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Article 8

Administrative Law--Review of Liquor Authority Proceedings--Violation of O.P.A. Ceiling Prices as Cause for Revocation of License (Matter of Glenram Wine & Liquor Corp. v. O'Connell, 295 N.Y. 336 (1946))

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RECENT DECISIONS

ADMINISTRATIVE LAW—REVIEW OF LIQUOR AUTHORITY PROCEEDINGS—VIOLATION OF O.P.A. CEILING PRICES AS CAUSE FOR REVOCATION OF LICENSE.—In a hearing before the State Liquor Authority in connection with proceedings to revoke petitioner-respondent's wholesale liquor license, it was found that licensee sold liquor at prices in excess of O.P.A. ceiling prices; that licensee and one of its officers and two employees were convicted of these offenses; that licensee violated Section 104, subdivision 10, of the Alcoholic Beverage Control Law, in failing to keep on the premises adequate books and records of all transactions, and Section 101-a, subdivision 2, of the Alcoholic Beverage Control Law, in making sales on credit. The revocation proceedings ended in a determination by the Liquor Authority for cancellation and surrender of the license. An application for renewal of the license was denied by the Authority. The Appellate Division annulled these determinations and remitted the matter to the State Liquor Authority for consideration of the application for the issuance of a license to the petitioner.[1] The State Liquor Authority appeals and also appeals separately from the order of the Appellate Division with a stipulation by the Authority that, upon affirmance of the order appealed from, order absolute might be rendered against the Authority in favor of the petitioner. *Held,* order reversed in part; otherwise first appeal and separate appeal with stipulation for order absolute dismissed. *Matter of Glenram Wine & Liquor Corp. v. O'Connell,* 295 N. Y. 336, 67 N. E. (2d) 570 (1946).

The Alcoholic Beverage Control Law gives the State Liquor Authority broad discretionary power in the issuance and revocation of liquor licenses.[2] Subject to the laws of the state, the State Liquor Authority alone must determine when it should give, withhold or revoke its sanction, but its determination may be reviewed by the courts.[3] This discretionary power of the State Liquor Authority will not be interfered with in the absence of proof that it has acted arbitrarily.[4]

In the present case, six of the charges made against the petitioner were for sales made during a prior licensing period in violation of O.P.A. ceiling prices. The court states that in proper cases a li-

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[1] Glenram Wine & Liquor Corp. v. O'Connell, 269 App. Div. 1004, 58 N. Y. S. (2d) 475 (3d Dep't 1945).

[2] N. Y. ALCOHOLIC BEVERAGE CONTROL LAW § 17.

[3] N. Y. ALCOHOLIC BEVERAGE CONTROL LAW § 121; Matter of Yacht Club Catering v. Bruckman, 276 N. Y. 44, 11 N. E. (2d) 345 (1937).

[4] Commerce Development Corp. v. O'Connell, 58 N. Y. S. (2d) 97 (1945).

cense may be suspended or revoked for acts occurring during a prior licensing period, herein overruling the Appellate Division.[5] The Court of Appeals had ruled, however, in 1945, that, where the Liquor Authority had, in conformity with the Alcoholic Beverage Control Law,[6] provided the licensee with a list of the causes for which his license could be revoked, and conviction for violation of O.P.A. ceiling prices was not listed among those causes, revocation of a wholesale liquor license because of such conviction was without authority.[7] The proceeding here under consideration began as a hearing to revoke the petitioner's license and ended with an order of cancellation. This action, the court holds, was merely an attempt to avoid the effect of the prior decision of the Court of Appeals in the *Colonial* case,[8] and is to be considered as a revocation of the license. "Cancellation" is merely a form of revocation and the word is so used in the statute and has been so understood by authority until this present attempt to avoid the effect of the court's prior decision.[9] This action, therefore, is to be considered as a revocation and, as in the *Colonial* case,[10] was without authority insofar as it was largely predicated on the violation of the federal statute and such cause was not listed among the reasons furnished the licensee as causes for revocation.[11]

There was sufficient evidence to sustain the finding that liquor was sold on credit to one on the "delinquent list" and this would be a violation of the Alcoholic Beverage Control Law,[12] which would warrant a suspension of the petitioner's license. It does not appear, however, that such sale was knowingly, wilfully or intentionally made after receipt of the delinquent list, as required by the law,[13] to make the licensee subject to the penalty. Since there was proof of the sales above ceiling prices and these sales were entered in the books kept on the premises as sales at ceiling price, this is sufficient evidence that the books kept by the licensee were inaccurate and inadequate, a violation of the Alcoholic Beverage Control Law carrying the penalty of forfeiture of the license.[14] The court ruled that it had no jurisdiction to review that part of the order of the Appellate Division which ordered consideration of the application for issuance of a new license, either on the appeal as of right or on the stipulation

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[5] 269 App. Div. 1004, 58 N. Y. S. (2d) 475 (1945).

[6] N. Y. ALCOHOLIC BEVERAGE CONTROL LAW § 114, subd. 5.

[7] Colonial Liquor Distributors v. O'Connell, 295 N. Y. 129, 65 N. E. (2d) 745 (1946).

[8] *Ibid.*

[9] N. Y. ALCOHOLIC BEVERAGE CONTROL LAW § 119; Gelces v. State Liquor Authority, 154 Misc. 517, 278 N. Y. Supp. 328 (1935).

[10] 295 N. Y. 129, 65 N. E. (2d) 745 (1946).

[11] N. Y. ALCOHOLIC BEVERAGE CONTROL LAW § 114, subd. 5.

[12] N. Y. ALCOHOLIC BEVERAGE CONTROL LAW § 101-A, subd. 2.

[13] N. Y. ALCOHOLIC BEVERAGE CONTROL LAW § 101-A, subd. 2.

[14] N. Y. ALCOHOLIC BEVERAGE CONTROL LAW § 104, subd. 10; N. Y. ALCOHOLIC BEVERAGE CONTROL LAW § 101, subd. 1c.

for an order absolute, since the order appealed from did not finally determine a special proceeding and does not come under the section of the Constitution on which the appeal is based.[15] Hearings are not contemplated in connection with applications for the issuance of a license. If a hearing is granted on application for a new license, it is a matter of courtesy.[16]

M. J. S.

AUTOMOBILES—LIABILITIES OF DEALERS FOR THE SALE OF DEFECTIVE AUTOMOBILES TO THIRD PARTIES.—Defendant, a used car dealer and proprietor of a repair shop, delivered a used car with defective brakes into the possession of a prospective buyer for the purpose of a trial run, without giving notice of such condition. The prospective buyer, while exercising the highest degree of care, drove the car onto the apron of one of plaintiff's service stations and because of the defective brakes ran into and demolished two gasoline pumps for the value of which the plaintiff is now suing. The trial court sustained a motion to dismiss the complaint.

Held, reversed and remanded. The duty of the defendant under the facts pleaded was not confined to that of bailor and bailee, or vendor and vendee, or any other such relationship, but rather is a duty which arises out of the obligation that the law imposes on every man to refrain from acts of commission or omission which he may reasonably expect will result in injury to third persons. *Standard Oil Co. of Indiana v. Leaverton,* — Mo. App. —, 192 S. W. (2d) 681 (1946).

Formerly it was the general rule that manufacturers or sellers were not liable to third persons with whom they had no contractual relationship in the use of their product, with the exception of those things inherently dangerous.[1] This doctrine was later limited when it was decided that whenever goods or machinery are supplied to another for his use a duty arises to use ordinary care and skill as to the condition of the thing supplied.[2] In the leading case attaching this liability to manufacturers of automobiles, it was said that although automobiles are not inherently dangerous articles *per se* they become akin to such when supplied in a dangerously defective condition.[3] A high degree of care was imposed on the maker because any reasonably prudent man would know that such articles by their

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[15] N. Y. CONST. Art. VI, § 7, subd. 3.

[16] Usdane v. Bruckman, 30 N. Y. S. (2d) 396 (1941).

[1] Thomas v. Winchester, 6 N. Y. 397 (1852).

[2] Devlin v. Smith *et al.,* 89 N. Y. 470 (1882); Heaven v. Pender, 11 Q. B. D. 503 (1883); Schubert v. J. R. Clark Co., 49 Minn. 331, 51 N. W. 1103 (1892).

[3] MacPherson v. Buick Motor Co., 217 N. Y. 382, 111 N. E. 1050 (1916).