

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 2037

April 5, 1972

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April 5, 1972

1. APPELLATE DECISIONS - SANDERSON v. WOODSTOWN.

Alfred T. Sanderson, t/a New	)	
Town Tavern,	)	
	)	On Appeal
Appellant,	)	
	)	CONCLUSIONS
v.	)	and
	)	ORDER
Borough Council of the Borough of	)	
Woodstown,	)	
	)	
Respondent.	)	

-----  
Alfred T. Sanderson, Esq., Appearing Pro se.  
Acton & Point, Esqs., by Oakford W. Acton, Jr., Esq., Attorneys  
for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal challenges the action of the Borough Council of the Borough of Woodstown (Council) which adopted an ordinance on September 27, 1971, limiting the sale of alcoholic beverages as follows:

"No alcoholic beverage shall be sold, served or delivered, nor shall any licensee suffer or permit the sale, service or delivery of any alcoholic beverage upon the licensed premises, directly or indirectly between the hours of 6 P.M. and 6 A.M. any week day, or between 6 P.M. on Saturday night and 6 A.M. on the following Monday; standard time as provided by the laws of the State of New Jersey."

Appellant, the holder of one of two plenary retail consumption licenses issued by the Council, in his petition of appeal, alleges the following:

"a. Petitioner is advised that the Borough of Woodstown is the only municipal subdivision of the State of New Jersey requiring the sale of alcoholic beverages to cease at 6:00 p.m. The action of the Borough Council is arbitrary and capricious and without any foundation in fact.

b. Petitioner is advised that one, Alfred Busby, voted in favor of the adoption of the Ordinance aforesaid as a member of the Borough Council. Mr. Busby has attempted to purchase the license owned by petitioner at the same price that Petitioner paid for same years ago.

c. The subject Ordinance was moved for adoption by Borough Councilman, Mr. Walker, and seconded by Borough Councilman, Mr. Busby. Final notice of passage was published September 30, 1971.

d. Mr. Busby's actions in this proceeding are as a result of self-interest and are a conflict of interest."

Finally, appellant urges that the Division "adopt a reasonable regulation permitting the sale of alcoholic beverages by Petitioner and the other licensees in the Borough who is similarly situated."

The respondent, in its answer, urges the following:

"(a). The action or actions of the Borough of Woodstown in passing an ordinance amending the hours for the sale of alcoholic beverages is a valid, reasonable, and proper exercise of the municipal powers as conferred by R.S. 33:1-40.

(b). The ordinance or ordinances of the Borough of Woodstown limiting the hours of sale of alcoholic beverages to 6 P.M. have been in existence since 1952 and were in existence at the time of the purchase of premises by Appellant-Petitioner."

The appeal was heard de novo pursuant to Rule No. 6 of State Regulation No. 15, with full opportunity for counsel to present testimony and cross-examine witnesses.

It was stipulated that the "hours" ordinance which was adopted by the unanimous action of the Council on September 27, 1971 and set forth above in its entirety amended the hours ordinance which had been approved by the Council in August 1952, which reads as follows:

"No alcoholic beverage shall be sold, served or delivered, nor shall any licensee suffer or permit the sale, service or delivery of any alcoholic beverage upon the licensed premises, directly or indirectly, between the hours of 6 P.M. and 6 A.M. any week day or between 6 P.M. on Saturday night and 6 A.M. the following Monday; provided, however, beginning with the last Sunday of April in each year and ending on the last Sunday of September each year, the times aforesaid shall be computed in accordance with daylight saving time."

Called in behalf of appellant, James M. Edwards, who was Borough Clerk since time prior to the year 1952, testified that for some time prior to the passage of the "hours" ordinance in the year 1952, the then-owners of the New Town Tavern (now operated by the appellant) permitted and suffered disorderly conduct in and about the licensed premises. This resulted in the introduction of the "hours" ordinance at a special meeting of the Council and its subsequent passage.

According to Edwards the then-owner of the Woodstown Hotel Bar, Harry Franzen (the sole other tavern licensee in the Borough), declared his willingness to cooperate with the Council relative to their wishes concerning the "hours" ordinance. The clerk "could not say" that the "hours" ordinance was intended to be a temporary measure.

Since the time that appellant has operated the New Town Tavern, he (appellant) has prosecuted all patrons who were disorderly. The operation of the tavern has improved since its operation in the year 1953. He has not received any complaints concerning the operation of either tavern in the Borough.

He recently received an application from appellant whereby he offered to surrender his plenary retail consumption license in consideration of the issuance of a package goods license. The application was published and no objections were received by him.

In recent years, motion picture theaters were allowed to open on Sunday after approval by referendum. Other businesses, such as food stores, a pizza parlor, gasoline service stations and a diner are permitted to remain open until either 11:00 p.m. or midnight.

The passage of the "hours" ordinance on September 27, 1971 was brought about because, firstly, the Borough was in the process of codifying all of its ordinances, and secondly, the Borough had received a letter from the appellant requesting information concerning whether he could remain open until 7:00 p.m. during the month of October. Therefore, the ordinance amending the 1952 ordinance was adopted for the purpose of having it conform with the existing State law relative to daylight saving time and for no other expressed reason.

The Borough police force consists of a Chief, an Assistant Chief and two patrolmen. A referendum to lengthen the legal hours of sale held in 1953, was defeated by a vote of 368 in favor and 615 against. There hasn't been a referendum held since. Package goods licensees from outside the Borough make deliveries of alcoholic beverages in the Borough. He does not know if deliveries are made after 6:00 p.m.

A letter, dated August 13, 1969, addressed to both licensees in the Borough informing them that the Council had considered their request to extend the hours of sale to 10:00 p.m. and that, by a vote of five to one, it had decided that any action should be taken as the result of a referendum vote, was received in evidence.

Prior to its adoption on September 27, 1971, the "hours" ordinance was duly advertised. No one either appeared at the meeting or sent in any communication. The appellant was not notified personally of the proposed ordinance.

Morris Schlapfer, who together with his wife operate the Woodstown Hotel and the Woodstown Hotel Bar in the downtown business area, testified that he pays an annual license fee of \$800 to the Borough and, due to the restrictive hours of operation, the liquor business is not profitable.

He asserted that the liquor business is a "leisure business", that should be mainly conducted after working hours commencing ordinarily after 5:00 p.m. The present "hours" ordinance is more convenient for the "problem" drinker as opposed to the "social" drinker. He has not encountered any disturbances in the operation of the bar business.

He further asserted that deliveries of alcoholic beverages are made in the Borough by out-of-town liquor dealers after 6:00 p.m. and that some of his patrons frequent a tavern located across the border line of the town that remains open until midnight. He has pressed the Council to allow him to remain open until 10:00 p.m. as a convenience to his hotel guests (many of whom are working men) and also in order to meet his various operating expenses. He did not know of any community in the three-county area that had a 6:00 p.m. closing hour ordinance.

The appellant, Alfred T. Sanderson, testified that he became owner of the New Town Tavern in the summer of 1967; at the time of the transfer of the license to him he had been led to believe by the then-councilman Joseph Gemberling, that if the tavern business were to be conducted in a lawful manner

there was a possibility that the hours of operation would be extended; he rid the tavern of all undesirable patronage; on three occasions he appeared before the Council to request that the hours be amended, but on none of these occasions was he given the benefit of the thinking of the members thereof; that he did not wish to resort to the use of a referendum, as suggested, due to the costs involved and because the result thereof would be binding for five years; and that the present hours render the operation of the business unprofitable.

Additionally, the witness testified that on January 16th and again on January 22, 1971, Alfred Euzby, a member of the Borough Council, who had voted in favor of the "hours" ordinance, adopted on September 27, 1971, called him relative to purchasing the licensed premises, and, at his request, he allowed him to examine the books of account. Subsequent thereto, Euzby informed him that he was not interested in purchasing the tavern. Councilman Euzby seconded the closing hours ordinance which was adopted September 27, 1971.

An editorial appeared in the Monitor Register of November 18, 1971, a newspaper circulated in the Borough expressing sentiment in favor of setting the closing hour at 9:00 p.m. or later, instead of 6:00 p.m. Subsequent thereto he saw no other statements or letters to the editor expressing an opinion either for or against the extension of the closing hour.

Sanderson asserted that times and conditions have changed since the year 1952 and that, instead of reducing the hours of operation, the Council should suspend or revoke the license if the tavern were to be operated in a manner violative of the alcoholic beverage laws. Additionally, Sanderson asserted that the minutes of the Council meetings of August 1952 (admitted into evidence) disclose that the "hours" ordinance was adopted in an attempt to eliminate certain disorderly acts taking place in the street adjoining the tavern. Inasmuch as that situation was corrected, Sanderson was of the opinion that the closing hour could now be extended.

On cross examination, Sanderson testified that he was aware that the license fee was \$800 at the time that the license was transferred to him and was also aware of the provisions of the closing hour ordinance.

In behalf of respondent, Albert F. Buzby, a member of the Borough Council since 1966, testified that in January or February 1971, he made a telephone call to appellant's office which resulted in the negotiations for the purchase of his tavern. Appellant did not accept his offer and the negotiations were terminated.

He asserted that his action in seconding the motion for the adoption of the ordinance in September 1971 amending the closing hours to conform with the State daylight saving time, was not done with the thought in mind of taking punitive action against appellant; he treated the ordinance routinely. He was aware that if the closing hours were extended it would make the tavern operation more profitable. At the time he voted in favor of the adoption of the subject ordinance he had terminated all negotiations for the purchase of the tavern.

It is apparent that the action taken by the Council in September 1971 in amending the hours ordinance which was originally adopted on August 18, 1952 was motivated solely by its desire to have it conform with the State daylight saving time law.

It is also apparent that the ordinance forbidding the sale of alcoholic beverages after 6:00 p.m. was adopted by the Council in 1952 pursuant to strong public sentiment favoring its passage as exhibited by the show of hands by the members of the public attending that meeting which voted 78 in favor of its passage and 11 against. It is noteworthy that in the following year (1953) a referendum to lengthen the hours of sale was defeated by a vote of 615 to 368.

In arriving at a determination herein, I am mindful of the logic expressed by Judge Haneman in Walinski v. Mayor & Council, Gloucester, 25 N.J. Super. 122 (Chancery Div. 1953) at p.131, as follows:

"It is plain, therefore, that it was the intent of the Legislature, in the first instance, to vest the power to determine the hours during which sales may be made on any weekday and Sunday in the local governing body."

Further, in the field of liquor control an analogy should be drawn between the principle involved in the subject case and the principle involved in the cases cited *infra*. It has been held that "If the motive of the governing body is pure, its reasons, whether based on morals, economics or aesthetics, are immaterial." See Fanwood v. Rocco, 59 N.J. Super. 306, 320 (App. Div. 1960), *aff'd.* 33 N.J. 404 (1960).

In this connection it may be well to quote further from Fanwood v. Rocco, *supra.* (p.320):

"The primary purpose of the act is to promote temperance (R.S. 33:1-3) and 'to be remedial of abuses inherent in liquor traffic and shall be liberally construed' to effect those purposes. R. S. 33:1-73; Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs of City of Hoboken, *supra.*"

In the recent case of Lyons Farms Tavern Inc. v. Newark et als. 55 N.J. 292, 303 (1970), the court stated:

"The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a *de novo* hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record."

Conceding that times have changed since the years 1952 and 1953 as asserted by appellant, he has failed to meet the burden of proving that the local sentiment is presently in favor of lengthening the hours of sale and that the Council is flouting widespread local sentiment and acted unreasonably in adopting the ordinance complained of on September 27, 1971.

It is regrettable that appellant, who has conducted his business in a respectable manner, may be the victim of a possible financial loss. Unfortunately, not every hardship has a remedy. It has been consistently held that in a conflict between a licensee's financial concern and the public interest, the latter must prevail. Smith v. Bosco, 66 N.J. Super. 165 (App. Div. 1961).

I have considered appellant's allegation that the action of one of the Councilmen in voting for the passage of the ordinance was dictated by self-interest and I find that the proof falls short of sustaining that allegation.

After considering all the evidence herein, including the transcript of the testimony, the exhibits and the summation of counsel, I conclude that appellant has failed to sustain the burden of establishing that the action of the Council was unreasonable or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15. Hence, I recommend that an order be entered affirming the action of the Council and dismissing the appeal.

#### Conclusions and Order

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

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

Accordingly, it is, on this 3rd day of March 1972,

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

Robert E. Bower,  
Director.

2. APPELLATE DECISIONS - RARITAN TOWNSHIP WINE, LIQUOR AND BAR CO., INC. v. HAZLET.

Raritan Township Wine, Liquor and Bar Co., Inc., t/a Harry's Bar and Liquors,	)	
	)	
Appellant,	)	On Appeal
v.	)	
Township Committee of the Township of Hazlet,	)	CONCLUSIONS and ORDER
	)	
Respondent.	)	

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Sidney I. Sawyer, Esq., Substituted Attorney for Appellant  
Howard A. Roberts, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Township Committee of the Township of Hazlet (hereinafter Committee) which on August 24, 1971 found appellant guilty of selling alcoholic beverages to a minor, and suspended its license for fifteen days. The effective date of suspension was deferred to afford appellant an opportunity to apply to the Director for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971 in the event that the action of the Committee is affirmed on this appeal.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, and the parties hereto agreed to the following stipulation of facts: The minor, identified as David ---, was born January 17, 1952, and was thus twenty years of age on July 14, 1971 when he purchased a six-pack of beer.

Appellant alleged in its petition of appeal that the action of the Committee was erroneous in that the minor falsely represented in writing that he was over the age of twenty-one; his appearance was such that an ordinary prudent person would believe him to be over that age, and the sale to him was made in good faith relying on such representation and appearance.

Respondent Committee denied each of these contentions and asserted its conclusion was based upon the evidence and law applicable thereto.

In support of its findings the Committee produced testimony of Warren R. Briggs, a detective attached to the local Police Department. He testified that he was on duty about 9:00 p.m. on July 14, 1971; watched the alleged minor enter appellant's package store and emerge with a paper bag. Accosting the minor, he found the bag contained a six-pack of beer. The witness knew the minor was such and requested production of a driver's license. The minor not having such license with him, the witness accompanied the minor home where a license was produced showing the birth date as stipulated. The witness returned to appellant's store, where the store manager (Walter Witczak) admitted the sale and that no proof of age had then been required. The manager declared to the witness that a sale had been previously made to the minor after production of a driver's license showing a birth date of a per-

son over the age of twenty-one. On cross examination the witness admitted knowing of the minor who had been a well-known athlete in the local high school. The witness described the minor as being 6'8" in height and weighing over two hundred twenty pounds. While the witness knew who the minor was, he was not acquainted with him personally.

Upon conclusion of the witness' testimony, it was indicated that the minor David --- is believed to be in the United States Coast Guard and stationed at a northeast base. He could be produced if need be.

Respondent introduced testimony of Walter G. Witczak, manager of the licensed premises, who admitted selling alcoholic beverages to the minor whom he described as a very tall man, 6'8" in height, weighing over two hundred pounds, dressed in work clothes. He obtained no identification or writing on the night of the sale, but asserted that his wife (who is major stockholder of the corporate licensee) had previously obtained verification of the minor's age as over twenty-one about two weeks prior to the date of the alleged sale herein. At the earlier visit the witness had not been close to the counter and had not seen the then exhibited driver's license. He has a helper named Brian who did see that license. By custom he does not obtain any written representation of age from suspected minors, and relies principally upon the production of drivers' licenses. The minor had talked of his wife and child during a prior visit and that, coupled with the prior exhibit of the license, convinced the witness that there was no violation of the age requirement.

Ethel M. Witczak (principal stockholder of the corporate licensee) testified that she was not on the premises on July 14, 1971 (the night of the sale) but about two weeks previously the minor had come into the store and she asked him for identification as a matter of policy. He exhibited a driver's license which indicated that he was twenty-two years of age. A friendly conversation developed and the minor told her and her helper Brian and her husband about his wife and child. She indicated that the driver's license she saw was white and that licenses for minors were yellow. Brian saw the license also on that evening.

Brian E. Hunsicker (the helper) testified that he is seventeen years of age; has a permit to work in licensed premises, and is a senior high school student. He did not see the name on the license that the minor produced because he was looking over Mrs. Witczak's shoulder, but did see the year of birth to be 1949. He knew who the minor was, for his older sister and the minor were classmates in the local high school and graduated together. He added that the height and weight of the minor made him look well over twenty-one.

Following the hearing in this Division, counsel for appellant filed a memorandum in support of argument that the action of the Committee should be reversed. The thrust of that argument is the reliance of respondent upon a "writing" which the license is claimed to be and the appearance of the minor to be a person over the age of twenty-one.

The statute applicable to sales to minors (N.J.S.33:1-77) provides that the establishment of all of the following facts "shall constitute a defense ... (a) that the minor falsely represented in writing that he or she was 21 years of age or over, (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be 21 ... and (c) that the sale was made in good faith relying upon such written representation and appearance ... that the minor was actually 21 years of age or over" (underscoring added).

To implement the statute the Director has been given authority to promulgate regulations (N.J.S.A. 33:1-39) and has done so. Rule 1 of State Regulation No. 20 prohibits the sale to "... any person under the age of twenty-one (21) years\*...." The asterisk (\*) following the word "years" refers to a marginal note under this rule which refers to "Special Note, Section 5 of Appendix entitled Disciplinary Proceedings" (see p. 86 of Rules and Regulations). That special note carries the following admonition:

"... Hence it is not a defense that mere verbal inquiry may have been made as to the age of the minor or that the minor had verbally misrepresented his age or that the minor had displayed some document (such as a driver's license, birth certificate, military identification card, selective service registration certificate, or any other similar document) which represented his age as over 21. The representation in writing required by the Alcoholic Beverage Law is a writing made by the minor at or prior to the time of sale or service ...."

The attorney for appellant argues that the minor presented a driver's license which showed him to be of age and that, therefore, no further written representation had to be made. He cites Laurino v. State of N.J. Div. of Alcoh. Bev. Contr., 81 N.J. Super. 220 (App. Div. 1963), reprinted in Bulletin 1544, Item 1, in support of his contention. In Laurino a false written representation was made by two female minors to the local police officer on fingerprint cards signed by them and in compliance with a local ordinance. The court, in a narrowly written opinion, concluded that such police identification cards satisfied the requirements of the statutory law as a valid representation in writing in place of the form suggested by the Division to be used by the licensee in such cases.

However, this case is limited to the peculiar facts and circumstances therein. This Division has always held that the written representation, as contemplated in the statute, is a writing made by the minor at or prior to the time of the sale or service. In Sportsman 300 v. Nutley, 42 N.J. Super. 488 (App. Div. 1956), the court specifically rejected a contention that a showing of a driver's license constituted a representation in writing that the minor was twenty-one years of age or over. In that case the court said:

"The agency has not, however, considered that 'a false representation in writing by the minor' was intended to embrace such writings as a driver's license, a draft card, or a social security card...."

The court added (quoted from Re Wedemeyer, Bulletin 1050, Item 8):

"Experience in cases similar to this indicates that for some reason licensees or their agents are reluctant to 'embarrass' a minor by requiring him to reduce to writing his name, age and address. If licensees are willing to use their own methods of determining the age of a minor, rather than follow the statute, they do so at their peril and must accept the consequences of their own neglect. It would appear no more difficult for the licensee to follow the statutory requirement of having the patron sign a representation of his age than asking him to produce a draft card, driver's license or similar document for the licensee's purported examination. Where the licensee follows the statutory method, there is always the desirable and substantial possibility that the patron, if a minor, will refuse to commit himself to writing and will leave the establishment."

Mrs. Witzzak initially demanded proof of age and, by so doing, erased all doubt that the minor's appearance was such that proof need not be required. Appellant cannot now suggest that, because of the minor's size, a reasonably prudent person would not have questioned his age.

Licenseses must be held strictly accountable for violations of the statute and the rules with respect to sales to minors. The prevention of sales of intoxicating liquor to minors not only justifies but necessitates the most rigid control. Hudson Bergen County Retail Liquor Stores Association et al. v. Hoboken et al., 135 N.J.L. 502 (1947); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

Since two of the factual elements enumerated in the applicable enactment were not established, appellant has failed to meet the exculpatory requirement of the statutory defense to such prohibited sale.

It is accordingly recommended that an order be entered affirming the Committee's action, dismissing the appeal, and fixing the effective date of suspension or entertaining an application by appellant (should such be timely made) for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

#### Conclusions and Order

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

I have fully considered the exceptions to the Hearer's report and find that the exceptions have either been answered in the Hearer's report or are lacking in merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

It appears that the respondent deferred the effective date of suspension in order to afford appellant an opportunity to apply to the Director for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971, in the event that the action of the respondent is affirmed.

In its exceptions the appellant requests permission to apply for the imposition of such fine. I have determined to accept an offer of compromise to pay a fine in lieu of suspension, and shall defer the imposition of a suspension in order to give appellant the opportunity to file a petition for such compromise.

Accordingly, it is, on this 6th day of March 1972,

ORDERED that the action of respondent Township Committee of the Township of Hazlet be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED the suspension of license be and the same is hereby deferred until entry of a further order herein, and upon condition that the appellant shall forthwith file a petition for the imposition of a fine in lieu of suspension, in accordance with the provisions of Chapter 9 of the Laws of 1971, and shall comply with all procedural requirements necessary for the prompt computation, imposition, and prompt payment of the fine.

Robert E. Bower  
Director

3. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION - FRONT - FAILURE TO KEEP BOOKS - LICENSE SUSPENDED FOR 55 DAYS, LESS 11 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

939 Jackson Street, Inc. )  
t/a Apollo Supper Club )  
935-937-939 Jackson Street )  
Camden, N. J., )

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption License C-179, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden. )  
----- )

Licensee, Pro se  
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to the following charges:

"1. In your short-form application dated June 7, 1971, filed with the Municipal Board of Alcoholic Beverage Control of the City of Camden, upon which you obtained your current plenary retail consumption license, in answer to Question No. 8 you, after listing Doris J. Wilson, Florence Johnson and Myrtle Thomas as the holders of 98%, 1% and 1% respectively, of your issued and outstanding stock, failed to disclose in answer to Question No. 10 therein a change in facts in your last prior long-form application, viz., to show a change of answer from 'No' to 'Yes' to Question No. 22 in said long-form application which asks: 'Has any corporation, partnership, association or individual other than the stockholders hereinbefore set forth any beneficial interest, directly or indirectly, in the stock held by said stockholders? If answer is 'Yes' state details', to show and disclose that Gerald Wilson, Herbert Johnson and Floyd Clary had such interest in that they were the real and beneficial owners of all of the shares of stock listed respectively in the names of Doris J. Wilson, Florence Johnson and Myrtle Thomas; such evasion and suppression of a material fact being in violation of R.S. 33:1-25.

2. In your aforesaid short-form application for license, you failed to disclose and show in answer to Question No. 10 therein a change in facts in your last prior long-form application, viz., a change of answer from 'No' to 'Yes' to Question No. 24 in said long-form application which asks: 'Does the individual signing this application on behalf of said corporation know, or have any reason whatsoever to believe or suspect, that any of the officers or directors of said corporation, or any holder, directly or indirectly, by any device or subterfuge whatsoever, of more than ten (10) per cent in beneficial interest of the capital stock of said corporation would fail to qualify as an individual applicant for the license hereby applied for in any respect?... If so state name of person or persons failing to qualify...', and to show and disclose you knew and had reason to know that Gerald Wilson, who indirectly was the holder

- of 98% of your issued and outstanding stock in the name of Doris J. Wilson, as aforesaid, would fail to qualify as an individual applicant for the license by reason of the fact that he had been convicted of a crime involving moral turpitude, to wit: armed robbery in Camden County, New Jersey on or about July 12, 1955; such evasion and suppression of a material fact being in violation of R.S. 33:1-25.
3. In your aforesaid short-form application for license, you failed to state in answer to Question No. 10 therein a change in facts in your last long-form application, viz., a change from 'No' to 'Yes' to Question No. 29, which asks: 'Has any individual, partnership, corporation or association, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?... If so, state names, addresses and interest of such individuals, partnerships, corporations or associations', and to show and disclose that the aforementioned Gerald Wilson, Herbert Johnson and Floyd Clary had such an interest in that they indirectly, through the said Doris J. Wilson, Florence Johnson and Myrtle E. Thomas had such an interest, as hereinabove set forth in the license applied for and in the business to be conducted under said license; such evasion and suppression of a material fact being in violation of R.S. 33:1-25.
  4. In your aforesaid short-form application for license, you failed to state in answer to Question No. 10 therein a change in facts in your last prior long-form application, viz., a change of answer from 'No' to 'Yes' to Question No. 30 in said long-form application which asks: 'Has the applicant agreed to permit any person to receive or agreed to pay any employee or other persons (by way of rent, salary or otherwise), all or any portion or percentage of the gross or net profits or income derived from the business to be conducted under the license applied for?... If so, give details...', and to show and disclose you had agreed to permit the aforementioned Gerald Wilson, Herbert Johnson and Floyd Clary to retain the profits and income derived from your licensed business; said evasion and suppression of a material fact being in violation of R.S. 33:1-25.
  5. From on or about October 1, 1969 to date, you knowingly aided and abetted said Gerald Wilson, Herbert Johnson and Floyd Clary to exercise, contrary to R.S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; in violation of R.S. 33:1-52.
  6. From on or about October 1, 1969 to date, you failed to have and keep a true book or books of account in connection with the operation and conduct of your licensed business, viz., a record of all monies received, a record of the source of all monies received other than in the ordinary course of business, and a record of all monies expended from such receipts and the names of the persons receiving such monies and the purpose for which such expenditures were made; in violation of Rule 36 of State Regulation No. 20."

Licensee has no prior record of suspension of license. In considering licensee's plea in mitigation, my examination of the record discloses that licensee was active in initiating, assisting and cooperating with agents of this Division in the extensive investigation of this matter.

Thus, I find that the mitigating circumstances warrant a penalty of suspension less than that heretofore precedentially imposed. However, it is expressly emphasized that the penalty herein imposed is limited to the special facts and circumstances herein, and shall not be construed as a precedent in future matters involving similar charges.

The license will be suspended on Charge No. 1 through No. 5 for forty-five days, and on Charge No. 6 for ten days, with remission of eleven days for the plea entered, leaving a net suspension of forty-four days.

Accordingly, it is, on this 28th day of February 1972,

ORDERED that Plenary Retail Consumption License C-179, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to 939 Jackson Street, Inc., t/a Apollo Supper Club, for premises 935-937-939 Jackson Street, Camden, be and the same is hereby suspended for forty-four (44) days, commencing at 2:00 a.m. on Wednesday, March 15 1972, and terminating at 2:00 a.m. on Friday, April 28, 1972.

Robert E. Bower  
Director

- 4. DISCIPLINARY PROCEEDINGS - HOLDER OF SOLICITOR'S PERMIT CONNECTED WITH PLENARY WHOLESALE LICENSEE BY BUSINESS INTEREST AND EMPLOYMENT - PERMIT SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

Sidney Sagotsky )  
20 Lumar Road )  
Trenton, N. J., )

CONCLUSIONS  
and  
ORDER

Holder of Unlimited Solicitor's Permit No. 1036, issued by the Director of the Division of Alcoholic Beverage Control. )  
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Teich, Groh and Robinson, Esqs., by Leon M. Robinson, Esq., Attorneys for Permittee

Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

Permittee pleads non vult to charges as follows:

- "1. From February 1969 until the present time, you, the holder of an unlimited solicitor's permit for employment by Kasser Distillers Products Corp., a plenary wholesale licensee, were, at the same time, interested, directly or indirectly, in a retail license and in the business conducted thereunder, viz., in successive plenary retail consumption licenses issued to 302 Club, Inc., t/a Sid's Club, for premises 302 Brunswick Avenue, Trenton, N.J.; in violation of Rule 7 of State Regulation No. 14.

- 2. From February 1969 until the present time, you, the holder of an unlimited solicitor's permit for employment by Kasser Distillers Products Corp., a plenary wholesale licensee, were at the same time employed by or connected in a business capacity with a retail licensee, 302 Club, Inc., t/a Sid's Club, holder of successive plenary retail consumption licenses for premises 302 Brunswick Avenue, Trenton, N.J., in violation of Rule 7 of State Regulation No. 14."

The facts are sufficiently set forth in the charges.

Absent prior record, the Unlimited Solicitor's Permit will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days.

Accordingly, it is, on this 29th day of February 1972,

ORDERED that Unlimited Solicitor's Permit No. 1036, issued by the Director of the Division of Alcoholic Beverage Control to Sidney Sagotsky, 20 Lumar Road, Trenton, be and the same is hereby suspended for fifteen (15) days, commencing 7:00 a.m. on Tuesday, March 14, 1972, and terminating 7:00 a.m. on Wednesday, March 29, 1972.

Robert E. Bower  
Director

- 5. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN APPLICATION - EMPLOYMENT OF HOLDER OF SOLICITORS PERMIT - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO CORRECT AFTER 35 DAYS, LESS 7 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

302 Club, Inc. )  
t/a Sid's Club )  
302 Brunswick Avenue )  
Trenton, N. J., )

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption License C-235, issued by the City Council of the City of Trenton. )

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Teich, Groh & Robinson, Esqs., by Leon M. Robinson, Esq.,  
Attorneys for Licensee  
Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to charges as follows:

- "1. In your application filed May 6, 1971 with the City Council, City of Trenton, and upon which you obtained your current plenary retail consumption license C-235, in answer to Question #21 you listed Annette Sagotsky and Shirley Sussman as the holders of 99% and 1% respectively of your issued and outstanding stock, and falsely stated 'No' in answer to Question #22 which asks: 'Has any corporation, partnership, association or individual other than the stockholders hereinbefore set forth any beneficial interest, directly or indirectly, in the stock held by said stockholders?', whereas in truth and fact, Sidney Sagotsky had such an

interest in that he is the real and beneficial owner of all of the said stock listed in the names of Annette Sagotsky and Shirley Sussman; said false statement, representation, evasion, and suppression of material fact being in violation of R.S. 33:1-25.

2. In your aforesaid application, you falsely stated 'No' in answer to Question #29 which asks: 'Has any individual, partnership, corporation or association, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Sidney Sagotsky has such an interest in that he is the real and beneficial owner of all the shares of stock listed in the names of Annette Sagotsky and Shirley Sussman, as aforesaid; said false statement, representation, evasion, and suppression of material fact being in violation of R.S. 33:1-25.
3. In your aforesaid application, you falsely stated 'No' in answer to Question #30 which asks: 'Has the applicant agreed to permit any person to receive, or agreed to pay to any employee or other person (by way of rent, salary or otherwise), all or any portion or percentage of the gross or net profits or income derived from the business to be conducted under the license applied for?', whereas in truth and fact you had agreed to permit the said Sidney Sagotsky to retain all of the profits and income from your licensed business; said false statement, representation, evasion, and suppression of material fact being in violation of R.S. 33:1-25.
4. From on or about February, 1969 until present you had connected with you in a business capacity a person interested, directly in the wholesaling of alcoholic beverages, viz., the aforesaid Sidney Sagotsky, holder of a solicitor's permit for employment by Kasser Distillers Products Corporation, holder of a plenary wholesale license, in violation of Rule 29 of State Regulation 20.
5. From on or about February, 1969 to date you knowingly aided and abetted the said Sidney Sagotsky to exercise, contrary to R.S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; in violation of R.S. 33:1-52.
6. From on or about February, 1969 to date you knowingly aided and abetted the said Sidney Sagotsky to violate R.S. 33:1-43 by helping him conceal his dual interest in both the wholesale and retail ends of the alcoholic beverage industry in violation of R.S. 33:1-52."

The facts are sufficiently set forth in the quoted charges.

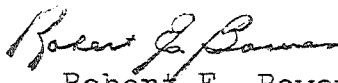
Licensee has a prior record of suspension of license by the local issuing authority for fifteen days, effective October 19, 1970, for gambling activity.

License will be suspended for thirty days (Re G.E.L.L., Inc., Bulletin 1958, Item 2), to which will be added five days for a dissimilar violation occurring within the past five years, making a total of thirty-five days, with remission of seven days for the plea entered, leaving a net suspension of twenty-eight days.

However, as the unlawful situation has not been corrected, the license will be suspended for the balance of its term, with leave granted to the licensee or any bona fide transferee of the license to apply to the Director for lifting of the suspension whenever the unlawful situation has been corrected, but such lifting shall not be granted in any event sooner than twenty-eight days from the commencement of the suspension herein.

Accordingly, it is, on this 29th day of February 1972,

ORDERED that Plenary Retail Consumption License C-235, issued by the City Council of the City of Trenton to 302 Club, Inc., t/a Sid's Club, for premises 302 Brunswick Avenue, Trenton, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1972, effective 2:00 a.m. Monday, March 6, 1972, with leave to licensee or any bona fide transferee of the license to apply to the Director by verified petition for the lifting of the suspension whenever the unlawful situation has been corrected, but in no event sooner than twenty-eight (28) days from the commencement of the suspension herein.

  
Robert E. Bower  
Director