1021.) However, this is not to say that under some circumstances a youthful patron may be present on the premises, unknown to the licensee or his agent, and may consume an alcoholic beverage without violation of section 65 by the licensee. Lack of knowledge of age is no defense but lack of knowledge of presence is a different matter and is one of many elements which should be considered. If the rule of absolute responsibility prevails then all that need be shown is the presence of the minor anywhere on the premises, the reception of alcohol by the minor and nothing else. In our view the language of the statute must be construed according to its ordinary and usual meaning, and has so been interpreted ***158** by the decisions as to absolve the appellant in the fact situation here presented.

The statute must be construed according to a common-sense rule or rule of reason. Our position is clearly stated in People v. Griesebacker (6 A D 2d 679) where the court said: "We believe there is a rule of reason to be applied. The language of the statute is designed to embrace conduct where parties participate directly or indirectly in actual immediate service to a minor under 18 years of age, or knowledgeably and voluntarily, singly or in combination, or under circumstances that should impart knowledge, act so as to permit the delivery of an alcoholic beverage to such minor." We know that the Griesebacker case was a criminal prosecution, in which the degree of proof required differs greatly from an administrative proceeding, but we believe the rule there laid down should govern any proceeding involving section 65. Even in Matter of Maniccia v. State Liq. Auth. (5 A D 2d 929) relied on heavily by the respondents, the conclusion of the court that the licensee knew or should have known of the delivery of the beer to the minors was reached by the application of the test of reasonable diligence. Evidence of good faith in the instant case was demonstrated by testimony that two police officers were employed by the licensee in their off-duty hours to check the bar and to prevent sales to minors.

We believe that Matter of Sheibar v. New York State Liq. Auth. (4 A D 2d 442, affd. 4 N Y 2d 984, supra.) which was unanimously affirmed by the Court of Appeals is completely controlling. In the Sheibar case, three sailors entered a small one-room bar where all patrons were in full view of the bartender. One sailor, of legal age, purchased three bottles of beer from the bar, took them to his table and the beer was consumed by all three including one underage person. The Appellate Division of the First Department (p. 443) unanimously annulled the determination of the Authority on the ground that there was "absent any proof -- other perhaps than a mere scintilla or a thin speculation -- of the delivery, or the permitting of the delivery, of an alcoholic beverage to the minor. Hence, a conclusion that section 65 of the Alcoholic Beverage Control Law had been violated was not a reasonable inference from the facts." Certainly, the Authority's proof in the case at bar, dealing with large premises with the alleys out of sight of the bartender and crowds of bowling patrons, is substantially weaker than that in Matter of Sheibar (supra.) and, a fortiori, requires annulment of the Authority's determination.

We are as concerned as the Authority with the sale of alcoholic beverages to minors. In our view it would not be unreasonable ***159** for the Authority to promulgate regulations prohibiting sale of alcoholic beverages in establishments like bowling alleys and similar enterprises, where the sale is only incidental to the main purpose of the business, unless the beverage is delivered to the consuming parties by waiters charged with the responsibility of determining the ages of all persons in the party. Any reasonable requirement of supervision which would prevent the imbibing of alcoholic beverages by minors would be highly desirable. If such action were taken by the Authority, the burden specifically placed upon the business might well discourage bowling alleys and similar places of amusement from dispensing alcoholic beverages. Until such action is taken by the Authority, to define clearly and positively the responsibility of the licensee, the present state of the law imposes no such obligation.

The determination of the Authority should be annulled, the suspension rescinded and the petition granted.

Bastow, J. P. (Dissenting).

This appeal requires simply the application of well-established legal principles to a factual situation. The Authority does not ask for the laying down of any rule of absolute responsibility of a licensee in any and all cases where an underage minor obtains an alcoholic beverage. It contends, and correctly, that the licensee by a course of conduct has failed in its duty to supervise with reasonable diligence the sale and consumption of bottled beer so that underaged minors may not obtain and consume the beverage.

The licensed premises consist of 32 bowling lanes with the bar located in the center thereof. The premises are open 24 hours a day for seven days a week. At times 300 or 400 persons are present and the crowd does not disperse until 5 o'clock in the morning. There is ample evidence to support the findings that on three separate occasions a male companion of a 16-year-old girl procured and delivered to her one or two bottles of beer on each occasion. These had been obtained from the bar which was 70-odd feet distant from the alleys and not visible to the person in charge of the bar. Two police officers of the City of Niagara Falls testified that on week ends they alternated on duty as employees of the licensee from 7 until 12 in the evening. One stated that his duties included keeping "an eye on the bar -- make sure that they check identification and so on for drinking."

Thus, the Authority had before it substantial proof to warrant the finding that "the licensee actually knew or should have known, had reasonable diligence been exercised" (Matter of Lynch's Bldrs. Restaurant v. O'Connell, 303 N. Y. 408, 410) ***160** that on repeated occasions on different dates adults were permitted to purchase multiple bottles of beer at the bar, carry them to a remote place in the premises where the intoxicants were consumed by members of a party, at least one of whom was an underage minor. The duty of the licensee did not end at the bar. The mandate of the statute is that "No person shall sell, deliver or give away or cause or permit or procure to be sold, delivered or given away any alcoholic beverages to 1. Any minor, actually or apparently, under the age of eighteen years" (Alcoholic Beverage Control Law, §65). It is a mere play on words to say, as petitioner does herein, that there was no proof of any actual delivery or service to any minor. "Sufferance as here prohibited implies knowledge or the opportunity through reasonable diligence to acquire knowledge. This presupposes in most cases a fair measure at least of continuity and permanence. *** But the duty to inquire existing, there is no safety in ignorance if proper inquiry would avail *** Whatever reasonable supervision by oneself or one's agents would discover and prevent, that, if continued, will be taken as suffered." (People ex rel. Price v. Sheffield Farms Co., 225 N. Y. 25, 30-31.)

The premises here involved consisting of thousands of square feet with crowds milling about throughout the day and night differ vastly from the family tavern or package liquor store considered in the authorities relied upon in the majority opinion. The licensee itself recognized its duty of supervision by retaining city policemen during the evening to "keep an eye" on the bar. Its very position in this proceeding, however, shows that it had and has no proper concept of the scope of that duty. It contends "that there was no delivery to the minor". In substance it argues, and apparently with success, that its duty of surveillance ended with the completed sale to an adult of a quantity of bottled beer at the bar. Under a so-called "rule of reason" it is now being held that there is no duty to make certain that these intoxicants are not carried elsewhere in the premises and consumed by youthful bowlers.

Here pertinent is the observation made in Matter of Maniccia v. State Liq. Auth. (5 A D 2d 929): "The fact that one person purchased an unusually large quantity of beer in bottles should have been sufficient to

put the person in charge of the premises on notice that the beer was not intended for consumption alone by the one making the purchase. Any inquiry on his part might readily have disclosed that some of the beer was intended for, and in fact consumed by minors in the party. Petitioner is ***161** bound by the rule that wherever reasonable supervision by oneself or one's agent would discover and prevent a violation, the party charged is bound to exercise such supervision".

The suggestion in the majority opinion that the Authority should promulgate additional regulations to cover the situation here disclosed is difficult to understand. The prohibitions in section 65 of the Alcoholic Beverage Control Law against the gift, sale or delivery of alcoholic beverage to those under 18 have existed since the enactment thereof. (L. 1934, ch. 478, § 65.) Any careful licensee conducting premises consisting of a bar and bowling alleys may prevent such occurrences by instructing its employees at the bar that only one bottle of beer will be served at a time to any one person. Multiple orders would be delivered directly to a group of persons by an employee who would be required to make certain that underage minors were not served. It is submitted that no additional regulations are required. Through the years the courts have vigorously sustained the Authority in this area. "The protection of adolescents against psychic and physical impairment from the use of alcohol is a settled policy of the State. It is more important than the inconvenience that might come to liquor purveyors in taking the trouble to check somewhat the maturity of their customers. The burden is not intolerable, but whatever it is the Legislature has undoubted power to impose it. If it seems heavy, it is placed where it is for good cause." (Matter of Barnett v. O'Connell, 279 App. Div. 449, 450.)

In the face of this and similar authoritative statements on the subject it is now being held that unless and until further regulations are adopted by the Authority "to define clearly and positively the responsibility of the licensee, the present state of the law imposes no such obligation." The provisions of the statute under consideration are plain and unambiguous. Conclusive interpretation has been given this and similar legislation by the courts of this State. This particular statute is one carrying penal sanctions. (Alcoholic Beverage Control Law, §130, subd. 3.) The decision now being made in substance prevents both the administrative agency and the police from proceeding against licensees operating bowling alleys, and those similarly situated, until the Authority by regulation defines "clearly and positively" what the Legislature has meant by the plain language of the statute. This would appear to be an unwarranted exercise of judicial power in the field of statutory construction.

The determination should be confirmed. ***162**

All concur, except Bastow, J. P., and Halpern, J., who dissent and vote to confirm the determination, in an opinion by Bastow, J. P., in which Halpern, J., concurs. Present -- Bastow, J. P., Goldman, Halpern, McClusky and Henry, JJ.

Determination annulled, with $50 costs and disbursements, suspension rescinded, and petition granted.

N.Y.A.D., 1961.

MATTER OF BEVERLY LANES v. ROHAN

END OF DOCUMENT

157 A.D.2d 656 549 N.Y.S.2d 757

In the Matter of Al Ronick, Inc., Petitioner,
v.
New York State Liquor Authority, Respondent

Supreme Court, Appellate Division, Second Department, New York

January 8, 1990

SUMMARY

Proceeding pursuant to CPLR article 78 to review a determination of the respondent New York State Liquor Authority dated December 30, 1988, which, after a hearing, suspended the petitioner's liquor license for 15 days and imposed a $1,000 bond claim.

Adjudged that the determination is confirmed and the proceeding is dismissed on the merits, with costs.

The evidence adduced at the administrative hearing established that the petitioner's bartender sold and delivered two alcoholic beverages to an adult male who was in the company of a female actually under the age of 21. The adult male then handed one of those drinks, an alcoholic beverage known as "iced tea", to the female, who began consuming the drink. Although both were seated at the bar, the female was never asked ***657** to produce proof of her age. Clearly, under these circumstances, substantial evidence supported the State Liquor Authority's determination that the illegal conduct was "'open, observable and of such nature that its continuance could, by the exercise of reasonable diligence, have been prevented"' (Matter of Austin Lemontree v New York State Liq. Auth., 147 AD2d 476, 477, affd 74 NY2d 869, quoting Matter of 4373 Tavern Corp. v New York State Liq. Auth., 50 AD2d 855, 856).

Thompson, J. P., Lawrence, Eiber and Balletta, JJ., concur.

N.Y.A.D., 1990.

AL RONICK, INC. V NEW YORK STATE LIQUOR AUTHORITY

END OF DOCUMENT

74 N.Y.2d 869 547 N.E.2d 93 547 N.Y.S.2d 838

►► *In this decision, the seven Judges of the Court of Appeals (the State's highest Court), affirmed the majority decision of the lower court (the Appellate Division), which had confirmed the State Liquor Authority's determination. The Authority had found that a patron's delivery of an alcoholic beverage to a person under the legal age had been permitted by the tavern, where the delivery occurrred three feet from the bar where 4 or 5 bartenders were working.* ◄◄

In the Matter of Austin Lemontree, Inc., Appellant,
v.
New York State Liquor Authority, Respondent.

Court of Appeals of New York

Decided October 17, 1989

SUMMARY

Appeal from a judgment of the Appellate Division of the Supreme Court in the Second Judicial Department, entered February 6, 1989 in a proceeding pursuant to CPLR article 78, which, with two Justices dissenting, (1) confirmed a determination of the New York State Liquor Authority finding petitioner guilty of the sale of alcoholic beverages to a minor and suspending petitioner's liquor license for 10 days, and (2) dismissed the proceeding.

In this proceeding to review a determination of the State Liquor Authority, the Appellate Division concluded that the Authority's determination that petitioner violated Alcoholic Beverage Control Law § 65 by selling, delivering or giving away or causing or permitting or procuring to be sold, delivered or given away alcoholic beverages to a 19-year-old minor was supported by substantial evidence; that the minor's presence three feet from the bar where four or five bartenders were working when the drink was purchased for, and given to, the minor was sufficient to support the conclusion that petitioner's illegal conduct was open, observable and of such nature that its continuance could, by the exercise of reasonable diligence, have been prevented, and that the penalty of a 10-day license suspension was not so disproportionate to the offense as to be shocking to one's sense of fairness. ***870**

Matter of Austin Lemontree v New York State Liq. Auth., 147 AD2d 476, affirmed.

HEADNOTES

Intoxicating Liquors--Licenses--Sale to Minor
(1) In a proceeding to review a determination of the State Liquor Authority finding petitioner guilty of the sale of alcoholic beverages to a minor and suspending petitioner's liquor license for 10 days, a judgment of the Appellate Division, which confirmed the determination, is affirmed for the reasons stated in the memorandum at the Appellate Division, which concluded that the determination was supported by substantial evidence, that the minor's presence three feet from the bar where four or five bartenders were working when the drink was purchased for, and given to, the minor was sufficient to support the conclusion that petitioner's illegal conduct was open, observable and of such nature that its continuance could, by the exercise of reasonable diligence, have been prevented, and that the penalty of a 10-day license suspension was not so disproportionate to the offense as to be shocking to one's sense of fairness.

APPEARANCES OF COUNSEL

Richard J. Oddo for appellant.

Sharon L. Tillman and Roberta L. Hiller for respondent.

OPINION OF THE COURT

On review of submissions pursuant to section 500.4 of the Rules of the Court of Appeals (22 NYCRR 500.4), judgment affirmed, with costs, for the reasons stated in the memorandum of the Appellate Division (147 AD2d 476).

Concur: Chief Judge Wachtler and Judges Simons, Kaye, Alexander, Titone, Hancock, Jr., and Bellacosa.

N.Y. 1989.

Matter of Austin Lemontree v New York State Liq. Auth.

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(Cite as: 147 A.D.2d 476) 147 A.D.2d 476 537 N.Y.S.2d 575

In the Matter of Austin Lemontree, Inc., Petitioner,
v.
New York State Liquor Authority, Respondent.

Supreme Court, Appellate Division, Second Department, New York

February 6, 1989

OPINION OF THE COURT

Proceeding pursuant to CPLR article 78 to review a determination of the New York State Liquor Authority, dated February 16, 1988, which, after a hearing, found the petitioner guilty of the sale of alcoholic beverages to a minor and suspended the petitioner's liquor license for 10 days.

Adjudged that the determination is confirmed and the proceeding is dismissed on the merits, with costs.

The determination of the New York State Liquor Authority that the petitioner violated Alcoholic Beverage Control Law § 65 by selling, delivering or giving away or causing or permitting or procuring to be sold, delivered or given away alcoholic beverages ***477** to a person under the age of 21 years is supported by substantial evidence. The minor's presence three feet from the bar where 4 or 5 bartenders were working when the drink was purchased for, and given to, the minor was sufficient to support the conclusion that the petitioner's illegal conduct was "open, observable and of such nature that its continuance could, by the exercise of reasonable diligence, have been prevented" (Matter of 4373 Tavern Corp. v New York State Liq. Auth., 50 AD2d 855, 856; Matter of Cat & Fiddle v New York State Liq. Auth., 24 AD2d 753; Matter of Park II Villa Corp. v New York State Liq. Auth., 141 AD2d 646; cf., Matter of Panacea Tavern v New York State Liq. Auth., 144 AD2d 562).

The penalty imposed, a 10-day suspension of the petitioner's liquor license, is not so disproportionate to the offense as to be shocking to our sense of fairness (see, Matter of Pell v Board of Educ., 34 NY2d 222, 233).

Brown, J. P., Rubin and Spatt, JJ., concur.

Lawrence, J. dissents and votes to grant the petition, annul the determination, on the law, and vacate the penalty imposed, with costs, with the following memorandum decision in which Kooper, J., concurs:

The respondent New York State Liquor Authority alleged that the petitioner had violated Alcoholic Beverage Control Law § 65 in that it sold, delivered or gave away or permitted to be sold, delivered or given away alcoholic beverages to a person or persons under the age of 21 years (see, Alcoholic Beverage Control Law §65 [1]). The competent evidence adduced at the hearing, which was supplied exclusively by the minor to whom the alcoholic beverage was allegedly provided, disclosed that the minor was approximately three feet from the bar counter in the establishment when she received a drink from an unidentified male patron who had offered to buy her a drink. No further testimony was adduced with respect to the manner in which the unidentified male patron obtained the drink. Nor did the male patron testify at the hearing.

In view of the position taken by this court in Matter of Panacea Tavern v New York State Liq. Auth. (144 AD2d 562), Matter of Park II Villa Corp. v New York State Liq. Auth. (141 AD2d 646), and Matter of 4373 Tavern Corp. v New York State Liq.Auth. (50 AD2d 855, 856), I must conclude that the record herein lacks substantial evidence to establish that the petitioner knew or should have known, of the manner in which the drink was obtained by the male patron, or that itwas ***478** ultimately intended for delivery to the minor for consumption.

N.Y.A.D., 1989. AUSTIN LEMONTREE, INC. V NEW YORK STATE LIQUOR AUTHORITY

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197 A.D.2d 625 602 N.Y.S.2d 673

***625 In the Matter of Jo Mar Jo Restaurant Corp., Petitioner,**
v.
New York State Liquor Authority, Respondent.

Supreme Court, Appellate Division, Second Department, New York

(October 18, 1993)

SUMMARY

Proceeding pursuant to CPLR article 78 to review a determination of the respondent New York State Liquor Authority, dated February 13, 1991, which, after a hearing, suspended the petitioner's liquor license for a period of 15 days and ordered a $1,000 bond forfeiture.

Adjudged that the determination is confirmed and the proceeding is dismissed on the merits, with costs.

The determination of the respondent New York State Liquor Authority that the petitioner violated Alcoholic Beverage Control Law § 65 (1) by selling an alcoholic beverage to a minor is supported by substantial evidence. The evidence adduced at the administrative hearing established that the petitioner's premises was not crowded on the night in question and that the petitioner's bartender sold and delivered alcoholic beverages to an adult male, who in turn handed one of those beverages to his underage friend, who began consuming the drink. Although the minor was seated at a table, the bartender had an unobstructed view of her and thus, the evidence was sufficient to support the conclusion that the petitioner's conduct was "open, observable and of such nature that its continuance could, by the exercise of reasonable diligence, have been prevented" (Matter of 4373 Tavern Corp. v New York State Liq. Auth., 50 AD2d 855, 856; see, Matter of Culligan's Pub v New York State Liq. Auth., 170 AD2d 506).

Additionally, the penalty imposed is not so disproportionate to the offense as to be shocking to one's sense of fairness (see, Matter of Wyman, Inc. v New York State Liq. Auth., 170 AD2d 991; Matter of Larowe v New York State Liq. Auth., 170 AD2d 905).

Thompson, J. P., Sullivan, Miller, Ritter and Santucci, JJ., concur.

N.Y.A.D.,1993.

Matter of Jo Mar Jo Rest. Corp. v New York State Liq. Auth.

END OF DOCUMENT

170 A.D.2d 506 565 N.Y.S.2d 851

In the Matter of Culligan's Pub, Inc., Petitioner,
v.
New York State Liquor Authority, Respondent.

Supreme Court, Appellate Division, Second Department, New York

(February 11, 1991)

SUMMARY

Proceeding pursuant to CPLR article 78 to review a determination of the respondent New York State Liquor Authority, dated April 18, 1989, which, after a hearing, found that the petitioner had violated Alcoholic Beverage Control Law § 65 (1) by selling an alcoholic beverage to a minor and suspended its on-premises liquor license for a period of 15 days.

Adjudged that the determination is confirmed and the proceeding is dismissed on the merits, without costs or disbursements.

The determination of the respondent New York State Liquor Authority, adopting the findings of the Hearing Officer which credited the testimony of the witnesses that the petitioner violated Alcoholic Beverage Control Law § 65 (1) by selling alcoholic beverages to a minor is supported by substantial evidence. The petitioner's contention that there was insufficient evidence that the person who purchased the alcoholic beverage was a minor because his age was established by his own testimony rather than by an official document is without merit. The courts of this State generally permit a witness to testify to his own age, even though that testimony is based essentially on hearsay evidence, upon the theory that it is common knowledge in the family (see, Koester v Rochester Candy Works, 194 NY 92, 97; Matter of 36 W. Main v New York State Liq. Auth., 285 App Div 756, 757-758; see generally, Richardson, Evidence §§ 319, 329, 364 [k] [Prince 10th ed]). Moreover, the strict rules of evidence do not apply to administrative proceedings and, thus, hearsay evidence is admissible in such proceedings (see, e.g., Matter of Harry's Chenango Wines & Liq. v State Liq. Auth., 158 AD2d 804; Matter of Lane v State of New York Liq. Auth., 127 AD2d 922, 924). The evidence establishing the minor's age was unrebutted and presented a question of credibility. This court will not substitute its own judgment for that of an administrative agency on the question of credibility (see, Matter of Silberfarb v Board of Coop. Educ. Servs., 60 NY2d 979; Matter of Simpson v Wolansky, 38 NY2d 391, 394; Matter of Ahsaf v Nyquist, 37 NY2d 182).

The evidence adduced at the administrative hearing established that the petitioner's bartender sold and delivered two pitchers of beer to a group of four males including the minor and that, upon request, the bartender produced five glasses which the minor took to a table situated seven or eight feet from the bar and of which the bartender had an unobstructed ***507** view. The minor and his four companions each poured themselves a glass of beer at the table. The petitioner's premises was not crowded on the night in question. The record further indicates that the bartender served the beer without asking the minor or any of his companions for identification. Under these circumstances, the evidence was sufficient to support the State Liquor Authority's conclusion that the petitioner's illegal conduct was "open, observable and of such nature that its continuance could, by the exercise of reasonable diligence, have been prevented" (Matter of 4373 Tavern Corp. v New York State Liq. Auth., 50 AD2d 855, 856; see, Matter of Al Ronick, Inc. v New York State Liq. Auth., 157 AD2d 656; Matter of Austin Lemontree v New York State Liq. Auth., 147 AD2d 476, 477, affd 74 NY2d 869).

Additionally, the penalty imposed, a 15-day suspension of the petitioner's on-premises liquor license, is

not so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness (see, Matter of Pell v Board of Educ., 34 NY2d 222, 233; Matter of Austin Lemontree v New York State Liq. Auth., supra).

Thompson, J. P., Lawrence, Harwood and Balletta, JJ., concur.

N.Y.A.D., 1991.

Matter of Culligan's Pub v New York State Liq. Auth.

END OF DOCUMENT

170 A.D.2d 506 565 N.Y.S.2d 851

In the Matter of Culligan's Pub, Inc., Petitioner,
v.
New York State Liquor Authority, Respondent.

Supreme Court, Appellate Division, Second Department, New York

(February 11, 1991)

SUMMARY

Proceeding pursuant to CPLR article 78 to review a determination of the respondent New York State Liquor Authority, dated April 18, 1989, which, after a hearing, found that the petitioner had violated Alcoholic Beverage Control Law § 65 (1) by selling an alcoholic beverage to a minor and suspended its on-premises liquor license for a period of 15 days.

Adjudged that the determination is confirmed and the proceeding is dismissed on the merits, without costs or disbursements.

The determination of the respondent New York State Liquor Authority, adopting the findings of the Hearing Officer which credited the testimony of the witnesses that the petitioner violated Alcoholic Beverage Control Law § 65 (1) by selling alcoholic beverages to a minor is supported by substantial evidence. The petitioner's contention that there was insufficient evidence that the person who purchased the alcoholic beverage was a minor because his age was established by his own testimony rather than by an official document is without merit. The courts of this State generally permit a witness to testify to his own age, even though that testimony is based essentially on hearsay evidence, upon the theory that it is common knowledge in the family (see, Koester v Rochester Candy Works, 194 NY 92, 97; Matter of 36 W. Main v New York State Liq. Auth., 285 App Div 756, 757-758; see generally, Richardson, Evidence §§ 319, 329, 364 [k] [Prince 10th ed]). Moreover, the strict rules of evidence do not apply to administrative proceedings and, thus, hearsay evidence is admissible in such proceedings (see, e.g., Matter of Harry's Chenango Wines & Liq. v State Liq. Auth., 158 AD2d 804; Matter of Lane v State of New York Liq. Auth., 127 AD2d 922, 924). The evidence establishing the minor's age was unrebutted and presented a question of credibility. This court will not substitute its own judgment for that of an administrative agency on the question of credibility (see, Matter of Silberfarb v Board of Coop. Educ. Servs., 60 NY2d 979; Matter of Simpson v Wolansky, 38 NY2d 391, 394; Matter of Ahsaf v Nyquist, 37 NY2d 182).

The evidence adduced at the administrative hearing established that the petitioner's bartender sold and delivered two pitchers of beer to a group of four males including the minor and that, upon request, the bartender produced five glasses which the minor took to a table situated seven or eight feet from the bar and of which the bartender had an unobstructed ***507** view. The minor and his four companions each poured themselves a glass of beer at the table. The petitioner's premises was not crowded on the night in question. The record further indicates that the bartender served the beer without asking the minor or any of his companions for identification. Under these circumstances, the evidence was sufficient to support the State Liquor Authority's conclusion that the petitioner's illegal conduct was "open, observable and of such nature that its continuance could, by the exercise of reasonable diligence, have been prevented" (Matter of 4373 Tavern Corp. v New York State Liq. Auth., 50 AD2d 855, 856; see, Matter of Al Ronick, Inc. v New York State Liq. Auth., 157 AD2d 656; Matter of Austin Lemontree v New York State Liq. Auth., 147 AD2d 476, 477, affd 74 NY2d 869).

Additionally, the penalty imposed, a 15-day suspension of the petitioner's on-premises liquor license, is

not so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness (see, Matter of Pell v Board of Educ., 34 NY2d 222, 233; Matter of Austin Lemontree v New York State Liq. Auth., supra).

Thompson, J. P., Lawrence, Harwood and Balletta, JJ., concur.

N.Y.A.D., 1991.

Matter of Culligan's Pub v New York State Liq. Auth.

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147 A.D.2d 901 537 N.Y.S.2d 352

In the Matter of Lakeside Inn Supper Club, Inc., Petitioner,
v.
New York State Liquor Authority, Respondent.

Supreme Court, Appellate Division, Fourth Department, New York

February 3, 1989

Determination unanimously confirmed and petition dismissed without costs.

OPINION OF THE COURT

This is a proceeding transferred to this court pursuant to CPLR 7804 (g) to review a New York State Liquor Authority determination that petitioner violated Alcoholic Beverage Control Law § 65 (1), which prohibits the sale or delivery of alcoholic beverages to persons under the age of 21.

The record demonstrates without contradiction that on July 8, 1986 petitioner's bartender served an alcoholic beverage to a minor without having required the minor to produce proof of age. The bartender testified that he served the patron because on previous dates she had presented photographic identification in the form of a motor vehicle operator's license reflecting that she was 21 years old.

Alcoholic Beverage Control Law § 65 (4) provides in relevant part: "In any proceeding pursuant to subdivision one of this section, it shall be an affirmative defense that such person had produced a photographic identification card apparently issued by a governmental entity or institution of higher education and that the alcoholic beverage had been sold, delivered or given to such person in reasonable reliance upon such identification."

Although the Administrative Law Judge who presided at the hearing credited the testimony of the bartender, he found nevertheless that the affirmative defense of reasonable reliance was not established. He ruled that the defense could only be ***902** established by showing that the photographic identification was presented on the occasion of the specific sale or delivery underlying the alleged violation. By adopting the findings of the Hearing Officer, the State Liquor Authority necessarily adopted his interpretation of Alcoholic Beverage Control Law § 65 (4). That interpretation by the agency charged with the responsibility for administration and enforcement of the statute must be upheld since it is neither irrational nor unreasonable (see, Matter of Howard v Wyman, 28 NY2d 434, 438, lv granted 29 NY2d 481, rearg denied 29 NY2d 749, Matter of Reader's Digest Assn. v State Tax Commn., 103 AD2d 926, 927). We conclude, therefore, that the determination is supported by substantial evidence and that the penalty of a 10-day suspension of petitioner's license is not so disproportionate to the offense as to be shocking to one's sense of fairness (see, Matter of Pell v Board of Educ., 34 NY2d 222, 233). (Article 78 proceeding transferred by order of Supreme Court, Erie County, Fallon, J.)

Present--Dillon, P. J., Doerr, Green, Pine and Davis, JJ.

N.Y.A.D., 1989.

LAKESIDE INN SUPPER CLUB, INC. V NEW YORK STATE LIQUOR AUTHORITY

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232 A.D.2d 947 649 N.Y.S.2d 83

In the Matter of Dark Horse Tavern, Inc., Doing Business as Dark Horse Tavern, Petitioner,
v.
New York State Liquor Authority, Respondent.

Supreme Court, Appellate Division, Third Department, New York

(October 30, 1996)

OPINION OF THE COURT

Mercure, J.

SUMMARY

Proceeding pursuant to CPLR article 78 (transferred to this Court by order of the Supreme Court, entered in Cortland County) to review a determination of respondent which suspended petitioner's on-premises liquor license.

The undisputed evidence adduced at the administrative hearing conducted in this matter established that on February 12, 1994, Krista Krueger and Rebecca Garrett, both 20 years old, gained admission to petitioner's licensed establishment by displaying genuine New York State driver's licenses belonging to other individuals who were over the age of 21. Garrett did the same on March 31, 1994. Under the system petitioner established on each of those occasions, the patrons exhibited identification at the sole entrance to the premises, thereby ostensibly ensuring that only patrons of legal drinking age were present inside and obviating the need for bartenders to check patrons' identification. On each of the dates at issue here, the minor's payment of a $3 admission charge entitled her to consume an unlimited quantity of beer during the evening. ***948** Without doubt, Krueger and Garrett were served and consumed beer on the respective occasions. Petitioner's affirmative defense that the minors had each "produced a photographic identification card apparently issued by a governmental entity and that the alcoholic beverage had been sold, delivered or given to such person in reasonable reliance upon such identification" (Alcoholic Beverage Control Law § 65 [4]) was rejected by respondent.

In our view, respondent's determination that petitioner failed to sustain its burden with respect to the affirmative defense defined in Alcoholic Beverage Control Law § 65 (4) is supported by substantial evidence on the record and is by no means arbitrary or capricious (see, Matter of Roc's Z-Bar v State of New York Liq. Auth., 189 AD2d 1077, 1078, appeal dismissed 81 NY2d 1006; Matter of Lakeside Inn Supper Club v New York State Liq. Auth., 147 AD2d 901, 902). Because Krueger destroyed the driver's license that she exhibited to petitioner's employee on February 14, 1994, petitioner was unable to present any reliable evidence as to Krueger's likeness to the person portrayed on the license. Moreover, Krueger's testimony established that she had brown eyes, whereas the license indicated that its holder had blue eyes. With regard to Garrett, the evidence established that she obtained entrance to petitioner's premises by exhibiting her 25-year-old sister's license. Our examination of photographs of Garrett and her sister's license, which were received in evidence at the administrative hearing, supports the Hearing Officer's conclusion that Garrett had a "youthful appearance" and "[did] not appear to be as old as the person portrayed" on the license.

Under the circumstances, we need not consider respondent's legal bases for rejecting petitioner's affirmative defense.

Cardona, P. J., Casey, Spain and Carpinello, JJ., concur.

Adjudged that the determination is confirmed, without costs, and petition dismissed.

N.Y.A.D., 1996. Matter of Dark Horse Tavern v New York State Liq. Auth.

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