

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 997

JANUARY 11, 1954.

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 997

JANUARY 11, 1954.

1. NEW LEGISLATION - RETAIL CONSUMPTION OR PLENARY RETAIL DISTRIBUTION LICENSE - WHERE ONLY ONE LICENSE PERMITTED NEW LICENSE ISSUABLE IF OLD LICENSE IS VOIDED.

Senate No. 7 (First Special Session) was approved by the Governor on December 21, 1953, and thereupon became Chapter 437 of the Laws of 1953. It reads as follows:

"AN ACT concerning certain alcoholic beverage licenses, and supplementing chapter one of Title 33 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. In any municipality wherein not more than one retail consumption license and not more than one plenary retail distribution license may be issued pursuant to State law and wherein one license of either type or of each type is issued, if the holder of either type of license dies or shall have died and operation of the business ceases or shall have ceased during the license term and if no application for extension or transfer of the license is or shall have been filed within ninety days following the decease, the municipal issuing authority may by resolution void said license and thereafter it shall be lawful to issue in such municipality a new license of the same type as that of the license so voided.

"2. This act shall take effect immediately."

Dominic A. Cavicchia
Director.

Dated: December 28, 1953.

2. APPELLATE DECISIONS - HUDSON-BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION v. NORTH BERGEN AND NAJARIAN.

HUDSON-BERGEN COUNTY RETAIL LIQUOR)
STORES ASSOCIATION,)

Appellant,)

-vs-)

ON APPEAL
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE TOWNSHIP OF)
NORTH BERGEN, and VAHAN AND STEPHEN)
NAJARIAN, trading as VAY'S FOOD)
MARKET,)

Respondents.)

Samuel Moskowitz, Esq., Attorney for Appellant.
Leo Brauer, Esq., Attorney for Board of Commissioners of the Township
of North Bergen successor to the duties of Respondent Municipal
Board of Alcoholic Beverage Control.
Morris F. Pearlman, Esq., Attorney for Respondents Vahan and Stephen
Najarian.

BY THE DIRECTOR:

This is an appeal from the action of Respondent Board on July 11, 1953, whereby it approved the application of Respondents Vahan and Stephen Najarian for transfer of a limited retail distribution license from Antoinette Warns to said Vahan and Stephen Najarian and from premises 8010 Grand Avenue to 8728 Hudson County Boulevard (hereinafter referred to as Boulevard), North Bergen.

No question has been raised as to the fitness of the transferees to hold a license. Appellant contends that the place-to-place transfer was erroneous because there is no public need for the transfer since the area is amply serviced by existing licensees and the transfer results in an undue concentration of licenses in the area.

Respondents denied these allegations and, in addition, Respondent Board set forth separate defenses wherein it alleged that the area was not sufficiently serviced by existing licenses and alleged that the proposed transfer is of great convenience to the residents of North Bergen in the area serviced by the transferees.

At the hearing on this appeal two plenary retail distribution licensees who are members of appellant and one limited retail distribution licensee testified on behalf of appellant. It was stipulated that appellant is a trade association consisting of plenary retail distribution licensees in Hudson and Bergen counties and that its purpose is to protect the interests of its members and to disseminate information among them.

The proposed new location (8728 Boulevard) is on the southeast corner of the Boulevard and 88th Street. The aforementioned holder of the limited retail distribution license who opposed the transfer conducts his business at the southwest corner of Bergenwood Avenue and 89th Street (one block north of the proposed new location in question) at the point where the Boulevard turns eastward toward Bergenline Avenue and Boulevard east. Bergenwood Avenue is, in effect, what would be the continuation of the Boulevard if it did not change direction at that point. The two plenary retail distribution licensees, aforementioned, are located on the Boulevard. One is at the other end of the same block as the proposed new location, namely, on the northeast corner of 87th Street and the Boulevard. The other one is next

to the northeast corner of the Boulevard and 82nd Street. There are two more plenary retail distribution licensees in the same general area, one several blocks north on the Boulevard and one at Newkirk Avenue and 85th Street, at least three blocks away. In addition, there is a limited retail distribution licensee at Fourth Avenue and 85th Street and another at Second Avenue and the Boulevard, both of which are three blocks from the proposed new location.

There are also eight plenary retail consumption licenses on the Boulevard in the area between 82nd Street and First Avenue, a distance of approximately eight blocks, and another on 90th Street, East of Fifth Avenue.

Appellant's witnesses testified that, in their opinion, there was no public need for the transfer, that the area was already adequately served by existing licensees and that the transfer would cause an undue concentration of licenses in the area. They further testified that some of the licensees in the area conducted an extensive delivery service.

None of these witnesses made objections before Respondent Board before the transfer was granted. Two claimed that they had no knowledge of the application, but no claim is made that proper notice was not given. The other witness admitted that he knew of the advertisements of the application in a local newspaper but made no protest.

One of the respondents, Vahan Najarian, testified that he and his brother Stephen have been in business in the general area for fifteen years; that for four and one-half years they have conducted a supermarket at the proposed new location at 8728 Boulevard; that they have private parking facilities; that they sell all kinds of food products to customers who live in the neighborhood or who come from various parts of Hudson County or southeast Bergen County and that they deliver over a wide area in those two counties. He also testified that they had a considerable customer demand for beer and that the tendency is toward "one stop" stores where a customer can make all of his purchases.

The former location, 8010 Grand Avenue, is near 81st Street approximately seven blocks south and one long block west of the proposed new location. It appears from the map introduced in evidence, with the consent of all parties, that the entire area surrounding both locations is heavily residential except that the Boulevard, for a considerable distance and on both sides thereof, is zoned for business, and that, by and large, the Boulevard is the business section in this area. There are, of course, other business sections elsewhere.

Respondent Board was abolished on September 2, 1953 and its powers and duties have been returned to the Board of Commissioners. None of its former members was available to testify at the hearing on this appeal. The license, the transfer of which is the subject of this appeal, is a limited type of license and exists for a limited purpose. It may be issued only for premises "operated and conducted by the licensee as a bona fide grocery store, meat market, meat and grocery store, delicatessen, or other type of bona fide food store at which groceries or other foodstuffs are sold at retail; for premises at which the sale of groceries or other foodstuffs is the primary and principal business and at which the sale of alcoholic beverages is merely incidental and subordinate thereto." Furthermore the holder may sell only unchilled, brewed, malt alcoholic beverages in quantities of not less than seventy-two fluid ounces for consumption off the licensed premises, and only in the original containers.

The burden of establishing that the action of Respondent Board was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulations No. 15.

It has been held repeatedly that the number of licenses which should be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. "My function on appeals of this type is not to substitute my personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of my personal view on the subject. Rafalowski v. Trenton, Bulletin 155, Item 8; Northend Tavern, Inc. v. Northvale, Bulletin 493, Item 5; Petti v. Bayonne, Bulletin 564, Item 7; Mulcahy et al. v. Maplewood et al., Bulletin 658, Item 4." Segal et al. v. Clifton, Bulletin 732, Item 5. See also West Hudson-Bergen &c. Association v. Harrison et al., Bulletin 801, Item 1. This is particularly so where the proposed location is in an area devoted to business, and the mere fact that other licensed premises also serve the same area is not necessarily dispositive. Hudson Bergen &c Association v. Rutherford et al., Bulletin 931, Item 3; Trinity Methodist Church of Rahway v. Rahway et al., Bulletin 972, Item 3.

Under all of the circumstances I find that appellant has failed to carry the burden imposed by Rule 6 of State Regulations No. 15, aforementioned.

Accordingly, it is, on this 8th day of December, 1953,

ORDERED that the action of the Respondent Municipal Board of Alcoholic Beverage Control be and the same is hereby affirmed, and the appeal herein, be and the same is hereby dismissed.

DOMINIC A. CAVICCHIA
Director.

3. APPELLATE DECISIONS - FESTA AND GRIEB v. HALEDON.

JOSEPH J. FESTA and JOSEPH F.)
GRIEB,)

Appellants,)

-vs-)

BOROUGH COUNCIL OF THE BOROUGH)
OF HALEDON,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Theodore D. Rosenberg, Esq., Attorney for Appellants.
No appearance on behalf of Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it denied appellants' application for the transfer to them of a plenary retail consumption license issued to Edward Timmerman for premises known as 305 Belmont Avenue, Haledon.

The petition of appeal alleges that on September 28, 1953, the application was denied for the following reason:

"In view of the prior convictions of the appellant, Joseph F. Grieb, they, the respondents, deemed him to be an undesirable person to conduct a tavern in the Borough."

The petition of appeal alleges that the action of respondent was erroneous because it was arbitrary, constituted an abuse of discretion and was violative of the spirit of R. S. 33:1-31.2.

When respondent failed to appear at the hearing, appellants were permitted to proceed ex parte in accordance with Rule 10 of State Regulations No. 15, subject to the provisions of Rule 6 of said Regulations which provides that the burden of establishing that the action of respondent issuing authority was erroneous and should be reversed shall rest with the appellant.

From the testimony presented herein it appears that appellant Joseph J. Festa is fully qualified to hold a license and no question of his qualifications or fitness has been raised by respondent.

At the hearing Joseph F. Grieb testified that he is thirty-one years of age; that he was married in July 1945; that he owns premises known as 285 Glover Avenue, Paterson, where he and his wife and two children reside, and that for approximately seven years last past he has been employed as a maintenance mechanic in the dyeing industry. However, it appears that in April 1938, when he was seventeen years of age, he was convicted in another State of the crime of "taking without stealing", as a result of which he served two months of a six-months' term in a house of correction; that in January 1939 he pleaded guilty in another State to the crime of burglary, entry and larceny, as a result of which he was placed on probation for two years, and that in April 1943 he pleaded non vult in a county court to the crime of burglary, entering, larceny and robbery, as a result of which he was fined \$50.00. Records of the Division of Alcoholic Beverage Control disclose that, pursuant to the provisions of R. S. 33:1-31.2, Joseph F. Grieb filed a petition to remove his statutory disqualification because of the aforesaid convictions, and that on September 25, 1953, I entered an order removing his statutory disqualification because of the convictions referred to above in accordance with the provisions of R. S. 33:1-31.2. In the records of the Division the case is referred to as Case No. 1087, in accordance with the usual practice in order that the applicant for such relief may ordinarily be spared from undue publicity.

Under the provisions of the Alcoholic Beverage Law it is primarily the duty of the governing board or body or other issuing authority of each municipality to administer the issuance of retail licenses locally (R. S. 33:1-19), and to investigate applicants and to do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration of the law (R. S. 33:1-24). The duty thus imposed upon the local issuing authority to pass upon the fitness of an applicant for a retail license continues in effect despite the entry of an order removing statutory disqualification pursuant to the provisions of R. S. 33:1-31.2. This is abundantly clear from the opinion of Commissioner Burnett in Re Chiaravalli, Bulletin 300, Item 15, wherein he says:

"An order entered pursuant to this statute (R. S. 33:1-31.2) does not qualify the person therein named to hold a license. Rather it removes the disqualification which otherwise would exist. It means that instead of being mandatorily disqualified, the application of such person may be considered on its merits. The order does not have the effect of a pardon. It does not wipe out the crime. Rather, it merely extinguishes the statutory effect which a crime involving moral turpitude would normally have. It, therefore, is still necessary that the issuing authority pass on the question as to whether or not under all the facts the applicant should be given a license."

It has been held that a local issuing authority may deny an application for a license where it reasonably determines that the applicant is not a fit person to hold a license and even in cases where the applicant has never been convicted of a crime. Hodanish v. Trenton, Bulletin 121, Item 6; Jackie Clark v. West Orange, Bulletin

631, Item 7 and Bulletin 635, Item 2. In this case appellant Joseph F. Grieb failed to satisfy the local issuing authority that the public interest would be best served in granting him a license. There is nothing in the record to indicate or suggest that the refusal by respondent was inspired by improper motives. R. S. 33:1-25 provides that, in the case of applications filed by partnerships, no license shall be issued unless all of the partners would qualify as individual applicants. Under the circumstances I conclude that the appellants have not sustained the burden of proof in showing that the action of respondent issuing authority was erroneous and, hence, I shall affirm respondent's action.

Accordingly, it is, on this 10th day of December, 1953,

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

DOMINIC A. CAVICCHIA
Director.

4. APPELLATE DECISIONS - CORNELIUS ET AL. v. ELIZABETH AND DOWD
AND LYONS.
UNION COUNTY RETAIL LIQUOR STORES ASSOCIATION
v. ELIZABETH AND DOWD AND LYONS.

WILLIAM J. CORNELIUS, ERMINE CORNELIUS,
ELMER S. HARVEY, ALICE HARVEY, THEODORE
DEGENRING, LEILA DEGENRING, HARRY BREY,
JINGA BREY, DAVID BEDROCK, EDITH BEDROCK,
MARGARET PFEFFER, WILLIAM HUETTL, MARTIN
SCHAEFFER, ROSE SCHAEFFER, ELVIN C.
VanNESS, MILDRED VanNESS, CHARLES M.
MacDONALD, HARRY C. ELLISON, LEILA ELLISON,
Appellants,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE
CONTROL OF THE CITY OF ELIZABETH, WILLIAM
G. DOWD, III, and HENRY J. LYONS,

Respondents.

ON APPEAL

UNION COUNTY RETAIL LIQUOR STORES ASSOCIATION,
a corporation of the State of New Jersey,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE
CONTROL OF THE CITY OF ELIZABETH, and WILLIAM
G. DOWD, III, and HENRY J. LYONS,

Respondents.

CONCLUSIONS
AND
ORDER

Joseph A. Lettieri, Esq., Attorney for Appellants, William J.
Cornelius, et al.

Julius R. Pollatschek, Esq., Attorney for Appellant, Union County
Retail Liquor Stores Association.

Louis P. Longobardi, Esq., Attorney for Respondent Municipal Board.

John T. Glennon, Esq., Attorney for Respondents, William G. Dowd, III,
and Henry J. Lyons.

BY THE DIRECTOR:

By consent of all parties, these two appeals were heard together and, since the issues in both cases are substantially the same, they will be decided together.

On August 4, 1953, respondent Municipal Board issued a new plenary retail distribution license to respondents Dowd and Lyons for premises known as 366 Springfield Road, Elizabeth.

The appellants in both cases allege that the action of respondent Board was erroneous for substantially the following reasons: (1) the premises for which the license has been granted are located in an area which, under the zoning ordinance of the City of Elizabeth, is zoned for residential "A" use; (2) there is no need for any additional package stores in the vicinity; (3) the establishment of a liquor outlet at the premises in question will create a traffic hazard, and (4) respondent Board previously denied an application for a similar license for other premises in the same general neighborhood. In addition, the individual appellants allege that the location of a liquor establishment in a highly residential neighborhood will depreciate property values.

The premises known as 366 Springfield Road consist of a store located in a brick building containing six stores on the ground level with apartments above. The building was erected in 1926. The store known as 366 Springfield Road is now vacant but was previously occupied as a barber shop and has never been used for the sale of alcoholic beverages.

On February 19, 1931, the Board of Public Works of the City of Elizabeth adopted a zoning ordinance which is in effect at the present time. According to the Building Zone Map which accompanies and is declared to be part of the ordinance, a large area surrounding the aforesaid building is classified as a Residence "A" District. The ordinance, in effect, provides that no business shall be conducted in a Residential "A" District.

Respondents Dowd and Lyons contend that the license has not been issued in violation of the zoning ordinance because the aforesaid building was erected before the zoning ordinance was adopted and, hence, the use thereof for the sale of alcoholic beverages is a prior non-conforming use and excepted from the zoning restriction. As to existing non-conforming buildings, Section 3(a) of the Ordinance provides:

"Except as hereinafter provided, no building or premises shall be used except in conformity with the provisions of this ordinance which applies to the district in which it is located. However, any non-conforming use, existing at the time of passage of this ordinance, may be continued or changed to another non-conforming use no more harmful or objectionable in the opinion of the Board of Adjustment, hereinafter prescribed, than the last preceding non-conforming use, provided that the building or premises involved shall be neither altered nor enlarged except as hereinafter stipulated, unless such use shall be changed to a use permitted in the district. ***"

It is well established that a non-conforming use may not be extended. DeVito v. Pearsall, 115 N.J.L. 323; Dubin v. Wick, 120 N.J.L. 469; Vogel v. Bridgewater, 121 N.J.L. 236; Simone v. Peters, 135 N.J.L. 495; Scerbo v. Jersey City, 4 N. J. Super. 409; Struyk v. Samuel Braen's Sons, 17 N. J. Super. 1 (aff'd 9 N. J. 294); Gerkin v. Ridgewood, 17 N. J. Super. 472. The sale of liquor would constitute a new use in the zoned area and would not be permissible under the non-conforming use which existed at the time the ordinance was adopted. Talbot v. Keppler and Mendham, Bulletin 117, Item 1, and cases therein cited; Marinaccio v. Ocean, Bulletin 264, Item 11; Nasso v. Bridgewater, Bulletin 744, Item 10.

It is doubtful that the Board of Adjustment could lawfully and bindingly determine that the use here sought would constitute a non-conforming use "no more harmful or objectionable" than the use

heretofore made but, in any event, it does not appear that the Board of Adjustment has expressed any opinion upon that question.

This license, therefore, having been issued in violation of the zoning ordinance of the City of Elizabeth, must be set aside. Talbot v. Keppler and Mendham, supra.

Under the circumstances it is unnecessary to consider here any of the other reasons alleged by appellants for reversal of the action taken by respondent Board.

Accordingly, it is, on this 14th day of December, 1953,

ORDERED that the action of respondent Municipal Board, in issuing a plenary retail distribution license to respondents William G. Dowd, III, and Henry J. Lyons, be and the same is hereby reversed. All activity under said license must cease forthwith.

DOMINIC A. CAVICCHIA
Director.

5. DISCIPLINARY PROCEEDINGS - SUSPENSION REIMPOSED AFTER FURTHER STAY DENIED BY SUPREME COURT.

In the Matter of Disciplinary)
Proceedings against)

JOSEPH MAZZA)
T/a TRAVELER'S HOTEL & RESTAURANT)
300 Paterson Plank Road)
East Rutherford, N. J.,)

O R D E R

Holder of Plenary Retail Consumption)
License C-10, issued by the Borough)
Council of the Borough of East)
Rutherford.)

BY THE DIRECTOR:

Following the affirmance by the Superior Court, Appellate Division, of the suspension of 180 days theretofore imposed against this defendant, the penalty was reimposed on November 25, 1953, to become effective December 2, 1953. See Bulletin 992, Item 1 and Bulletin 994, Item 1. On December 1, 1953, the defendant filed a notice of appeal to the Supreme Court and obtained a temporary stay of the suspension, as reimposed; pending application to the Supreme Court for a stay pending the outcome of the appeal. This application has been denied by the Supreme Court and the penalty, therefore, may now again be imposed.

Accordingly, it is, on this 9th day of December, 1953,

ORDERED that Plenary Retail Consumption License C-10, issued by the Borough Council of the Borough of East Rutherford to Joseph Mazza, t/a Traveler's Hotel & Restaurant, for premises 300 Paterson Plank Road; East Rutherford, be and the same is hereby suspended for a period of one hundred eighty (180) days, commencing at 2:00 a.m. December 16, 1953, and terminating at 2:00 a.m. June 14, 1954.

DOMINIC A. CAVICCHIA
Director.

6. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against)

PETER DELLA RODOLFA and)

JOSEPH DELLA RODOLFA)

T/a RODOLFA'S)

10-12 Nicholson Street)

Lodi, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-)
tion License C-9, issued by the)
Mayor and Council of the Borough)
of Lodi.)
-----)

Frank J. Cuccio, Esq., Attorney for Defendant-licensees.
David S. Piltzer, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that they sold alcoholic beverages at retail, in original containers for consumption off their licensed premises; in violation of Rule 1 of State Regulations No. 38.

The file herein discloses that two ABC agents visited defendants' licensed premises on the night of Wednesday, September 30, 1953, to investigate a specific complaint that defendants were selling alcoholic beverages at retail, in original containers, to workmen from nearby industrial plants, for consumption off the licensed premises, in violation of Rule 1 of State Regulations No. 38. At approximately 11:00 p.m. the agents observed Joseph Della Rodolfa, one of the licensees, hold a whispered conversation with a male patron, after which he took something from the cooler and placed it in a paper bag which he handed to the patron who, in turn, handed over some money which was rung up on the cash register. The patron placed the paper bag under his coat and left the premises. However, when one of the agents asked for six cans of beer to take out the same licensee refused because it was after ten o'clock, adding, "I'd give it to you but somebody might be outside watching."

The same agents returned to the licensed premises at approximately 10:20 p.m. on Friday, October 2, 1953. Both licensees were tending bar. At 10:35 p.m., one of the agents asked Peter Della Rodolfa for four cans of beer to take to work. Peter went to the other end of the bar, talked to Joseph, returned to the agent and refused to make the sale because it was after ten o'clock. That agent left the licensed premises and took a position outside from which he could observe patrons entering and leaving the premises. The other agent remained inside.

At 11:45 p.m. a man entered the licensed premises carrying a small package (his lunch). He went to the end of the bar and spoke to Peter Della Rodolfa, who took three cans of Ballantine Beer from the cooler, placed them in a paper bag and put the bag and its contents on the bar in front of the patron, who paid for the beer and left the premises with it. When approached by the agent who had gone outside, the patron first claimed that he had purchased the beer at 9:30 p.m. However, the cans were cold and were "sweating." The agent took the patron into the licensed premises, where the patron admitted that Peter had sold the beer to him a few minutes before. The licensees denied making the sale and refused to give a written statement.

Defendants have a prior record. Their license was suspended by the State Director for ten days, effective September 10, 1951, for this same type of violation. Re Della Rodolfa, Bulletin 916, Item 16. Since this is their second similar offense within a five year period I shall suspend the license for thirty days. Re Bartoszak, Bulletin 989, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 28th day of December, 1953,

ORDERED that Plenary Retail Consumption License C-9, issued by the Mayor and Council of the Borough of Lodi to Peter Della Rodolfa and Joseph Della Rodolfa, t/a Rodolfa's, for premises at 10-12 Nicholson Street, Lodi, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 4:00 a.m. January 4, 1954, and terminating at 4:00 a.m. January 29, 1954.

DOMINIC A. CAVICCHIA
Director.

7. SEIZURE - FORFEITURE PROCEEDINGS - UNLICENSED SALE OF BEER ABOARD FISHING BOAT BY MINOR - MOTOR VEHICLE USED TO TRANSPORT SUCH BEER BEER ORDERED FORFEITED - REQUEST FOR RETURN OF MOTOR VEHICLE DENIED BECAUSE OWNER THEREOF EMPLOYED MINOR AND OTHERWISE LACKED GOOD FAITH - MOTOR VEHICLE ORDERED FORFEITED.

In the Matter of the Seizure on)
August 26, 1953, of 95 cans of beer)
and an International truck, at Pier)
6, Atlantic Highlands Municipal)
Harbor, in the Borough of Atlantic)
Highlands, County of Monmouth and)
State of New Jersey.)

Case No. 8399

ON HEARING
CONCLUSIONS AND ORDER

Elmer J. Horvath, Pro Se.
Harry Castelbaum, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, and further pursuant to a stipulation entered into by Elmer J. Horvath on September 25, 1953, to determine whether 95 cans of beer and an International truck, described in a schedule attached hereto, seized on August 26, 1953 in the vicinity of Pier 6, Atlantic Highlands Municipal Harbor, in Atlantic Highlands, N. J. constitute unlawful property and should be forfeited.

The beer was seized on the fishing boat "Flash King" while docked at such pier, after ABC agents were sold beer, without a license, aboard the boat in New Jersey territorial waters. The truck not licensed to transport alcoholic beverages, was seized because it was used that day to transport such beer.

Pending forfeiture hearing in the case, Elmer J. Horvath, the owner of the truck, deposited \$250.00, the retail value of said truck with the Director of the Division of Alcoholic Beverage Control, under protest, pursuant to R. S. 33:1-66. Horvath has stipulated that the Director shall determine in this proceeding whether such sum of \$250.00 shall be forfeited, or returned to him.

When the matter came on for hearing, pursuant to R.S. 33:1-66 and the aforesaid stipulation, Elmer J. Horvath appeared and sought return of such sum of \$250.00. No one opposed forfeiture of the 95 cans of beer.

The beer is an illicit alcoholic beverage because it was intended for sale without a license. R. S. 33:1-1(i). Such illicit beer, and the truck used in the transportation thereof, constitute unlawful property and both are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

I have the discretionary authority to return forfeited property to a person who has established to my satisfaction that he acted in good faith and unknowingly violated the law. R. S. 33:1-66(e).

It appears that Elmer J. Horvath was employed as Captain of the fishing boat, which was purchased by the owner in 1949. A plenary retail transit license was issued by the Division of Alcoholic Beverage Control in 1949, authorizing the sale of alcoholic beverages aboard the boat. Thereafter no such license was obtained. From the outset beer was sold aboard the boat, at first by a mate, and thereafter by Elmer J. Horvath, as their independent enterprise, and in no wise for the benefit of the owner of the boat. Furthermore, the unlicensed sale of beer on the date of seizure and on other occasions theretofore was made by a 15-year-old boy under the supervision and direction of Horvath.

Aside from the fact that everyone at this late date knows or should know that it is unlawful to sell alcoholic beverages without a license, Horvath had specific knowledge that an appropriate license had been obtained in 1949, and hence cannot excuse the failure to obtain a similar license thereafter by reason of any claimed misinformation that such license was not required, attributed to some person not connected with the Division of Alcoholic Beverage Control. If Horvath had any doubt as to the necessity of a license, his proper course was to inquire of the Division of Alcoholic Beverage Control, which he did not do.

It appears further that when a brewery refused to supply beer to Horvath after the 1949 license expired, Horvath made a practice of purchasing beer for resale aboard the boat from retailers. This is a further violation of the law, since a retailer is not permitted to sell alcoholic beverages for resale. R.S. 33:1-12. Finally, in aggravation, Horvath's employment of a 15-year-old boy to sell beer violated both good morals and the express prohibition of the Alcoholic Beverage Law against the sale of any alcoholic beverages by a minor. R. S. 33:1-26.

It is thus self-evident that Horvath displayed throughout a total disregard of the Alcoholic Beverage Law. His conduct clearly was not that of a person who intending to comply with the law, acting in good faith throughout, nevertheless unknowingly violates the law. His request for return of the \$250.00 deposited by him must be denied.

Accordingly, it is DETERMINED and ORDERED that the 95 cans of beer listed in Schedule "A" attached hereto, constitute unlawful property, and the same be and hereby are forfeited in accordance with the provisions of R. S. 33:1-66, and that they be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control, and it is further

DETERMINED and ORDERED that the International truck described in the aforesaid Schedule "A" constitutes unlawful property and the sum of \$250.00, representing its appraised retail value, paid under protest to the Director of the Division of Alcoholic Beverage Control

by Elmer J. Horvath to obtain return of such truck, he and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, to be accounted for in accordance with the law.

Dated: December 9, 1953.

DOMINIC A. CAVICCHIA
Director.

SCHEDULE "A"

- 95 - 12 oz. cans of beer
- 1 - International Truck, Serial No. 4492, Engine No. 45509, 1953 Florida Registration IGL12551.

8. DISQUALIFICATION - APPLICATION DENIED BECAUSE OF PETITIONER'S LENGTHY CRIMINAL RECORD DESPITE FACT THAT HE HAD NOT BEEN CONVICTED OF CRIME WITHIN PAST FIVE YEARS.

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

CONCLUSIONS
AND ORDER

Case No. 1105.
-----)

BY THE DIRECTOR:

Petitioner, who was born in September 1914, has a lengthy criminal record. In 1930 he was sent to a children's home after he had been accused of stealing pigeons, and in July 1931 he was placed on probation on a charge of breaking, entry and larceny. The record shows that on an unspecified date in 1932 he was sentenced to serve fifteen days in a county jail on a charge of disorderly conduct. On February 1, 1932, he was found guilty on a charge of assault and battery and was sentenced to Rahway Reformatory. After being transferred to Annandale Reformatory he was paroled on December 19, 1932. On January 18, 1934, after he was found guilty of larceny of an automobile, he received an indeterminate sentence to Annandale Reformatory and, after a transfer to Rahway Reformatory, he was paroled therefrom on October 28, 1935. On December 16, 1935, he was found guilty on another charge of assault and battery and again sentenced to Rahway Reformatory, from which he was paroled on May 31, 1937. On September 10, 1938, he was arrested on a charge of assault and battery, which charge was apparently withdrawn. On October 21, 1940, he was arrested on a charge of robbery. The fingerprint returns do not disclose any disposition of this charge, but petitioner testified that he was thereafter tried and acquitted. On July 26, 1945, he was arrested on a charge of possessing counterfeit sugar coupons, and on June 24, 1946, he was placed on probation for a period of one year after he had been found guilty on said charge. It is clear that his conviction in 1934 for larceny of an automobile involved moral turpitude and, hence, petitioner is presently ineligible to hold a liquor license or to be connected in any business capacity whatsoever with a liquor licensee. R. S. 33:1-25, 26.

At the hearing petitioner testified that during World War II he served in the Merchant Marines for a period of about two years and that, upon his release from said service in April 1945, he purchased a small ice cream parlor. His arrest for possessing counterfeit sugar coupons occurred while he was conducting said business. Petitioner further testified that he sold said business in the latter

part of 1945, and that in the following year he began to conduct his own construction business from his home; that he still conducts said business and sometimes employs two or three helpers, but generally does the work himself. He is a carpenter by trade.

Petitioner, who was married in 1940, resides with his wife and two children.

At the hearing an employee of a lithographing company and a housewife, who have known him for eleven years, and a laborer, who has known him for seven years, testified that petitioner now bears a good reputation in the municipality in which he resides. The Chief of Police of said municipality has certified that there are no complaints or investigations presently pending concerning petitioner.

Although it appears from the record that petitioner has not been convicted of any crime for more than seven years last past, I am not fully satisfied that his connection with the alcoholic beverage industry would not be contrary to public interest in view of his lengthy criminal record. At the hearing petitioner testified that he has never been engaged in the alcoholic beverage industry. He further testified that he is seeking the removal of his disqualification in order that he may "buy a place" if an opportunity to purchase a business used in conjunction with a liquor license presents itself at some future time.

Under all the circumstances of this case I shall, in the exercise of my discretion, deny the petition, with leave to file a new petition after the expiration of one year from the date hereof.

Accordingly, it is, on this 17th day of December, 1953,

ORDERED that the petition herein be and the same is hereby denied, with leave to reapply as aforesaid.

DOMINIC A. CAVICCHIA
Director.

9. STATE LICENSES - NEW APPLICATIONS FILED.

William DeAscentiis, t/a Brewer's Distributors
517 Line Street, Camden, N. J.

Application filed December 23, 1953 for transfer of State Beverage Distributor's License SBD-39 from Bertram F. Kloidt & Nicholas R. Krauszer, t/a K & K Beverages, Rear 3928 Marlton Pike, Pennsauken Township, N. J.

Hoffman Beverage Company
392-408 Grove Street, Newark 6, N. J.

Application filed December 28, 1953 for Public Warehouse License.

A. J. Farone, Inc.
63 Putnam Street, Saratoga Springs, New York.

Application filed December 30, 1953 for Transportation License.

DOMINIC A. CAVICCHIA
Director.

10. AUTOMATIC SUSPENSION - SELLING ALCOHOLIC BEVERAGES TO MINORS -
 LICENSE PREVIOUSLY SUSPENDED BY LOCAL ISSUING AUTHORITIES FOR 25
 DAYS - APPLICATION TO LIFT GRANTED.

In the Matter of a Petition by)

JOHN COGAN)

T/a ALLWOOD REST.)

777 Bloomfield Avenue)

Clifton, N. J.,)

ON PETITION

O R D E R

To Lift the Automatic Suspension
 of Plenary Retail Consumption)
 License C-122, issued by the Muni-)
 cipal Board of Alcoholic Beverage)
 Control of the City of Clifton.)

John Cogan, Petitioner, Pro Se.

BY THE DIRECTOR:

It appears from a verified petition filed herein that on December 4, 1953, petitioner was fined the sum of \$500.00 in the Passaic County Court after he pleaded non vult to an indictment alleging that he had sold alcoholic beverages to minors.

It appears from the records of the Division of Alcoholic Beverage Control that on July 27, 1953, the Municipal Board of Alcoholic Beverage Control of the City of Clifton suspended petitioner's license for a period of thirty days (less five for the plea) after he had pleaded guilty in disciplinary proceedings to charges alleging the sale of alcoholic beverages to minors, in violation of Rule 1 of State Regulations No. 20. Said suspension was effective from 3:00 a.m. August 3, 1953, to 3:00 a.m. August 28, 1953.

The indictment in the criminal proceedings and the charges in the disciplinary proceedings were based upon the same facts. The case concerns the sale of alcoholic beverages to three minors, two of whom were 18 years of age and one of whom was 17 years of age.

The conviction in the criminal proceedings has resulted in the automatic suspension of the license held by petitioner for the balance of its term. R.S. 33:1-31.1. On December 9, 1953, ABC agents picked up petitioner's license and no business has been conducted at the licensed premises since that time. The petition herein prays that the automatic suspension of the license may be lifted.

The suspension heretofore imposed appears to be adequate under the circumstances of the case. Hence the relief sought herein will be granted.

Accordingly, it is, on this 10th day of December, 1953,

ORDERED that the automatic suspension of License C-122, held by John Cogan, t/a Allwood Rest., for premises 777 Bloomfield Avenue, Clifton, be and the same is hereby lifted, and said license is hereby restored to full force and operation, effective immediately.

DOMINIC A. CAVICCHIA
 Director.

11. DISCIPLINARY PROCEEDINGS - ILLEGAL SITUATION CORRECTED - PRIOR
SUSPENSION FOR BALANCE OF TERM LIFTED.

In the Matter of Disciplinary
Proceedings against

STACIA JEDRZEJEWSKI
209 New Brunswick Avenue
Woodbridge Township
P.O. Hopelawn, N. J.,

ON PETITION
O R D E R

Holder of Plenary Retail Consump-
tion License C-17 (for the 1952-53
and 1953-54 licensing years), issued
by the Township Committee of the
Township of Woodbridge.

Bernard W. Vogel, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

On November 10, 1953, I suspended the license of Stacia Jedrzejewski for the balance of its term, effective at 2:00 a.m., November 17, 1953, after she was adjudged guilty of charges which alleged that she knowingly aided and abetted Stanley (Stanislaus) Jedrzejewski to exercise the rights and privileges of her plenary retail consumption license. Re Jedrzejewski, Bulletin 992, Item 2.

In said order leave was given to petition to lift the said suspension after thirty days thereof had elapsed, upon correction of the illegal situation. Pursuant to said leave, the said Stacia Jedrzejewski has filed a verified petition wherein she alleges that she is now the sole owner of the licensed business and that Stanislaus Jedrzejewski has divested himself of all his interest in the said licensed business.

It thus appearing that the unlawful situation has been corrected, and it further appearing that the suspension heretofore imposed will have been in effect for a period of thirty days at 2:00 a.m., December 17, 1953;

It is, on this 15th day of December, 1953,

ORDERED that Plenary Retail Consumption License C-17, issued by the Township Committee of the Township of Woodbridge to Stacia Jedrzejewski for premises 209 New Brunswick Avenue, Woodbridge Township, be restored to full force and operation at 2:00 a.m., December 17, 1953.

DOMINIC A. CAVICCHIA
Director.

12. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

GEORGE & GELDA JOHNSON
Intersection 38 & 39
Southampton
P.O. Vincentown, N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Southampton.

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Dimon, Haines and Bunting, Esqs., by Martin L. Haines, Esq.,
Attorneys for Defendant-licensees.
David S. Piltzer, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

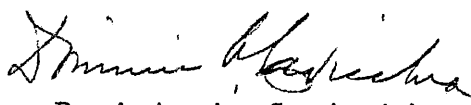
Defendants pleaded non vult to a charge alleging that they sold at retail an alcoholic beverage at less than the price thereof listed in the then currently effective Minimum Consumer Resale Price List; in violation of Rule 5 of State Regulations No. 30.

The file herein discloses that, on November 7, 1953, defendants' clerk sold to an ABC agent a 4/5 quart bottle of Christian Brothers Muscatel Wine for \$1.39, whereas the listed minimum resale price, effective October 1, 1953, was \$1.45. The clerk gave a signed, sworn statement admitting the sale. Defendants claim that they inadvertently failed to note the change in price of the item in question when the new list became effective.

Defendants have no prior adjudicated record. I shall suspend the license for ten days, the minimum penalty for an unaggravated offense of this kind. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Saykanics, Bulletin 991, Item 4.

Accordingly, it is, on this 28th day of December, 1953,

ORDERED that Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Southampton to George & Gelda Johnson, Intersection 38 & 39, Southampton, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. January 4, 1954, and terminating at 2:00 a.m. January 9, 1954.


Dominic A. Cavicchia
Director.