

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

Case No. 63,904

FILED

JUL 13 1983

SID J. WHITE
CLERK SUPREME COURT

By 
Chief Deputy Clerk

ASTRAL LIQUORS, INC. and
R. J. MANDELL CORPORATION,

Petitioners,

vs,

STATE, DEPARTMENT OF BUSINESS REGULATION,
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO,

Respondent.

APPLICATION FOR DISCRETIONARY
REVIEW OF OPINION
OF THE DISTRICT COURT OF APPEAL,
THIRD DISTRICT OF FLORIDA.

BRIEF OF PETITIONERS ON JURISDICTION

Lane Abraham
SY CHADROFF, P.A.
200 SE First Street #1101
Miami, Fl. 33131
Attorneys for Petitioners

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TABLE OF CITATIONS

CASES

Carbo, Incorporated vs. Meiklejohn, 217 So.2d
159 (Fla. 1st DCA, 1968)-----4,5,6

OTHER

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§561.32(2) Fla. Stat.-----3,4

QUESTIONS PRESENTED

I. WHETHER THE OPINION OF THE DISTRICT COURT OF APPEAL EXPRESSLY DECLARES VALID A STATE STATUTE?

II. WHETHER THE OPINION OF THE DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF ANOTHER DISTRICT COURT HOLDING A STATUTE SIMILAR TO THE STATUTE UNDER ATTACK HEREIN TO BE AN UNCONSTITUTIONAL DELEGATION OF AUTHORITY TO AN ADMINSTRATIVE AGENCY?

INTRODUCTION

In this brief the Petitioner, Astral Liquors, Inc., will be referred to as: ASTRAL. The Petitioner, R. J. Mandell Corporation, will be referred to as: MANDELL. The Respondent will be referred to as DABT.

The term R-Mandell or R-Astral will be used when necessary to refer to the respective records on appeal below (although the appeals were consolidated for purposes of brief, argument and opinion, the records were not).

STATEMENT OF THE CASE AND THE FACTS

The Petitioners seek to have reviewed a decision of the District Court of Appeal, Third District, filed February 22, 1983 (Appendix - A) and, rehearing having been granted, the opinion on rehearing filed June 2, 1983 (Appendix - B).

ASTRAL was the respondent in an administrative complaint below and was an appellant before the District Court of Appeal. MANDELL was the petitioner in an administrative matter below and was an appellant before the District Court of Appeal. DABT was respectively the petitioner and the respondent in the two administrative cases below and was the Appellee in the consolidated appeals before the District Court of Appeal.

These were appeals to the District Court of Appeals from Final Administrative Orders of the DABT which revoked the alcoholic beverage license of ASTRAL (R. Astral, 31-34) and denied the application for the transfer of an alcoholic beverage license of MANDELL (R. Mandell, 36-41). The appeals, dealing with the chronological continuum of events regarding the same license and representing the same facts and legal issues, were consolidated in the District Court of Appeal.

The District Court of Appeal affirmed the Final

Administrative Orders but thereafter granted the appellants motion for rehearing. Upon consideration, the District Court adhered to its original opinion with one dissent.

This case began when the DABT filed administrative charges against ASTRAL seeking to revoke its alcoholic beverage license on the grounds that its sole stockholder had become unqualified to continue holding said license (R. ASTRAL, 2-4). Shortly thereafter, ASTRAL sold its business, including the alcoholic beverage license, to MANDELL (R. Mandell, 49-51). MANDELL then made application to the DABT for the transfer of the license to itself (R. Mandell, 3-6). After administrative hearings, the DABT revoked the license held by ASTRAL and denied the transfer application of MANDELL. The appellants appealed to the Third District Court of Appeal on constitutional grounds which are succinctly stated in the opinion of the Court (and the dissenting opinion). The District Court of Appeal held §561.32(2) Fla. Stat. to be a valid delegation of authority to an administrative agency. The appellants thereafter filed a Notice to Invoke the Discretionary Jurisdiction of this Court.

ARGUMENT

I. THE OPINION OF THE DISTRICT COURT OF APPEAL EXPRESSLY DECLARES VALID A STATE STATUTE.

Article 5, §3(b)(3), Fla. Const. gives this Court the discretionary authority to review the opinion of a district court of appeal which expressly declares valid a state statute. The opinion of the District Court of Appeal, Third District, in this case, clearly declares §561.32(2), Fla. Stat. to be valid.

The Appellants claimed below that §561.32(2) Fla. Stat. was an unconstitutional delegation of power to an administrative agency of the State due to a complete lack of standards or guidelines. The majority opinion of the District Court discussed the issue and concluded its opinion by stating:

"We therefore hold that §561.32(2) constitutes a valid delegation of authority to the Division."

The District Court having, thus, expressly declared valid the above-cited statute under constitutional attack, this Court has jurisdiction to review the opinion of the lower court.

II. THE OPINION OF THE DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF ANOTHER COURT HOLDING A STATUTE SIMILAR TO THE STATUTE UNDER ATTACK HEREIN TO BE AN UNCONSTITUTIONAL DELEGATION OF AUTHORITY TO AN ADMINISTRATIVE AGENCY.

Article 5 §3(b)(3), Fla. Const. gives to this Court the discretionary authority to review decisions of a District Court of Appeal if the decision is in direct and express conflict with the decision of another district court of appeal. The Appellants contend that the instant decision of the Third District Court of Appeal does so conflict with the decision of the First District Court of Appeal in Carbo, Incorporated v. Meiklejohn, 217 So.2d 159 (Fla.1st DCA, 1968), cert. den., 225 So.2d 533 (Fla. 1969).

The Petitioners in the instant matter put forth the proposition below that a section of the Beverage Law, §561.32(2) Fla. Stat. was a violation of Art. II, §3, Fla. Const. because it was an unlawful delegation of power by the legislature to an administrative agency. It was so because the statute failed to provide any standards or guidelines whatsoever to the agency while giving the agency (DABT) complete discretion to grant or deny a license application when there is a pending administrative complaint against the license. ASTRAL and

and MANDELL took the position that the doctrine of non-delegation applied and that the legislature could not constitutionally grant absolute, unfettered and, basically, unreviewable discretion to an agency.

The opinion of the Third District Court of Appeal held that the doctrine of non-delegation, while generally applicable, was not, in fact, applicable to this statute because: 1) this was a statute under the Beverage Law and, thus, within the police power of the state and 2) this was a licensing matter and, thus, fell within an exception to the general rule. The Court concluded that based upon these exceptions, legislative standards and guidelines were not required and that "granting the Division absolute discretion" under the conditions of the statute was not constitutionally prohibited.

In Carbo, supra., the First District Court of Appeal was confronted with a similar statute under the Beverage Law, §561.241 Fla. Stat. (1967). In that case the applicant for an alcoholic beverage license claimed the statute was an unconstitutional delegation of legislative power because the statute gave the DABT the power to issue licenses "in the interest of the public" but failed to set any standards or guidelines. The District Court agreed and held the statute unconstitutional on those

grounds. The statute involved in Carbo, supra., as well as the issues applicable, are so similar to the statute involved in this case that the dissenter in the opinion sought to be reviewed here stated that given the Carbo decision, he believed the statute here was "a fortiori unconstitutional."

Indeed, both statutes are part of the Beverage Law. Both statutes deal with the issuance of alcoholic beverage licenses. The Third District says that the Beverage Law is not subject to the non-delegation rule and that neither are licensing matters. The First District holds a licensing statute under the Beverage Law to be a violation of the non-delegation rule and, therefore, unconstitutional. The decisions are clearly in direct and express conflict. This Court has jurisdiction.

CONCLUSION

The opinion sought to be reviewed expressly declares valid a state statute. It also conflicts with the opinion of another District Court of Appeal. This Court, therefore, has jurisdiction to consider the issues involved.

The issues are important, and this Court should exercise its discretion and accept jurisdiction, because the opinion sought to be reviewed deals with the very foundation of administrative law and the Administrative Procedure Acts. The opinion stands for the proposition that the legislature can delegate in broad areas (those dealing with license matters and all matters related to the regulation of "privileged" occupations or the exercise of the police power) virtually absolute, unfettered and, most importantly, unreviewable discretion to administrative agencies. This would be a significant departure from prior practice and law and is deserving of Supreme Court consideration.

Respectfully submitted,



Lane Abraham

SY CHADROFF, P.A.
200 SE First Street #1101
Miami, Fl. 33131
Telephone - 305 -358-4317

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was furnished by mail to James A. Watson, Jr., Esquire, Department of Business Regulation, 725 South Bronough Street, Tallahassee, Florida 32301, this 11 day of July, 1983.

Lane Abraham
SY CHADROFF, P.A.
200 SE First Street
Suite 1101
Miami, Florida 33131
Telephone (305) 358-4317

Lane Abraham