STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2103 June 12, 1973

TABLE OF CONTENTS

ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2103 June 12, 1973

1. APPELLATE DECISIONS - RIVERDALE ENTERPRISE CORP. v. JERSEY CITY.

Riverdale Enterprise Corp., t/a Mike's Pub,

Appellant,

v.

Municipal Board of Alcoholic Beverage Control of the City of Jersey City,

Respondent.

On Appeal

CONCLUSIONS and ORDER

Miller, Hochman, Meyerson & Miller, Esqs., by Jay Pasternack, Esq., Attorneys for Appellant
Samuel C. Scott, Esq., by Bernard Abrams, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of the Municipal Board of Alcoholic Beverage Control of the City of Jersey City (hereinafter Board) which on October 31, 1972 suspended the plenary retail consumption license issued to Riverdale Enterprise Corp., t/a Mike's Pub (hereinafter Mike's) for premises 226 Webster Avenue, Jersey City, for thirty days, in consequence of a guilty finding on charges alleging that on Saturday, July 1, 1972, it permitted a brawl and hindered an investigation on the licensed premises.

Upon filing of the appeal an order was entered by the Director on November 13, 1972, staying the Board's order of suspension pending the determination of this appeal.

Appellant contends that the evidence produced at the hearing before the Board was insufficient to sustain a guilty finding. The Board denied this contention and averred the testimony before it was substantial upon which its findings were properly based.

The appeal in this Division was taken pursuant to Rule 6 of State Regulation No. 15, and was de novo, in which the parties were permitted full opportunity to present evidence and to cross-examine witnesses.

The Board produced testimony of Michael Kelly who stated that on Saturday, July 1, 1972, he entered the subject

licensed premises about 10:15 p.m. He had been there once before. There were two patrons at the bar, and a bartender later identified as Dennis McNamara was behind the bar.

As soon as Kelly approached the bar, the bartender took a bat from under the bar, swung the bat and hit another patron (later identified as Milk) and Kelly. Milk fell to the floor and Kelly, badly hurt, ran from the tavern to the home of a friend who took him to the hospital. He had had no words with the bartender, had not had time to order a drink, and was in the tavern less than a minute. At the hospital he was interrogated by police detectives but, as his cuts about his eyes were bandaged, he could not identify the detectives. On cross-examination he admitted a belief that the bartender had struck him accidentally in the thrust of the bat toward Milk.

Jersey City police officers Michael J. O'Donnell and John J. Orrico testified that, while on duty on July 1, 1972, they received a call directing them to proceed to Christ Hospital where they found Kelly on a stretcher. Kelly informed them that he had been struck by the bartender in appellant's tavern.

Police officer Allen Mazalewski testified that on Saturday, July 1, 1972, about 10:05 p.m., while on radio-car duty with officer Garvin, they received a call directing them to quell a street fight at the licensed premises. On arriving, they found the premises closed and locked. They knocked loudly on the door but received no response. While so engaged, another call was received directing them to a place a short distance away where one of the participants was lying in the street. They arrived at that place, where they found a man, later identified as Milk, lying in the street and bleeding profusely. Upon arrival of the ambulance, he and his partner returned to the licensed premises and again began rapping for admission. They saw blood on the door sill and, when finally admitted by McNamara, found blood on the center of the floor leading to the doorway. McNamara had blood on his T-shirt. There were stools turned over and the premises appeared in disarray.

Upon being questioned, the bartender McNamara denied that there was any incident in the premises and, when prodded, merely answered "no comment." Upon arrival of the members of the Bureau of Criminal Investigation, the officer and his partner left the premises.

Leroy Garvin, the police officer partner of Officer Mazalewski, testified in substantial corroboration of his partner, adding that he saw blood on the wall as well as on the floor. On cross-examination he admitted that two other tavern-keepers in Jersey City had recently been killed in robberies and holdups.

Dennis M. McNamara testified that he is manager and bartender of the appellant's premises and was on duty on the night of July 1, 1972. One patron, whom he identified as Paul

Murphy, was at the bar, ordered a drink for which he paid with a twenty-dollar bill for which he was given change. At this point, another person, identified as Milk, entered the premises. Milk approached the bar, gave Murphy a push, took the money with one hand and produced a knife with the other. McNamara in an instant grabbed a baseball bat, struck Milk and at the same time accidently struck Kelly who arrived at that moment. Both Milk and Kelly ran out, followed by Murphy. McNamara closed the premises and called the police, and awaited their arrival.

On cross-examination he admitted telling the responding police little or nothing, insisting he wanted to talk to the Chief. He contended that he had received the bat from a police officer after he had complained of being in fear of addicts in the area. The knife which Milk had produced and had been knocked from the hand by the baseball bat was later discovered on the floor under a pool table by his wife when cleaning up. He complained bitterly that the detectives investigating the incident had harassed him and took him to police headquarters where he was handcuffed to a chair without charges being then preferred.

McNamara's wife Margaret testified as to the finding of a knife under a pool table early the next morning while she was cleaning. The knife was admitted into evidence.

It is noted that McNamara did not call Paul Murphy, the only other person in the bar at the time of the incident, to testify although McNamara described Murphy as a nearby steady patron whom he knows. "Such failure of a party to testify may invite the indulgence against it of every inference warranted by the evidence presented by its adversary." 31A C.J.S. 156(4) Evidence, p. 422; Hackensack Motel v. Little Ferry, Bulletin 1648, Item 1.

The primary responsibility for enforcement of the laws pertaining to retail licenses rests upon the municipality. Benedetti v. Trenton, 35 N.J. Super. 30 (App.Div. 1955); Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598 (App.Div. 1955).

Preliminarily it should be observed that disciplinary proceedings are civil in nature and require proof by a preponderance of the believable evidence only. Buther Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). Testimony, to be believed, must not only come from the mouths of credible witnesses but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 564 (1954).

McNamara's story of heroically fending against a knife-wielding thief, striking an apparently innocent patron in the process, being deserted by his patron friend and retreating behind the locked doors of his establishment is incredible when viewed in the full context of the events that followed. Although

he alleges summoning the police, their later admittance into the premises with difficulty and, then, instead of receiving a triumphant account by a victor over an alleged knife-wielding intruder, the questioning produced only a terse "no comment" from McNamara. His own admission of being harassed by detectives, being handcuffed to a chair at headquarters, and his suspicion that Kelly was a part of the alleged plan to rob him lead to the inescapable conclusion that McNamara realized his over-reaction to whatever was in challenge and that he had committed serious injury without sufficient justification. His professed innocence was tarnished by the failure of Murphy to have awaited with him for the arrival of the police and his own failure to have the door opened for the police when they did arrive.

In short, appellant has failed to sustain the burden of showing that the Board's action was erroneous and should be reversed. Rule 6 of State Regulation No. 15. Accordingly I recommend that the action of the Board be affirmed, the appeal be dismissed and that the suspension imposed by the Board be reimposed.

CONCLUSIONS and ORDER

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

Having carefully considered the entire record herein, including transcript of the testimony, 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 10th day of April 1973,

ORDERED that the action of the Board be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the order dated November 13, 1972, staying the suspension previously imposed pending determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-442, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Riverdale Enterprise Corp., t/a Mike's Pub, for premises 226 Webster Avenue, Jersey City, be and the same is hereby suspended for thirty (30) days, commencing at 2 a.m. Monday, April 23, 1973, and terminating at 2 a.m. Wednesday, May 23, 1973.

Robert E. Bower,
Director.

2. APPELLATE DECISIONS - DANNY'S LOUNGE, INC. v. PATERSON.

Danny's Lounge, Inc., t/a Danny's Lounge,
Appellant,
v.
Board of Alcoholic Beverage Control for the City of Paterson,
Respondent.

On Appeal

CONCLUSIONS and ORDER

George J. Hajjar, Esq., Attorney for Appellant
Joseph A. La Cava, Esq., by Donald M. Ferraiolo, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant, holder of a plenary retail consumption license for premises 791 Main Street, Paterson, was found guilty in disciplinary proceedings conducted by respondent of two charges as follows:

"1. On Saturday, October 7, 1972, at approximately 10:30 p.m. you allowed, permitted and suffered your place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered a brawl, act of violence or other disturbance initiated by your employee, one Daniel Riccardo, and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

"2. On Saturday, October 7, 1972, you employed and had connected with you in a business capacity, one Daniel Riccardo, a person who had been convicted on December 22, 1961, of a crime involving moral turpitude, viz., larceny of a motor vehicle; in violation of Rule 1 of State Regulation No. 13."

Respondent (hereinafter Board) ordered the suspension of the said license for a period of fifteen days on the first charge and for a period of twenty days on the second charge, or a total suspension of thirty-five days, effective December 11, 1972. Upon filing of this appeal an order was entered by the Director on December 7, 1972, staying the Board's order of suspension

pending determination of the appeal.

In its petition of appeal appellant alleged that the Board's action was erroneous; that, inasmuch as it had filed an answer and entered a plea of not guilty to the charges, it presumed that the hearing would not be conducted on the date mentioned in the notice of charges and that it would be informed of a new hearing date. Instead, the Board proceeded to hear the charges ex parte.

The Board denied the substantive allegations of the said petition.

The appeal was heard de novo and was based upon the transcript of the proceedings held before the Board, supplemented by additional testimony adduced on behalf of appellant pursuant to Rules 6 and 8 of State Regulation No. 15.

I

I shall first consider appellant's contention that it was denied due process because the Board proceeded to hear the testimony ex parte. It is my view that it was incumbent upon the appellant, upon being served with the charges and notice of hearing, to ascertain whether or not the hearing would be rescheduled because of the answer filed by it. Appellant was in error in assuming that the hearing would automatically be adjourned merely because it filed an answer to the charges served in conjunction with the notice of hearing. In any event, any infirmities that may have existed because of the Board's action were cured on this appeal since appellant was afforded a full opportunity at this plenary de novo hearing to subpoena witnesses and present such testimony that it considered relevant to this proceeding. Cino v. Driscoll, 130 N.J.L. 535 (Sup.Ct. 1943); Rule 6 of State Regulation No. 15.

II

Relative to the first charge, the transcript of the proceedings held by the Board reveals that John Logan testified that, accompanied by his wife, daughter and brother-in-law, he entered the licensed premises on October 7, 1972, at approximately 9 p.m. Logan described what transpired when he entered the tavern:

> "Well, I came in. I was looking for my son. He usually hangs out in there. I asked where was he at. He wasn't in. They asked me to leave. I had had a few under me. I asked for a drink. He said, 'No. You ain't getting no more.' So, anyway I wouldn't leave. So he took me outside and assaulted me."

Continuing, the witness testified that, when he refused to leave,

Danny Riccardo (manager of the subject premises) grabbed his jacket, pulled him out to a small parking lot and struck him with his fists.

Under questioning by one of the Board members, Logan testified that he "had a few too many" and he kept asking the barmaid for another drink. She refused to serve him. Logan then testified:

> "So Danny [Riccardo] heard it, and a couple of times he told me to leave. I said, 'Well, wait a minute. I want another drink.' So he said I had too many. So he grabbed me like this and took me outside. I wouldn't leave."

Riccardo did not strike him while he was at the bar.

At the de novo hearing, Sandra Cruz testified that on October 7, 1972, she commenced her duties as barmaid at the licensed premises at 6 p.m. Logan entered the premises later with his wife, daughter, brother-in-law and one other individual and sat at a table. During the course of the evening Logan, at recurrent intervals, ordered drinks at the bar and carried them to the table. Shortly before midnight Logan commenced getting boisterous and refused to pay for the drinks. Upon being requested to pay for the drinks, Logan directed foul language at the barmaid. Cruz summoned Riccardo from the back where he was reading. Riccardo spoke to Logan relative to paying for the drinks. Logan directed foul language at Riccardo. Logan's daughter told him [Logan] to calm down. Logan slapped his daughter, causing her to fall against the juke box. The time was then approximately 1:15 a.m. Riccardo asked Logan to leave. Logan refused. Riccardo led Logan to the door and out. Logan reached back in the door, caught Riccardo's arm and ripped his shirt. Thereafter Logan reopened the door, threw a bottle into the tavern, and started to pull curtains down from the door. Logan's daughter then started scratching and striking at her father. Riccardo at no time left the tavern. At this point Riccardo called the police because Logan refused to leave. However, Logan and his party finally departed from the area prior to the arrival of the police.

Gilbert Card, who resides in an apartment over the subject licensed premises, testified that he patronized the licensed premises on the night of October 7. He testified that Riccardo led Logan by the arm to the door, he did not push him out nor did he follow Logan outside. Riccardo did not strike Logan.

Anthony Sheppard, who had patronized appellant's tavern earlier in the evening of October 7, testified that he returned at approximately 1:30 a.m. He observed Logan ripping off Riccardo's shirt while they were in the doorway of the tavern. The door was eventually closed. Logan was on the outside and he (Sheppard) was inside the tavern. Logan was pushing the door in. Upon opening the door, he threw a bottle in the tavern. While he was outside

the tavern he observed Logan's daughter and son-in-law struggling with Logan in order to restrain him.

Jesse Walker, who is acquainted with both Logan and Riccardo and who patronizes the licensed premises nightly, testified that he left the licensed premises on October 7 at 9:30 p.m. and, upon his return at 1:30 a.m., he observed Logan standing at the doorway of the tavern trying to pull Riccardo outside. Logan ripped Riccardo's shirt. He observed Logan's daughter and son-in-law trying to keep him outside.

Daniel (also known as Danny) Riccardo testified that his wife is the owner of the licensed premises and that he is the manager thereof. When he entered the tavern on October 7 at approximately 9:30 p.m., Logan was already in the tavern. He asserted that he spent some time reading a newspaper in the kitchen and going in and out of the barroom occasionally. On one occasion when Logan was "getting a little mouthy" Riccardo asked him to leave. Logan refused and Riccardo returned to the kitchen. At approximately 1:30, the barmaid called to Riccardo to come back into the barroom because Logan was "causing a lot of trouble." Riccardo asked Logan to leave. Logan became abusive. Riccardo grabbed Logan by the arm and walked him to the door, followed by his wife, his daughter and son-in-law. He led him out to the cove immediately outside the door. When Riccardo turned, Logan grabbed him and ripped his shirt. He then called the police. When the police arrived, Logan was gone. The following morning Logan called Riccardo and said, "Danny, I am sorry I caused trouble up there last night. Don't bar me out of the bar because for your shirt I'll pay for it."

In arriving at a determination of the subject charge, I have considered Logan's testimony wherein he admitted that he "had a few too many" and that, although he insisted upon being served, he was denied service and was requested to leave the barroom. Further, he testified that he was not assaulted inside the licensed premises. His assertion that he was assaulted outside the licensed premises was uncorroborated.

On the other hand, the testimony of the manager of appellant, who completely denied assaulting Logan either inside or outside the licensed premises, was corroborated by several other witnesses. Thus the principle is applicable that, where the evidence is otherwise equiponderant, the weight or the preponderance thereof may be determined by the greater number of witnesses.

Under all the circumstances I find that the Board has not sustained the burden of establishing the subject charge by a fair preponderance of the credible evidence and recommend that the action of the Board on this charge be reversed and the charge dismissed.

III

In an attempt to substantiate the second charge, Francis James, who was employed as a custodian of records in the Paterson Police Department, testified at the hearing held before the Board that the records disclosed that Danny Riccardo was indicted and charged with larceny of a motor vehicle and that on December 22, 1961 he was sentenced to serve 364 days in jail; that the jail sentence was suspended; that he was fined $200 and placed on probation for one year.

At the hearing held by the Division it was established through the official records that Riccardo was not convicted of the crime of larceny of a motor vehicle for which he was indicted but, on the other hand, that indictment was dismissed and he pleaded guilty to a charge of unlawful use of a motor vehicle under N.J.S.A. 2A:170-38, which is a disorderly person charge, and therefore not a conviction of a crime.

Although the Board conceded that Riccardo had his disqualification removed by order of the Director dated November 12, 1971, based upon Riccardo's petition for removal of his disqualification, it argued that Riccardo falsely represented his criminal record in obtaining his removal of disqualification. Although the second charge in nowise encompasses this allegation (and no conviction can be broader than the charge), adjudging this matter on the merits thereof I find that the Division had before it a full and complete record of the other charges alluded to by the Board at the time that the aforesaid order was entered removing Riccardo's disqualification. Re Disqualification No. 2610.

After carefully examining the transcript of the proceedings below and the proofs adduced at the present hearing, I find an absence of substantial legal evidence to support a finding of appellant's guilt relative to this charge.

IV

The Board is to be complimented for its zealousness in leveling the aforesaid charges against appellant and, in particular, in guarding against the employment of individuals in the alcoholic beverage industry whose employment therein would be inimical to industry.

However, it is axiomatic that in disciplinary proceedings a preponderance of the evidence is necessary to support and justify a finding of guilt, and doubtful questions of fact must be resolved in appellant's favor. Wasserman v. Newark, Bulletin 1590, Item 1; Club Zanzibar Corp. v. Paterson, Bulletin 1408, Item 1.

In view of the fact that the factual findings on both

charges were not supported by substantial legal evidence, I conclude that respondent failed to sustain the burden of establishing the finding of guilt by a preponderance of the evidence. I therefore recommend that the action of the Board be reversed and the charges be dismissed. Kurschner v. Newark, Bulletin 1508, Item 2.

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, exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 25th day of April 1973,

ORDERED that the action of respondent in finding appellant guilty of the charges herein be and the same is hereby reversed, and the charges be and the same are hereby dismissed.

ROBERT E. BOWER
DIRECTOR

3. APPELLATE DECISIONS - NARDONE v. JERSEY CITY.

| | |
|---|---|
| Peter Nardone,<br>Appellant,<br>v.<br>Municipal Board of Alcoholic Beverage Control of the City of Jersey City,<br>Respondent. | On Appeal<br>CONCLUSIONS and ORDER |

Russell & McAlevy, Esqs., by John P. Russell, Esq., Attorneys for Appellant
Samuel C. Scott, Esq., by Bernard Abrams, Esq., Attorney for Respondent Municipal Board
Feinberg, Dee & Feinberg, Esqs., by William M. Feinberg, Esq., Attorneys for an Objector

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City (hereinafter Board) which on September 22, 1972, denied appellant's application for person-to-person and place-to-place transfers, i.e., from Mount Carmel Recreation Center Incorporated at 85 Giles Avenue, to appellant for premises 69 Broadway, Jersey City.

The resolution denying the transfers was grounded on the following reasons:

> "... due to applications for transfers not being truly presented, doubt as to true ownership of application submitted and no lease available as license premises of 69 Broadway, Jersey City, New Jersey."

Appellant in his petition of appeal contended the action of the Board was arbitrary and unreasonable and that the denial of transfer was violative of the applicable regulations in force in Jersey City.

In its answer the Board denied these contentions and averred that the Board was without power to approve the transfer within the context of and in violation of the terms of the applicable ordinance. Additionally, the Board contended that the application left doubt as to the true ownership of the proposed

license, hence it should not be approved.

An objector, Villa Capri of Jersey City, Inc., while not a primary party to the proceedings, joined as a respondent and in its filed answer repeated the contentions advanced by the Board and added that appellant is in fact a "front" for a person otherwise unqualified to receive a license.

The appeal was heard de novo in accordance with Rule 6 of State Regulation No. 15, with full opportunity afforded all parties to introduce evidence and cross-examine witnesses.

I

Appellant's contention that the Board's denial of the place-to-place transfer was violative of the applicable local ordinance of October 5, 1937 (Section 4-4)requires analysis of that ordinance. The cited section in brief proscribes place-to-place transfers within seven hundred fifty (750) feet of existing premises. However, an exception to that restriction is further contained in the ordinance as follows:

> "However, if any licensee holding a ... license shall be compelled to vacate the licensed premises for any reason that in the opinion of the Board ... was not caused by any action on the part of the licensee, or if the landlord of the licensee shall consent to a vacation thereof, the licensee may, in the discretion of the Board ... be permitted to have such license transferred to another premises within a radius of five hundred feet (500 ft.) of the licensed premises so vacated ...."

From the proofs advanced, and generally uncontroverted, the distance between the place of the existing license and the location applied for is less than four hundred feet, which premises in turn are less than two hundred feet from two existing licensed premises, including that of the objector.

The denial of application for the place-to-place transfer having been determined by the Board "after due deliberation", the burden of establishing that its action was erroneous and should be reversed rests with appellant. Rule 6 of State Regulation No. 15. It has been consistently ruled that no one has a right to the issuance or transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup.Ct. 1946); Biscamp v. Teaneck, 5 N.J. Super. 172 (App.Div. 1949). The decision as to whether or not a license will be transferred to a particular locality rests in the first instance within the sound discretion of the local issuing authority. Hudson-Bergen County Retail Liquor Stores Assn. v. North Bergen, Bulletin 997, Item 2. A local issuing authority has been held to possess wide discretion in the transfer of a liquor license subject, of course, to review by this Division in the event of abuse thereof. Passarella v. Atlantic City, 1 N.J. Super. 313 (App.Div. 1949); Blanck v. Magnolia, 38 N.J. 484 (1962).

The Director should not substitute his judgment on appeal for that of the local Board or reverse the ruling if reasonable support for it can be found in the record. Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970).

It has long been established by this Division that that portion of the ordinance which requires the consent of the owner of the property from which a license is to be transferred is unreasonable and restrictive because it does not carry out the objects of the Alcoholic Beverage Law. It serves only the private interests of the owners by giving them a stranglehold on their tenants whereby refusal to give consent could be made the means of exacting an exorbitant rent. Re DeYoe, Bulletin 278, Item 8. Thus that portion of the ordinance requiring consent of the owner is void because it is clearly unreasonable and completely without relation to the purpose of the distance regulations. Re Cielukowski, Bulletin 716, Item 6; Van Houten v. Deal, Bulletin 895, Item 1; Yurchak v. Jersey City, Bulletin 1974, Item 1.

Appellant Peter Nardone testified that he learned of the availability of the subject license held by the Mount Carmel Recreation Center from its local priest. The license was not currently used in that the purposes of the recreation center had shifted to emphasis on youth activities; the license was thus available. Appellant agreed to purchase the license and determined to move it to a location of a restaurant owned by his brother Nicholas Nardone at 69 Broadway. It was apparent from appellant's testimony that the existing license could not be situated where it is; the purpose of selling was to remove its deliterious effect on the young visitors to the Center. Hence this was an obvious out-and-out purchase not coming within the scope of any hardship provision of the ordinance. The Board in its discretion, and in accordance with the mandate of the applicable ordinance, determined to reject the application for the place-to-place transfer.

There arises strong doubt that the Board had the discretionary power to approve the transfer had it chosen to do so. The hardship provision of the ordinance relates only to compulsion against the licensee not caused by its action. The applicant for the license was not in fact a licensee but merely an applicant. Appellant could not clothe himself with the benefits a licensee might derive from being compelled to move. Additionally, the proposed sale of the license, as uncontroverted from the facts produced, was nothing more than that -- a sale of a license. The prospective purchaser of a license is neither the victim of hardship nor compulsion. Cf. Yurchak v. Jersey City, Bulletin 2083, Item 3.

II

In the further denial of the person-to-person transfer

application to appellant, the Board expressed doubt as to the prospective true owner of the licensed premises. In substantiation of that doubt, Nicholas Nardone (brother of appellant) was called to testify. He admitted having been convicted of a gambling charge and is presently awaiting incarceration. He has a record of previous gambling offenses and, additionally, owns the premises to which the license was sought to be transferred. Those premises were the recent subject of a raid by ABC agents which disclosed that illicit alcoholic beverages were being stored and sold in a restaurant there operated by Nicholas Nardone.

A lease dated September 1, 1972 between Nicholas Nardone and his wife as landlords, and appellant, for the restaurant, was exhibited at this hearing; it had not been offered at the hearing before the Board. It is noted that the lease was not conditioned upon the tenant's obtaining the subject plenary retail consumption license; and further, from the testimony offered at the hearing before this Division, despite the rights and obligations embodied in the lease, the premises are not now being operated by either appellant or his brother. My impression seems inescapable that the lease arrangement was solely one of convenience rather than an arms-length transaction.

Other witnesses testifying on behalf of the Board and the objector merely added to the basic factual picture already related. Nothing in the record either added to or subtracted from the basic issue presented, i.e., was the action of the Board reasonable and responsive to the merits of appellant's applications.

For the reasons hereinabove noted, the Board properly denied the place-to-place application for transfer; appellant has failed to satisfy the requirement that the action of the Board in this connection was either arbitrary or unreasonable, hence was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

With respect to the denial of the person-to-person application for transfer, it is here found that, from the sorry record of Nicholas Nardone and the close interrelationship between him and appellant, an approval of such transfer would undeniably create what is termed a "front" situation. Appellant could hardly deny that, had his brother not been disqualified from holding a liquor license, the application would have been made by him.

Nicholas has had long restaurant experience, even having once been employed by the objector as chef and manager of that establishment. But his inability to operate a restaurant without such liquor license was abundantly clear when resort to illicit liquor traffic resulted from such attempt. Appellant, with ten years experience in the electronics industry, once owned the objector's restaurant and then employed his brother Nicholas as manager. Their close relationship was obviously reviewed by the

Board which determined to deny the application. See Florence Methodist Church v. Florence Township, 38 N.J. Super. 85; Barasso v. Irvington et al., Bulletin 1319, Item 2.

Appellant has failed to show that the action of the Board in denying the person-to-person application for transfer was erroneous and should be reversed. To the contrary, from all of the testimony, it is abundantly clear that the Board wisely exercised its discretion in determining that the granting of such application would not be in the best interests of the people of its community. Blanck v. Magnolia, supra; Lyons Farms Tavern, Inc. v. Newark, supra. In that respect, the action of the Board should be affirmed.

Accordingly, it is recommended that an order be entered affirming the action of the Board in denying both person-to-person and place-to-place transfer applications by appellant, 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, 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 25th day of April 1973,

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

Robert E. Bower,
Director.

4. STATE LICENSES - NEW APPLICATION FILED.

Valeriani Bottling Co.
414 and rear of 412 Pine Street
Camden, New Jersey

Application filed June 11, 1973 for person-to-person transfer of State Beverage Distributor's License SBD-201 from Anthony Pietrafesa, t/a Valeriani Bottling Co.

Robert E. Bower
Director