STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1490 JANUARY 28, 1963

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ITEM

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - LYSAGHT v. DENVILLE.

MARY H. LYSAGHT, t/a LYSAGHT'S WINE & LIQUOR STORE, Appellant, v. TOWNSHIP COMMITTEE OF THE TOWNSHIP OF DENVILLE, Respondent.	)	ON APPEAL CONCLUSIONS AND ORDER

Francis W. Hayden, Esq., Attorney for Appellant.
Warren E. Dunn, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent whereby it suspended appellant's license for fifteen days effective August 6, 1962, after finding appellant guilty in disciplinary proceedings of a charge alleging that on June 11, 1962, she sold alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20. Appellant's premises are located at 17 East Main Street, Denville.

"Upon the filing of the appeal an order dated August 1, 1962, was entered by the Director staying the effect of respondent's order of suspension pending the determination of the appeal. R.S. 33:1-31.

"Appellant in her petition of appeal alleges that the action of the respondent was erroneous and should be reversed for the following reasons:

(a) The facts adduced in support of the charge were insufficient to establish guilt of the charge;

(b) The verdict was contrary to the weight of the evidence;

(c) The 'contentions of the Respondent are insufficient to establish a violation' (of the Rules and Regulations) as a matter of law;

(d) Respondent misapplied the interpretative case law to the facts;

(e) The testimony adduced by respondent was contradictory and the doubts should have been resolved in favor of appellant.

"Respondent filed an answer admitting the jurisdictional facts and denying the substantive allegations of the petition. It also sets forth a 'Statement of Grounds for Action' taken by respondent which may be summarized as follows:

(a) A public hearing was conducted in compliance with the rules;

(b) Appellant was represented by counsel at said hearing and witnesses were heard;

(c) Appellant was given the fullest opportunity to cross examine witnesses and present her defense;

(d) Respondent, by a majority vote, found the appellant guilty; and

(e) The verdict was supported by the evidence presented.

"The hearing on appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony under oath and cross examine witnesses. Sidoroff et al. v. Jersey City and Niebanck, Bulletin 1310, Item

"The facts produced at this hearing reflect the following picture: At about 10:50 p.m. on the evening of June 11, 1962, tw radio patrol officers (Shaw and Rooney) of the Denville Police Department came upon five minors on a side dirt road, busily engaged consuming alcoholic beverages. Questioning by the officers elicited the information that the beer had been purchase by one Robert --- (age 17) at a package liquor store in Denville. The radio patrol car and the car driven by one of the minors proceeded to the main street in Denville where the appellant's licensed premises was pointed out to the officers. The officers asserted that they did not actually stop in front of appellant's premises but drove slowly past the same because it was after closing hours. They then proceeded to headquarters where the min executed a statement setting forth that he had purchased a quanti of beer at the licensed premises, but he did not remember the name of said premises.

"On the following night, by prearrangement, Robert accompanied the police officers to appellant's premises and identified the clerk (one Charles Main) as the person who sold him the said beer. At the time of the confrontation on June 12 Main denied having ever seen the minor before or having sold him any beer on June 11.

"On cross examination Officer Shaw admitted that he drove directly to appellant's liquor store but insisted that he followe the instructions of the boys. No independent investigation was made by Officer Shaw or Officer Rooney, nor is there any evidence of any other independent investigation having been made by the Police Department in connection herewith except for the confrontation which took place on June 12.

"Officer Rooney, in corroborating the testimony of Office Shaw, stated that he had questioned the minors and ascertained that they lived in Towaco, which is approximately seven miles from Denville. He also questioned the minor Robert who admitted to him that he had never been to appellant's store prior to the evening in question. Rooney also stated that there was another package liquor store, as well as a tavern, located in the immedia vicinity near the Dairy Queen Store which was the guiding point indicated by the minors.

"Robert testified that he is 17 years of age and was born on October 4, 1944. Briefly, his testimony can be summariz as follows: He arrived in Denville at about 8 p.m. that evening

with two minor friends. They met two other boys and drove around the general area. Deciding to buy beer, they stopped at appellant's store at about 8:10 p.m., at which time Robert entered the premises alone. He purchased a case and a six-pack of beer, paying a total of $5.85. This was purchased from a man whom he identified in the courtroom and whom he described as being in his middle fifties. He did not know the name of the store nor did he take notice of the name on the neon sign outside the premises. After he was apprehended by the police officers he directed them to the store, and thereafter was taken to police headquarters where he executed the confessive statement. On the following day he returned to police headquarters and then accompanied the police officers to the licensed premises where the confrontation hereinbefore described took place.

"On cross examination Robert insisted that his identification was correct and admitted that he had never been on these premises before that night. He also admitted that he passed sixteen other package liquor stores and taverns, some of which he had previously patronized for items other than alcoholic beverages. He was apparently quite familiar with the retail liquor outlets in that area. He further admitted that he made a left turn and backtracked east from the general direction in which he was traveling in order to go to appellant's store. He conceded that appellant's store was about seven or eight miles from the Montville fire house where he had orginally been picked up on this evening by his friends.

"With respect to the actual purchase Robert stated that he presented a five-dollar and a one-dollar bill, the sale was rung up in his presence, and he received fifteen cents in change.

"At the conclusion of the presentation of its case by respondent, a motion for dismissal was made by appellant on the ground that respondent had not proved a prima facie case. Since this would have been in the nature of a final disposition, action thereon was reserved pending the presentation of appellant's evidence.

"On behalf of appellant, Charles Main (the clerk on duty on the night in question) categorically denied that he had ever sold, served or delivered any beer or any alcoholic beverages to Robert, or that he had ever seen him prior to the evening of June 12 when he entered the premises for the purpose of identification. He stated that he had been a clerk in these premises for thirteen years and had never seen this minor before, and that he so testified before respondent at the hearing below. He further insisted that the cash register tape (which was introduced in evidence) did not reflect any single sale in the amount of $5.85 representing the total purchase by the said minor.

"On cross examination Main insisted he had no access to the tape and that the tape was removed from the register on the following day by the manager of these premises, in accordance with regular procedure; that the tape presented in this case was, in fact, the actual tape in the cash register on June 11.

"It was also clearly shown on cross examination that Main denied, when first confronted by this minor on June 12, ever having seen or served him; that he similarly testified at the disciplinary proceeding before the respondent and reasserted categorically at this appeal de novo. He also stated that he was forty-two years of age.

"George T. Bittel (the manager of the said premises) testified that he has been employed at these premises for the past twenty-nine years. As a matter of usual procedure, which was followed on the dates in question, he left the premises at 6 p.m. on June 11 and thereafter removed the cash register tape which reflected the proceeds of the prior twenty-four hours. He then made a deposit of the monies and produced the bank statement which reflected the same figure as was rung up on the register during that time. His examination of the cash register tape satisfied him that there was no single sale in the sum of $5.85. He further insisted that he was the only person who had the key to the cash register and that the register and its tape were not tampered with during his absence.

"The appellant was not present at the hearing, and a doctor's certificate was produced indicating that her physical disability prevented her attendance. However, it was clear that no useful purpose would be served by her testimony since she was not present in the premises on the date alleged herein.

"Thus we have the uncorroborated testimony of Robert (the minor) as to his alleged purchase of the alcoholic beverages as opposed to the testimony of the clerk which was partially corroborated by the store manager.

"I have had the opportunity to observe the minor on the stand and heard his glib recital of the activities of that evening. Appellant's attorney geographically related locations of sixteen licensed premises in the general area of Denville and this minor appeared to be familiar with at least twelve or thirteen of them. He admitted more than a passing acquaintance with several of these taverns and had made purchases of non-alcoholic beverages in two of them, according to his testimony.

"However, his very glibness made his testimony suspect. It seemed rather unusual, in my judgment, for a boy of seventeen to have such great familiarity with the taverns and package liquor stores in an area substantially distant from his home residence. None of the other minors was produced as a witness at this appeal de novo. Counsel for respondent represents in his answering memorandum that three of the minors were attending college and one them was in Canada and unavailable. However, the stenographic transcript of the three minors who testified before respondent at the initial hearing was not offered in evidence at this appeal, as permitted under Rule 8 of State Regulation No. 15. Thus I did not have the benefit of, nor could I consider, such testimony.

"In this frame of reference, appellant's counsel properly posed, in his memorandum submitted at the conclusion of this case, the following questions:

> 'Where were the other four? What would their testimony have been on either direct or cross-examination had they appeared? Is not this a failure by the (respondent) to produce essential proof? Should not this doubt be resolved in favor of the (appellant)?'

"Contrasted with the minor's testimony is the testimony of the clerk (Charles Main) in which he stated, with a great measure of certainty, that he had never seen the minor before the date of confrontation with the police officers and that he had certainly not served or sold any alcoholic beverages to him on the night in question. Added to this is the testimony of George Bittel (the store manager) who testified that the cash register tape and the

bank statement reflect a contrary situation to that testified to by the minor.

"I have examined the register tape and find that there is no purchase in the sum of $5.85 as testified to by the minor. There is no reason for me to assume that this was not the original tape used in the cash register on June 11.

"The guiding rule in these matters is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 34 C.J.S. Evidence, sec. 1042. While there is no set formula for determining the quantum of evidence required, each case being governed by its own circumstances, the verdict must be supported by substantial evidence. Cf. Walter v. Alt, 152 S.W. 2d 135, 141.

"The inquiry is whether there is any evidence which, if accepted and given its fullest probative force, reasonably tends to sustain the judgment of the respondent herein. The accepted standard of persuasion governing the trier of facts is that the determination is probably founded in truth. Riker v. John Hancock Mutual Life Insurance Co., 129 N.J.L. 508, 511. In this connection, I was particularly mindful of the fact that the minor did not know the name of the licensee although the evidence appeared to show that a large neon sign was emblazoned in front of her premises. It is also significant to me that there were a number of licensed premises within the immediate vicinity of appellant's premises.

"Within that context, it is not inconceivable that, in the excitement, embarrassment and confusion, and even fear, that must have been the accompanying emotions of this minor at the time of his apprehension, together with the effect upon him of beer which he may have consumed, he might have mistakenly pointed out appellant's premises. Also, the fact that these premises are located a considerable distance from the minor's residence and his great familiarity with most of the sixteen establishments which he had passed on his way to Denville raise the question in my mind as to whether or not this minor was trying to shift the blame for his purchase to some establishment other than the one which actually sold the beer to him. See Re Ernest's Bar, Inc., Bulletin 1321, Item 2.

"The testimony of appellant's witnesses appears to be more credible and it is perhaps appropriate to apply the doctrine of Professor Wigmore:

> 'There is no measure of the weight of evidence (unless the witnesses on the evidential facts are counted) other than the feeling of probability which it engenders.' Wigmore Evidence 3d Ed., sec. 2948.

"I cannot say that the uncorroborated testimony of minor produced by the respondent, together with the peripheral testimony of the police officers, is of such probative force that it has engendered that feeling of reasonable probability in these circumstances. Loew v. Borough of Union Beach, 56 N.J. Super. 93. As Judge Jayne said in Davidson v. Fornicola, 38 N.J. Super. 365, 371:

> '*** In exacting proof by the preponderance or greater weight of the evidence, the law does not prescribe the

> necessary quantum of the overweight or the degree of excess of its superiority in credibility. A preponderance is attained where the evidence in its quality of credibility destroys and overbalances the equilibrium.***'

"I wish to make one further observation with respect to the evidence presented in this case. Assuming that the evidence of the minor and the evidence produced by appellant were of equal substance and credibility, it is my opinion that, in fairness, any doubtful question of fact should be resolved in appellant's favor for the reason that the appellant has, according to the evidence, conducted her business in a law-abiding manner for twenty-nine years. In addition, both witnesses for the appellant appeared to be men of integrity and impressed me by their forthrightness and sincerity while on the stand.

"To be in doubt is to be resolved. Such doubt must be resolved in appellant's favor. Re Case No. 185, Bulletin 217, Item 4; Re Keansburg Steamboat Company, Bulletin 1287, Item 2.

"My consideration of all of the testimony in this case convinces me that the testimony of appellant's witnesses stands in a more convincing posture. Re Chizun, Bulletin 1274, Item 7. Weighing the uncorroborated testimony of the minor against the testimony given on behalf of appellant, the conclusion is inescapable that the finding of guilt by respondent was not supported by a fair preponderance of the believable evidence.

"I, therefore, recommend that the action of the respondent be reversed. Club Zanzibar Corp. v. Paterson, Bulletin 1408, Item 1; Chase v. Washington Township, Bulletin 1272, Item 4; Schwarz Drug Stores, Inc. v. Newark, Bulletin 1361, Item 2; Collazo v. Elizabeth, Bulletin 1410, Item 1."

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of testimony, the oral argument of counsel at the conclusion of the case, the briefs filed by the attorneys for the respective parties herein, and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 27th day of November, 1962,

ORDERED that the action of respondent be and the same is hereby reversed.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - BEDROCK, INC. v. ELIZABETH.

BEDROCK, INC., trading as BILLY' S TAVERN, Appellant, v. CITY COUNCIL OF THE CITY OF ELIZABETH, Respondent.	)	ON APPEAL CONCLUSIONS AND ORDER

Rothbard, Harris & Oxfeld, Esqs., by Emil Oxfeld, Esq., Attorneys for Appellant.
John M. Boyle, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the refusal by the respondent City Council to entertain an application for a purported renewal of a plenary retail consumption license formerly held by appellant for premises 1060 Magnolia Avenue, Elizabeth.

"Appellant contends in its petition of appeal that the action of respondent was illegal, arbitrary and capricious in that 'At no time was there a proceeding to revoke permanently the license held by appellant; that no notice of such action was ever given; that at no time during the proceedings before the State Division was any such intimation given; that the action of the respondent in holding that the license herein involved has been permanently revoked violates due process and applicable decisions of the New Jersey Supreme Court ***.'

"It will be necessary for a complete understanding of the matter that the facts be set forth in chronological order with reference to the license in question formerly held by appellant.

"It appears that on June 29, 1961, respondent denied the appellant's application for renewal of its license for the 1961-62 licensing year. Thereafter an appeal from the action of respondent in denying renewal was filed with the Director of the Division of Alcoholic Beverage Control (hereinafter the Director) who entered an order on June 30, 1961, extending the term of appellant's 1960-61 license until his further order; that on September 14, 1961, the Director entered an order suspending appellant's license for 1960-61, as extended, for a period of one hundred ninety days commencing at 2 a.m. Monday, September 18, 1961, and terminating at 2 a.m. Tuesday, March 27, 1962, as a result of finding appellant guilty of the following charges:

1. On Monday night, January 2, 1961, you allowed, permitted and suffered lewdness, immoral activity and foul, filthy and obscene conduct in and upon your licensed premises, viz., in that persons employed on your licensed premises performed for the entertainment of your customers and patrons in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulation No. 20.

2. On Monday night, January 2, 1961, you allowed, permitted and suffered female impersonators in and upon your licensed premises; in violation of Rule 4 of State Regulation No. 20.

3. On Monday, January 2, 1961, at about 10:25 p.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a pint bottle of Calvert Reserve Blended Whiskey, at retail, in its original container for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverage in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38.

See Re Bedrock, Inc., Bulletin 1417, Item 1.

"On April 16, 1962, the Director entered an order affirming the action of the respondent denying appellant's application for renewal of its license for the 1961-62 licensing year and vacated the order theretofore entered extending the appellant's 1960-61 license. Bedrock, Inc. v. Elizabeth, Bulletin 1452, Item 1.

"Appellant's attorney in the instant appeal (although he did not represent appellant in the two prior proceedings) does not dispute that no appeal was taken from the action of the Director to the Appellate Division of the New Jersey Superior Court within the time limited by the rules of the court.

"Appellant states that it deposited the required renewal fee for 1962-63 period with respondent, and was filing an application requesting renewal when, at the invitation of Thaddeus F. Gora (Chairman of the Municipal Board of Alcoholic Beverage Control), appellant on June 26, 1962, attended a meeting held by respondent. At the said meeting appellant's attorney addressed the respondent with respect to the advisability and propriety of renewing appellant's license for the current period and, furthermore, with reference to the character of the prospective purchasers of the capital stock of the appellant corporation. The respondent refused to accept the renewal application.

"There appears to be no dispute that on June 26, 1962, when appellant appeared with its attorney and while the discussion concerning the matter of renewal of the said license was in progress, the attorney for respondent (not the attorney representing respondent at the instant hearing) made mention that the license had been 'revoked' and, that being the case, 'it is revoked forever', which language apparently was adopted by the Chairman. Be that as it may, and regardless of the terminology us when appellant appeared before respondent, the fact is that respondent denied appellant's application for renewal of its license for 1961-62 licensing term, and on appeal to the Director said action of respondent was affirmed. See Bedrock, Inc. v. Elizabeth, supra.

"R. S. 33:1-12.13 (renewal licenses; new licenses) provides as follows:

'For the purposes of this act ** any license for a new license term, which is issued to replace a license which expired on the last day of the license term

> which immediately preceded the commencement of said new license term or which is issued to replace a license which will expire on the last day of the license term which immediately precedes the commencement of said new license term, shall be deemed to be a renewal of the expired or expiring license; provided, that said license is of the same class and type as the expired or expiring license, covers the same licensed premises, is issued to the holder of the expired or expiring license and is issued pursuant to an application therefor which shall have been filed with the proper issuing authority prior to the commencement of said new license term or not later than thirty days after the commencement thereof. Licenses issued otherwise than as above herein provided shall be deemed to be new licenses.'

"Query: Did the license in question expire on the last day of the license term which immediately preceded the commencement of said new license term? The answer is that it did not. The Director, when renewal of appellant's license was refused, extended appellant's 1960-61 license by reason of which appellant operated its liquor establishment (less the time under which said extension of the license was under suspension) until April 16, 1962, when the Director ordered that his prior order dated June 30, 1961, extending the 1960-61 license, be vacated. No appeal from the Director's action was taken to the Superior Court within the period of forty-five days in accordance with the rules pertaining thereto. Thus appellant had no license for the 1961-62 licensing term.

"The statute is specific that, in order to constitute a renewal of a liquor license, the license must be issued to replace a license which expired on the last day of the licensing term immediately preceding the commencement of the new licensing term. The application, if accepted for filing by respondent, would be deemed an application for a new license. A new license could not be legally issued because of the limitation law which permits no new plenary retail consumption license to be issued until the combined total number of such licenses existing in the municipality is fewer than one for each 2,000 population as shown by the last then preceding Federal census. The City of Elizabeth, according to the last census, has a population of 107,698 persons, and at present there are issued and outstanding 259 plenary retail consumption licenses. Thus there are now in existence one such license for every 415 persons. It can be readily understood that no new plenary retail consumption license could be legally issued by respondent. R.S. 33:1-12.14. Therefore, it would have been a futile gesture on the part of respondent to entertain an application for renewal under the circumstances appearing herein inasmuch as the appellant had no license to renew.

"I recommend that an order be entered affirming the action of respondent in declining to entertain an application for renewal of appellant's license (and in effect denying the application) for the current licensing term, and that the petition of appeal filed herein be dismissed."

Written exceptions and argument to the Hearer's Report by appellant's attorneys, as well as answering argument by the respondent's attorney, were filed with me pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the record herein, including the oral arguments of the attorneys representing the respective parties, the Hearer's Report, and the written exceptions, argument and answering argument with respect thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 28th day of November, 1962,

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

WILLIAM HOWE DAVIS
DIRECTOR

3. APPELLATE DECISIONS - CLUB JOMAR, INC. v. POINT PLEASANT BEACH.

CLUB JOMAR, INC., Appellant,	)	
v.	)	ON APPEAL CONCLUSIONS AND ORDER
MAYOR AND COUNCIL OF THE BOROUGH OF POINT PLEASANT BEACH, Respondent.	)	

Winetsky and Brody, Esqs., by Warren Brody, Esq., Attorneys for Appellant.
Robert H. Doherty, Jr., Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent wherein, by resolution dated July 24, 1962, it granted appellant's renewal license for 1962-63 subject to the following special conditions:

1. The licensee shall not sell, serve or deliver, or allow, permit or suffer the sale, service or delivery of any alcoholic beverage directly or indirectly to any person actually or apparently intoxicated.

2. Upon the closing of the premises, the Licensee must see to the orderly and quiet vacation of the premises by the patrons.

3. The Licensee must provide adequate parking lot attendants for the orderly, proper and quiet departure of the patrons.

4. The Licensee shall not allow, permit or suffer on the licensed premises, any lewdness or indecent act, or foul, filthy or obscene language, or disorderly conduct, or any brawl, act of violence, disturbance or noise, nor shall the Licensee allow, permit or suffer the licensed premises to be conducted so as to become a nuisance.

5. The Licensee must provide an exit for every one hundred (100 persons, which exits must be equipped with a panic bar on all doors, and these exits must be plainly marked as "EXITS" with the doors opening outward.

6. The Licensee on Friday, Saturday and Sunday evenings, will close one-half hour prior to the scheduled closing time, in order that the attendants, which the Licensee has at the various entrances and exits, may assist in the Parking Lot of the licensed premises to see to the orderly departure of the guests of the Licensee.

"Appellant's petition of appeal, among other things, contends that respondent's action was erroneous because (1) 'it singled out the appellant's license for the imposition of conditions not imposed upon most other licenses in the municipality and not in response to complaints or violations which the conditions purport to correct' and (2) that the conditions 'are repetitious of existing rules and regulations.'

"The appellant claims that, prior to the imposition of the conditions in question, no hearing was held nor was it advised by any public official that complaints had been made concerning the alleged mannar in which it operated its establishment.

"The power of a municipal issuing authority to impose conditions on a license before it is issued is expressly conferred by R.S. 33:1-32 and there is no provision therein that a hearing be held with respect thereto. Re Armstrong, Bulletin 196, Item 8; VanHorn v. Manalapan, Bulletin 735, Item 9; Milchman v. Newark, Bulletin 838, Item 8; Gilmore Realty Corp. v. Belmar, Bulletin 1202, Item 1; DeLuccia v. Paterson, Bulletin 1240, Item 1.

"I shall now consider the various conditions of which appellant complains.

"Conditions 1 and 4 are mere restatements of Rules 1 and 5, respectively, of State Regulation No. 20. Consequently, those special conditions are wholly superfluous because the said Rules in State Regulation No. 20 require the same things. However, this Division has adhered to the principle that it has no objection if the local issuing authority desires to repeat them in the form of a condition on the face of the license. I might add that it has been considered the preferable practice to omit what the Regulations themselves declare. Re Fitzsimmons, Bulletin 207, Item 3; Re Gordon, Bulletin 236, Item 4.

"Conditions 2 and 3 both relate to noise engendered by patrons when leaving the appellant's premises and parking lot. Councilman Basso (Chairman of the Police Committee) testified that complaints were received from persons residing in the vicinity of the appellant's premises concerning 'parking conditions and noise conditions and vulgarity in speech at all hours of the morning, anywhere from twelve o'clock until closing time which would be 2 a.m. on Friday and 3 a.m. on Saturday.' Councilman Basso further testified that on three weekends he personally investigated the matter and found that 'the situation in my estimation was appalling. The noise in the area, the patrons of the Jomar would exit from the place with all kinds of noises from cars, car doors slamming, horns blowing, foul and loud language.'

"Condition 5 no doubt had been inserted for reason of safety because of the large number of patrons patronizing appellant's premises especially on the weekends during the summer season. Samuel M. Marshall (president of appellant corporate licensee) testified that 'new type doors that swing out with the panic bars' will be installed when the dront of the premises is remodeled. Furthermore, he stated that the licensed premises is now air-conditioned but that during the past summer the doors were permitted to remain open because 'it has been real cool.' The testimony of Marshall also discloses that the appellant has leased a tract of land '145 feet by 500 feet deep' located across the street from the licensed premises and hence adequate parking facilities are now available for use by patrons. It is apparent from the evidence adduced herein that appellant has been cooperativ and to a large extent has substantially complied with some of the conditions to which its license is subject. Pursuant thereto appellant has evinced an intention to eliminate the parking in the rear of the premises which resulted in complaints from residents in the vicinity. A letter dated July 7, 1962, from residents of North, East and West Streets stated, among other things, that the situation has been considerably improved and that 'Club Jomar have expended some effort to aid the residents and help alleviate the situation.'

"As to Condition 6, respondent has no jurisdiction to direct appellant to close its premises on Friday, Saturday and Sunday evening one-half hour prior to the scheduled closing time contained in the ordinance with reference thereto. Cesar v. Trenton, Bulletin 951, Item 2. It is recommended that this condition be disapproved and declared without legal force or effect.

"There is no evidence whatsoever that members of respondent were improperly motivated in causing the conditions in question to be imposed upon appellant's current license. Such action apparentl was taken because the respondent Mayor and Council deemed it to be for the best interest of the particular area. It has been plainly shown that the method used to a large extent has served its purpose. I am satisfied that respondent is cognizant of this fact and will make a re-appraisal of the situation when appellant makes application for renewal of its license for the next successive term

"Appellant argues that, since the conditions in its opinion have been remedied, they should be deleted from the license by virtue of the ruling made in Gilmore Realty Corp. v. Belmar, supra (affirmed on appeal by the Appellate Division of Superior Court of New Jersey, 50 N.J. Super. 423). However, a distinction may be properly drawn in that case and the one sub judice. In the Belmar case the licensee inherited, so to speak, the conditions in question which resulted from improper operation by a prior licensee who operated the liquor business in the same premises. In the case now being considered, the improper conduct took place during appellant's operation and thus the renewal license was issued subject to the conditions therein contained.

"I recommend that, for the present, Conditions Nos. 1, 2, 3, 4 and 5 be approved and that Condition No. 6 be disapproved because respondent lacked jurisdiction to limit further the closing hour as provided in the existing ordinance as to a particular licensee. Cesar v. Trenton, supra."

Pursuant to Rule 14 of State Regulation No. 15, appellant's attorney filed exceptions and written argument to the Hearer's Repc

Having carefully considered the record herein, including

the Hearer's Report and the exceptions and written argument aforementioned, I concur in the conclusions of the Hearer and shall adopt them as my conclusions herein.

Accordingly, it is, on this 29th day of November, 1962,

ORDERED that the action of the respondent imposing special condition No. 6 that appellant close its premises one half hour earlier than the established closing hour for all licensed premises be and the same is hereby disapproved; and it is further

ORDERED that special conditions Nos. 1 to 5, inclusive, as recited in the Hearer's Report, be and the same are hereby approved, and that the appeal from respondent's imposition of said special conditions be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
DIRECTOR

4. STATE LICENSE - OBJECTIONS TO TRANSFER OF STATE BEVERAGE DISTRIBUTOR'S LICENSE - TRANSFER APPROVED.

In the Matter of Objections to the Transfer of State Beverage Distributor's License SBD-217 from)

BRETON WOODS BEVERAGE DISTRIBUTORS, INC.
53-55 Lewis Street
Paterson, New Jersey)

to CONCLUSIONS

BRETON WOODS BEVERAGE DISTRIBUTORS, INC.
1712 State Highway #88
Laurelton, New Jersey)

Harry G. Hyra, Esq., Attorney for Applicant.
Novins & O'Connor, Esqs., by Robert J. Novins, Esq., Attorneys for Ocean County Tavern Association and individual tavern owners, Objectors.
Doherty & Doherty, Esqs., by Madora Jane Doherty, Esq., Attorneys for Forbes Liquors, Inc., Objector.
Samuel Moskowitz, Esq., Attorney for New Jersey Retail Liquor Stores Association, Objector.

BY THE DIRECTOR:

On August 16, 1962, Breton Woods Beverage Distributors, Inc. filed an application for the transfer of its state beverage distributor's license from premises 53-55 Lewis Street, Paterson, to 1712 State Highway #88, Laurelton. Written objections to the granting of the application for said transfer were filed and a hearing was duly held thereon.

The objectors set forth, in substance, the following reasons for their objections:

1. That there is no desire on the part of the Township or on the part of the people of the Township, as expressed through a resolution adopted by the Brick Township Committee, for this business;

2. That there are adequate facilities to serve the needs of this area during the summer season, and that there is insufficient business to take care of the existing licenses during the winter season;

3. That the addition of this license in this area would constitute an undue burden on the policing powers;

4. That it would create a competitive area which would be detrimental to the industry as a whole; and

5. That there is no public need or necessity for this transfer.

At the hearing herein, Richard L. Hickey, president of the corporate applicant, testified that the applicant had purchased the license from a receiver; that the business was then insolvent; that it paid $12,000 for the licensed business together with inventory which included approximately 1,000 cases of beer, four trucks, conveyors, business equipment, furniture, typewriters and adding machines.

He stated that with the help of one assistant, he presently operates this business in Paterson but desires to transfer its base of operation to this area because the said community has had an expanded population of from 4,5000 to approximately 20,000 persons during the past ten years. The licens of the applicant permits it to sell its merchandise throughout the state; the transfer of the license to the proposed premises would be a more convenient operation because of its proximity to the preponderance of its customers.

He further testified that the new location is not near any existing schools or churches (the nearest school at present is about a half-mile from the said premises and there is an existing tavern located in closer proximity to the said school). There are no other state beverage distributor's licenses in the area.

This witness further testified that he had spoken informally to several of the Township committeemen and had been assured by them that there would be no objection to the transfer of the said license.

The proposed new premises consist of a one-story cinder-block building on which the applicant has an oral lease.

Four objectors testified in opposition to this application. A number of other objectors appeared, and it was stipulated that their testimony would be substantially the same as that of the witnesses who actually testified. The gravamen of the objections appears to be that there are eight taverns and three package goods stores in this area, and that the said transfer would provide competition to these existing establishments. The witnesses who testified are holders of consumption or distribution licenses and fear that the said transfer would interfere with and be a drain upon their present businesses. On cross examination they were asked whether they felt that a holder of a state beverage distributor's license (which is limited to the sale of unchilled beer) would affect their general business and they indicated that it would have such effect.

Objections were also made to the said transfer on behalf of the Ocean County Tavern Association which represents a large majority of the taverns in this county.

A resolution of the Township of Brick dated September 4, 1962, was introduced into evidence and contains the following language:

> "WHEREAS, it appears that an application has been made to the Director of the Division of Alcoholic Beverage Control for the transfer of a certain State Beverage Distributor's License from premises presently located in Paterson, Passaic County, to premises located on New Jersey State Highway #88, Laurelton, Brick Township, New Jersey; and
>
> "WHEREAS, it further appears that such proposed transfer may be made without the consent and approval of the governing body of the Township of Brick; and
>
> "WHEREAS, under the terms and conditions of the issuance of such license, the holder thereof has the right and privilege to sell at retail malt alcoholic beverages in original containers in quantities of not less than 144 fluid ounces and to deliver the same for consumption in the home; and
>
> "WHEREAS, it has been found and determined that there are sufficient retail distribution licenses previously issued in the Township of Brick adequately to serve the needs of the local residents; and
>
> "WHEREAS, it is hereby found and determined that if the proposed transfer be approved that it will serve no presently existing need and that it will adversely affect the business of those licensees presently conducting activities in Brick Township; now, therefore
>
> "BE IT RESOLVED by the TOWNSHIP COMMITTEE of the TOWNSHIP OF BRICK in the COUNTY OF OCEAN and STATE OF NEW JERSEY, as follows:
>
> "1. That the Township Committee of said Township looks with disfavor upon the granting of the place-to-place transfer of State Beverage Distributor's License No. SBD-217 from Passaic, New Jersey, to Brick Township.
>
> "2. That a certified true copy of this Resolution be forwarded by the Township Clerk to the Honorable William Howe Davis, Director, Division of Alcoholic Beverage Control, 1100 Raymond Blvd., Newark 2, New Jersey."

After considering all of the testimony, I am persuaded that the objections to the approval of this application for the transfer of this license herein have not been adequately proved; that they are of insufficient weight to warrant denial of the application; and that sufficient need exists for the granting of said application.

The evidence indicates that there are no schools or churches within an area of 200 feet nor in the immediate vicinity of the

proposed premises. There are also no zoning restrictions which would serve as a forceful and influential factor in the consideration of objections by the municipality affected. Cf. Re Maccia, Bulletin 1401, Item 5.

The privileges conferred by a state beverage distributor's licene are contained in R.S. 33:1-11(2)c. In essence, this license allows its holder to maintain a licensed premises and warehouse at and from which he may sell and deliver only unchilled beer and ale in original containers and in quantities of not less than 144 fluid ounces--in common parlance, not less than a half case containing twelve 12-ounce cans or bottles. A state beverage distributor licensee may sell and deliver this unchilled beer and ale both to licensed retailers and to consumers, with consumer sales and deliveries required to be made at prices which are not lower than the minimum prices filed in this office or listed in the current official Minimum Consumer Resale Price Pamphlet. This license may not be issued for premises in or upon which any retail business, except the sale of beer, ale and non-alcoholic beverages, is carried on. There may, of course, be no sale or delivery of any alcoholic beverage for consumption upon the licensed premises.

The proposed new premises will be a considerable distance away from existing licensed premises and there is no convincing evidence that these proposed new premises will materially affect competition by reason of the said transfer. This is particularly true because a state beverage distributor may operate throughout the entire state. Thus, he may offer as much competition to the neighboring communities and, indeed, the neighboring counties as he would to the situate community.

Since the privileges of a state beverage distributor's license are state-wide, the question of public necessity and convenience cannot be determined on the narrow basis of a single municipality in which the prospective licensee would have his principal office or warehouse. Re Beer Depot, Bulletin 1312, Item 8; Re Variety Beers & Soda Distributors, Inc., Bulletin 1000, Item 6.

It is also further significant that the general area has quadrupled its population during the past ten years without any material increase in the number of other licenses. All of these factors must be taken into consideration in the determination regarding the said application.

The decision as to whether or not an application for a tran of a state beverage distributor's license should be granted rests solely within the discretion of the State Director. While the sentiments of the local community and its municipal governing body are given serious consideration, the objections must be reasonable and based upon valid grounds.

After considering all of the evidence, it is my considered judgment that the objections are not sufficiently meritorious to warrant a denial of the application. Re Kalb, Bulletin 1457, Item 5; Re Lutz, Bulletin 1312, Item 6.

Accordingly, the pending application is approved and the appropriate endorsement on the license certificate may be made in accordance with the plans and specifications herein filed.

Dated: November 26, 1962

William Howe Davis
Director