

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

November 16, 1960

BULLETIN 1361

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

November 16, 1960

BULLETIN 1361

I. APPELLATE DECISIONS - D'ALESSANDRO v. PARSIPPANY-TROY HILLS
(CASE NO. 2)

Case No. 2)
VITO D'ALESSANDRO, t/a TROY)
HILLS LIQUOR STORE,)

Appellant,)

v.)

TOWNSHIP COUNCIL OF THE TOWNSHIP)
OF PARSIPPANY-TROY HILLS,)

Respondent.)

ON APPEAL
CONCLUSIONS
AND ORDER

John H. Grossman, Esq., Attorney for Appellant.
Frank C. Scerbo, Esq., Attorney for Respondent.
Aloysius J. Castellano, Esq., Attorney for Objectors.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby it denied an application filed by appellant to transfer his plenary retail distribution license issued for the 1959-60 licensing period from premises on U. S. Route No. 46 about 2600 feet east of Beverwyck Road to a store to be constructed on the easterly end of the Morris Hills Shopping Center located on U. S. Route No. 46, west of Littleton Road, Parsippany-Troy Hills. The distance between the premises is more than two miles.

"The application in question was filed on April 27, 1960 and denied at a meeting of the Township Council held on May 23, 1960 by the vote of two Councilmen and the Mayor. Another Councilman voted to grant the transfer, and another Councilman abstained from voting. This application was substantially similar to a previous application filed on June 3, 1959, denied on July 21, 1959 by the unanimous vote of the four Councilmen present and on appeal, such denial was affirmed on February 29, 1960 by the Director of this Division. D'Alessandro v. Parsippany-Troy Hills, Bulletin 1333, Item 1.

"The basis of such affirmance, in substance, was the factual conclusion of the respondent Council that the Council had granted two new plenary retail distribution licenses on April 22, 1959, resulting in three plenary retail distribution licenses within a radius of one mile of the Morris Hills Shopping Plaza; and that removal of appellant's license from the place where it is now situated would deny the people of such area the convenience of having a package goods store in that section of the Township.

"The Director adopted the Hearer's conclusions that the findings and conclusions of the Township Council that the area to which applicant sought transfer had sufficient liquor establishments to meet the needs and serve the conveniences of the persons residing in that section of the municipality were supported by the evidence.

"The present petition of appeal sets forth thirteen grounds

for reversal of which only the following concerns new matters not presented at the hearing on the first application: (1) that one of the newly granted licenses in the area covers a building not yet completed and which license has not, as yet, actually been issued; (2) that the population of the proposed area has doubled and the trend is to further increase; and (3) that a majority of the shopping public in the shopping center, as well as 727 persons who signed a petition in favor of the transfer, have expressed their desire for the location of a liquor store in the shopping center. These considerations were urged on behalf of the appellant at the meeting at which his present application for transfer was denied.

"Respondent's answer alleges, in substance, that it acted in good faith, without prejudice and in the best interests of the community; that appellant's application was substantially similar to the one previously submitted and that appellant did not demonstrate a change in circumstances and did not present any new evidence of a substantial nature which would warrant the granting of appellant's application.

"At the appeal hearing, appellant repeated the substance of his contention on the first appeal that his present location was opposite a drive-in-theatre and, as a result, he is troubled by minors who seek to purchase alcoholic beverages in his establishment and who create disturbances when refused. He enlarged upon his alleged inability to obtain what he considers to be adequate police cooperation. However, it is not mandatory that the respondent Council transfer appellant's license merely on that account, any more so than in an instance where a transfer is sought on the representation that the business at the old location has become unprofitable. See Bosco et al. v. Jersey City and Smith, Bulletin 1351, Item 1. In any event, as was said on the previous appeal, it seems to concern principally a local police problem.

"Appellant further testified that he has held a liquor license at his present address for eleven years; that the drive-in-theatre has been located there about five years and that he has not been charged with any violation of the Alcoholic Beverage Law or regulation except a sale to a minor in 1958. He also referred to the many persons who signed petitions in favor of the transfer. The weight to be accorded petitions for or against the granting of a retail license, or the transfer thereof, is a matter properly within the discretion of the municipal issuing authority. Palmer Food & Liquors, Inc. v. Bogota, Bulletin 1298, Item 1.

"There was also presented in evidence the unofficial 1960 population census of the Township and the election district voting registration of the Township. Without here repeating the specific figures, the appellant's contention is that in locating liquor licenses in the Township, the respondent should be guided by a mathematical formula of relative density of population as projected by comparing the 1950 and the 1960 tabulation of population. Needless to say, there can be no such exact mathematical formula, in disregard of other factors. Most of the comparison of growth of population was presented at the Council meeting at which the application to transfer was denied. The question as to whether licensed premises shall be permitted in a particular section of the municipality is a matter confided to the sound discretion of the issuing authority. Klein & Tucker v. Fair Lawn, et al., Bulletin 1175, Item 3.

"David Montgomery, represented to be the project manager of the shopping center, testified that he has been informed many times by other tenants of the desirability of locating a liquor store in such establishment.

"Councilman Downey, who voted to grant the transfer, testified that he did so because he was of the opinion that a package goods store in the shopping center would fill a public convenience, but acknowledged that the area where appellant is presently located should also have the convenience of a package store there. With practically the same views on both occasions, he voted to deny the transfer on the first application, and to grant the transfer on the instant application.

"Councilman Sutton, who voted to deny the transfer on both occasions, testified that he voted in such manner because he was of the opinion that the package liquor store of appellant served a desirable public convenience in the area, and that the two new package store licenses recently granted would be sufficient to handle the additional traffic in the shopping area; that it is a sprawling Township covering a twenty-five square mile area, and the Council should try to provide for the convenience of the citizens thereof; that he is of the opinion that the shopping center in question is a logical location for a liquor store and he so informed the appellant and another licensee some time ago; that he was 'torn between two decisions' and if presently confronted with the choice, would consider changing his vote. However, we are at present concerned on this appeal with the propriety of the action of the Council on May 23rd, and cannot speculate as to what may occur in the future.

"Councilman Sutton further explains that when the Council voted to grant the two licenses which resulted in three such licenses within a radius of a mile from the shopping center, they considered that until such time as they could be allowed to issue more licenses (perhaps by the 1960 census of increased population) they would have to 'stick with what they had'; that he does not want to take the appellant out of an area that needs some service, and that while a liquor store at the shopping center is a little more essential than the other area, with one license within three quarters of a mile or so, and the two others at Lake Parsippany, he does not think it is as critical as 'sending the people up to Lake Hiawatha' (if appellant's license is transferred out of his area).

"There are five package store licenses in the Township, three of which are those referred to as in a radius of a mile from the shopping center, with appellant's license located in the Rockaway Neck area, and the other in another area.

"Councilman Litchfield, who voted to deny the transfer, testified that he was of the opinion that, with five package store licenses in the Township, it was wrong to concentrate four of the five within a mile or so of each other; that persons in the area where he resides do not trade in the shopping center in question; and was of the opinion that appellant's liquor store served a public need in his area. At the meeting at which the transfer was denied, he stated that he hoped some day there would be a town center and hopes that Morris Hills area will be the center but today the convenience of the people will not be served by concentrating liquor stores in the one area.

"Arthur Everly, one of the new licensees whose premises are within about 4000 feet to the shopping center, testified that he is now actually operating the licensed premises.

"Councilman Denney, who abstained from voting on the application, testified that his reason therefor was because he had been offered employment as manager of the licensed business by Arthur Everly, and he was advised by the Township Counsel not to vote; that although he was present at the meeting, he did not participate in any manner in the Council's deliberation, was not asked

how he might vote and did not offer any suggestion to his fellow Councilmen as to how they should vote. This is the basis of appellant's contention that the majority decision was politically inspired and personal in nature.

"I have considered each and every ground set forth in the petition of appeal and am of the opinion that none of such grounds has any substantial merit. A transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. If denied on a reasonable ground, such action will be affirmed. D'Alessandro v. Parsippany-Troy Hills, supra. I find that the respondent's denial of the transfer was fully supported by the evidence, and was not arbitrary or unreasonable. I conclude that appellant has failed to establish that respondent's action was erroneous, and I recommend that an order be entered affirming respondent's action and dismissing the appeal herein.

"It appears that the 1959-60 license has expired, and was renewed by the appellant for his old premises for the 1960-61 licensing period. Hence, the decision herein is merely advisory in the event of the filing of a similar transfer application by the appellant herein.

Pursuant to the provisions of Rule 14 of State Regulation No. 15, exceptions to the Hearer's Report and written argument thereon were filed by the attorney for appellant, and written answering argument was filed by the attorney for respondent Council.

I have given careful consideration to the evidence and exhibits herein, the Hearer's Report and the written arguments of the respective counsel regarding the exceptions thereto and concur in the conclusions of the Hearer and adopt them as my conclusions herein. I shall, therefore, affirm respondent Council's action.

On the evidence presented before the respondent Board, it was fully justified in refusing to transfer the license, wholly apart from any impact of Councilman Denney's explanation of the reason he abstained from voting on such application. Its refusal to transfer the license was a reasonable exercise of its discretionary authority. However, in passing, Councilman Denney might well have left the hearing before the application was moved for consideration, and thereby have avoided even a semblance of conflict of interest.

Accordingly, it is, on this 29th day of September 1960,

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

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - SCHWARZ DRUG STORES, INC. v. NEWARK.

SCHWARZ DRUG STORES, INC.,)	
Appellant,)	
v.)	ON APPEAL
)	CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC)	AND ORDER
BEVERAGE CONTROL OF THE CITY OF)	
NEWARK,)	
Respondent.)	

 Harry Kay, Esq., Attorney for Appellant.
 Vincent P. Torppey, Esq., by James E. Abrams, 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 twenty-five days, effective June 6, 1960, after appellant was adjudged guilty of a charge alleging that on August 15, 1959 it sold and delivered alcoholic beverages at its licensed premises to John ---, age 16, in violation of Rule 1 of State Regulation No. 20.

"The licensed premises are located on the northwest corner of Clinton and Peshine Avenues in Newark; the west side of the premises is used for the sale of drugs and general merchandise; the east side of the premises contains the liquor section; there are two entrances to the licensed premises on Clinton Avenue, one leads directly to the liquor department and is about 30 feet west of Peshine Avenue and the other, leading directly to the drug department, is about 75 feet west of Peshine Avenue. After entering the premises, patrons have access to both of aforesaid sections which are separated by a few steps in the center of the premises. There are no entrances to the premises on Peshine Avenue.

"Upon the filing of the appeal, an order was entered on May 26, 1960 staying respondent's order of suspension until further order of the Director. R.S. 33:1-31.

"In its petition of appeal, appellant alleges respondent's action was erroneous because its decision was contrary to the weight of the evidence. Respondent, in its answer, denies such is the fact.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15; the transcript of the proceedings before respondent Board was placed in evidence and additional and supplemental testimony was presented by appellant, in accordance with Rules 6 and 8 of said Regulation.

"At the hearing before the respondent, John --- testified he was born on April 15, 1943; that on Saturday, August 15, 1959 at about 9:30 p.m., he, unaccompanied, entered the appellant's licensed premises and purchased two 'cartons' of beer and a bottle of wine from Peter Donner and William Wells; that he was positive of the date of said purchase; that prior to said purchase he was questioned by Wells about his age; that he did not display any proof of age; that he made a written representation to Wells that he was of legal age and that after leaving the premises he joined two companions, Grant --- (19 years of age) and Willie --- (19 years of age) (whose last name he

did not know).

"On cross-examination, John stated that he had misrepresented his age on three occasions when seeking employment; that in his statement to a local police officer (who had apprehended him with the alcoholic beverages) he gave a false home address; that he knew it was unlawful for a minor to purchase alcoholic beverages; that he was not too sure that he had purchased the alcoholic beverages in question on August 15th aforesaid; that he was certain of the hour because 'they were getting ready to close up' and that prior to the date in question he had visited the licensed premises 'a couple of hundred times' to purchase articles other than alcoholic beverages and that he had met Grant about a year ago. John further testified that on August 20, 1959 he told Mr. Kay, attorney for appellant, that prior to August 15th aforesaid he had never seen Grant or Willie; that he had purchased the alcoholic beverages in question for 25 or 30 fellows, none of whom he knew, and that he had also purchased alcoholic beverages for a stranger (17 or 18 years of age) who had given him fifty cents.

"Willie ---, testified that he met John on August 15, 1959 at 9:00 p.m.; that he knew John had obtained the beer in question from the licensed premises because he had observed him going and coming from that direction; that he did not give John any money; that he saw John, emptyhanded, enter the licensed premises and emerge therefrom with beer, part of which he (Willie) consumed.

"On cross-examination Willie testified that he first met John in August 1959, on a Friday or Saturday night at 9 o'clock in front of the Citizens' Restaurant on Peshine Avenue near Clinton Avenue; that he did not remember the date; that he remained in front of said restaurant until about 9:30 p.m. when he was taken into custody by a police officer and reiterated that he saw John enter the licensed premises. Upon interrogation by members of the respondent Board, Willie stated he did not see John enter or leave the licensed premises and that John returned with the beer two minutes after he left him (Willie) in front of aforesaid restaurant.

"John D. Manghisi (a Newark police officer), testified that on August 15, 1959 at about 10:15 p.m., he and Officer Troiano took John, Willie and Grant into custody in front of the aforementioned restaurant (about 100 feet from the corner of the licensed premises) when they found them in possession of alcoholic beverages and learned that they were minors. It was stipulated by counsel if Officer Troiano were called, his testimony would be the same as that of Officer Manghisi.

"Donald L. Higgins (a plainclothes man of the Newark Police Department) testified that on August 15, 1959 he and his partner, Frank M. Donnellan, were assigned to investigate the instant case; that on August 20, 1959 he questioned John in the presence of Mr. Kay, attorney for appellant, and that John stated he had purchased the alcoholic beverages at the licensed premises.

"On cross-examination, Officer Higgins testified that he and his partner questioned John for about two hours; that some of the statements made by John were false and that John informed them that he had purchased the alcoholic beverages in question for about 25 or 30 fellows.

"Officer Donnellan stated that his direct testimony would be the same as that of Officer Higgins (this was agreeable to the appellant). On cross-examination Officer Donnellan testified that John had stated he bought the alcoholic beverages for a group of fellows; that there was no mention by John that the group consisted

of 25 or 30 fellows and that John had given them a false name and address.

"On behalf of the appellant, William Wells testified that for the past five years he has been employed in the drug department at the licensed premises; that on occasions (during the daytime) he assisted in the sale of alcoholic beverages; that on August 15th aforesaid he did not work in the liquor department; that he did not sell any alcoholic beverages to John on August 15th aforesaid and that he did not take any written statement from John. Wells further testified that on August 17, 1959 John and a police officer visited the licensed premises; that John identified him as the person who sold him the alcoholic beverages; that on August 20, 1959 he, Louis Weiss, William Amabile (a clerk in the liquor section) and others were in a police line-up and that John identified Amabile as the individual who sold him the alcoholic beverages.

"On cross-examination, Wells stated that John had also picked him out of the police line-up as the clerk who sold him the alcoholic beverages; that prior to August 15th aforesaid he had seen John in the neighborhood and that he had also waited upon him in the drug department.

"Peter Donner testified that he is a graduate of Irvington High School; that he has attended Emerson College (at Boston) from 1954 to 1959; that he is a part-time employee in the liquor department at the licensed premises; that he was so employed on August 15th aforesaid; that he did not sell any alcoholic beverages to John on said date; that he did not take any written statement from John; that on August 17, 1959 John and a police officer visited the licensed premises and that to his knowledge John did not identify him.

"On cross-examination, Donner both denied and admitted that on August 17, 1959 John had identified him at the licensed premises as the clerk who sold him the alcoholic beverages.

"Jacob Eisen, a member and manager of the appellant corporate-licensee, testified that he is a past president of the New Jersey Pharmaceutical Association, Essex County Pharmaceutical Association and the Northern New Jersey Branch of the American Pharmaceutical Association; that ever since 1927 he has been a licensed pharmacist; that he has examined all the signatures on the written representations (L-3 in evidence) made by patrons who had been questioned about their ages in the licensed premises for the year 1959; that none of these statements bore the signature of John; that Wells is an assistant to the pharmacist in charge of the drug department; that Wells relieves the liquor clerks only during noon hours and that for the past three years Donner has been employed on a part-time basis in the liquor section of the licensed premises. Mr. Eisen further testified that there is a tavern-package liquor outlet on Clinton and Peshine Avenues directly across the street of the licensed premises and one on Clinton Avenue and Hunterdon Street, a short block from the licensed premises.

"On cross-examination, Eisen stated that it is possible that the 'slips' (L-3 in evidence) could be lost or destroyed 'but they are kept in a small box in the filing cabinet'.

"Martin Schwarz, on behalf of the appellant, testified that for the past ten years he has been a licensed pharmacist and that for the past nine years he has been assistant manager of the licensed premises. (At this point counsel for respondent stipulated that Exhibit L-3 is the complete record of the printed forms executed by patrons who had represented that they were of legal age and that Martin Schwarz's direct testimony would be the same as that given by Mr. Eisen).

"Ira Schwarz, secretary of the corporate-licensee, testified that he is a registered pharmacist, a past-president of the Essex County Pharmaceutical Society and a past-president (four years) of a synagogue and that he supervises and helps form the policies of the licensee.

"At the conclusions of the testimony of appellant's witnesses, John was recalled by the chairman of the respondent Board and testified that he heard the testimony of the appellant's witnesses; that on the night of August 15th aforesaid, he made two visits to the licensed premises and that he bought the alcoholic beverages in question from Donner. Upon further questioning by Mr. Kay and the chairman of the respondent Board, John denied he had purchased the alcoholic beverages in question from Wells and continued to state that on August 15, 1959 he had made individual purchases of alcoholic beverages from Donner and Wells.

"Louis Weiss, on behalf of appellant, testified that he is employed periodically as a pharmacist by the licensee; that on August 15th aforesaid he did not sell any alcoholic beverages to John and that on August 17th aforesaid he was not in the licensed premises.

"Martin Jeffrey and Julius Miller were called as character witnesses for Wells and testified that his reputation for honesty, truthfulness and veracity was good.

"Bert Carlson, a high school principal, and Anthony T. Wherle, a police lieutenant of the Irvington Police Department, testified that they have known Donner for ten years and six months, respectively, and that he bears a good reputation for truthfulness, veracity and honesty.

"At the hearing held herein, Willie was called as a witness by the appellant and did not add to or detract from his testimony before the respondent Board.

"Julius Miller, on behalf of the appellant, testified that for the past 3½ years he has been employed as a clerk in the liquor section of the licensed premises on Monday, Tuesday, Friday and Saturday nights; that he was so employed between 6:00 and 10:00 p.m. on Saturday, August 15th aforesaid; that Wells never worked with him; that John was not in the liquor department on Saturday night aforesaid; that many patrons visit the liquor section between 9:00 and 10:00 p.m. on Saturday and that it is difficult for him to state how long it takes for a customer to complete a purchase on a Saturday night between the hours of 9:00 and 10:00 o'clock.

"On cross-examination, Miller testified that the liquor section is busy every Saturday night, including the Saturday night in question, and that he did not know if John had visited the premises on Saturday night aforesaid.

"Peter L. Donner testified that he recalls that on August 17, 1960 John and a police officer visited the licensed premises and conversed with each other; that he did not hear their conversation and that John did not point him out and identify him to the officer. Donner further testified that he was in error when he previously stated that John had identified him at the licensed premises on August 17th aforesaid; that he was referring to John's identification of him in the police line-up; that he learned of this discrepancy when he read his previous testimony and that he called this fact to the attention of the attorney for the appellant.

"On cross-examination, Donner stated that he does not know if John, in the course of aforesaid conversation, had identified him to the officer and that he had testified before the respondent Board that on August 17th aforesaid John had identified him to the officer.

"William Amabile, on direct, cross and redirect examinations, testified that for a period of about ten months prior to September 1959 he was employed as a clerk in the licensee's liquor department on Wednesday, Friday and Saturday nights; that on Saturday, August 15, 1959, between 6:00 and 10:00 p.m., he, Donner and Miller were the clerks on duty in the liquor department; that on August 20, 1959 he, Donner and Miller, together with Martin Schwarz, Wells, Joe Mossman and two detectives, were in a police line-up; that John picked Donner and Wells as the ones who sold him alcoholic beverages on the night in question and identified him as the clerk who sold him alcoholic beverages on Friday night, August 14, 1959; that he 'was no where near the place that Friday evening'; that prior to August 20th aforesaid he had never seen John; that he does not know if John had purchased alcoholic beverages at the licensed premises on August 15, 1959 and that John had the definite appearance of a minor. In addition, Amabile testified that the busiest night of the week in the liquor section is on Saturday and that it is impossible for a patron to be served within two minutes on a Saturday between 6:00 and 10:00 p.m.

"William E. Wells supplemented his testimony before the respondent by testifying that he was honorably discharged from the Marine Corps in which he served actively for two years; that he never worked in the liquor department at night; that John never asked him for nor did he ever sell him any alcoholic beverages and that John has the appearance of a 15-year-old youth.

"Martin Schwarz, a stockholder of the corporate-licensee and assistant manager of the premises, testified that he acts in the capacity of a supervisor of the drug and liquor departments on the premises; that on Saturday, August 15th aforesaid, Miller, Donner and Amabile were the clerks in attendance in the liquor section; that Wells is employed as a drug clerk; that during the noon hour Wells acts as a relief clerk in the liquor section and that during his entire period of employment (including August 15th aforesaid), Wells never worked in the liquor department in the evening.

"Martin Schwarz further testified that on August 20th aforesaid, he, together with Donner, Wells, Amabile, Louis Weiss and three or four plain-clothes men were in the police line-up; that John identified Donner, Wells and Amabile; that John picked Amabile and Wells as clerks who sold him alcoholic beverages on Friday night, August 14, 1959, and that Wells and Amabile were not working in the premises on August 14th.

"Mr. Schwarz continued to state that the liquor clerks are instructed to summon him or Mr. Eisen whenever they are in doubt of a patron's age; that he has examined all the written representations made by such patrons for the year 1959 and that none of these forms contains the signature of John.

"In addition, Mr. Schwarz testified that on Saturday, August 15, 1959, between 9:00 and 10:00 p.m., the liquor section of the store was exceedingly busy; that on Saturday night, prior to the closing hour, there are from three to five patrons awaiting their turn to be served; that by reason thereof, a patron spends about ten minutes from the time he enters the premises, is served and has left the premises and that a patron, not obliged to wait for service, may effect his purchase and leave the premises within three or four minutes.

"On cross-examination, Mr. Schwarz testified that on the evening in question, he did not work in or visit the liquor department; that he was unable to say whether John had purchased alcoholic beverages on the night in question and that John, without a written representation as to his age, could purchase alcoholic beverages on the premises if he or his clerk thought he was of legal age.

"Jacob Eisen and Ira Schwarz, on behalf of the appellant, substantially corroborated the testimony of Martin Schwarz with reference to the licensee's policy concerning patrons of a questionable age and the length of time a patron spends in the licensed premises on Saturdays between 9:00 and 10:00 p.m. In addition, Mr. Eisen testified that the tavern-package store referred to by him in his original testimony is located at the northeast corner of Clinton and Peshine Avenues, about 30 feet east of the licensed premises; that the other tavern which he had stated was at the corner of Clinton Avenue and Hunterdon Street is about 200 feet west of the licensed premises; that the distance between the aforementioned Citizens' Restaurant and the licensed premises (corner of Clinton and Peshine Avenues) is about 300 feet; that the distance from the corner of Peshine and Clinton Avenues to the entrance of the liquor department of the licensed premises is between 35 to 40 feet and that the distance between aforesaid entrance and the liquor section is about 15 feet.

"On cross-examination, Ira Schwarz and Jacob Eisen testified they were not present in the licensed premises on the date and time in question.

"Lester Werner, a member of the Orange Police Department, Howard Caesar, a teacher in the Newark School System and Joseph Ginsberg, a pharmacist, testified that they have known William Wells for over two years, about ten years and thirteen years, respectively, and that he bears a good reputation for honesty, truthfulness and integrity and for being a law-abiding citizen.

"This case presents a conflict between the principal witnesses produced by the respondent and the witnesses called by the appellant. Bearing in mind the seriousness of the charge and that the lack of corroboration of the testimony of a minor is not fatal in disciplinary proceedings, I have carefully examined all the evidence in the case, together with the exhibits and brief of appellant. It appears that there are two liquor outlets located in the immediate vicinity of the appellant's licensed premises. Although there is a possibility that John's account of his purchase of the alcoholic beverages at appellant's premises is correct, a finding of guilt must be established by a fair preponderance of the evidence. In this connection, it will be noted that the testimony of John as to the actual purchase of the alcoholic beverages is uncorroborated; moreover, on direct examination, he states that he is positive that he entered the licensed premises and purchased the alcoholic beverages in question at about 9:30 p.m. on August 15, 1959 from Donner and Wells. On cross-examination, he testified that he is not sure of the date of purchase and that in the evening of August 15th aforesaid he had made two visits to the licensed premises and made separate purchases of alcoholic beverages from Donner and Wells. With respect to the testimony of Willie, the minor's companion, it will be noted that he reiterated that he had observed John, emptyhanded, enter the licensed premises and emerge therefrom with the alcoholic beverages in question and that upon examination by a member of the respondent Board, he stated that he did not see John enter or leave the licensed premises. As opposed to this testimony, we have an unequivocal denial of the charge by Donner and Wells, each of whose reputation as to honesty, truthfulness and integrity was attested to by a high-school principal, a teacher, two law-enforcement officers and a pharmacist. The testimony of John

and Willie, placed in the balance against the testimony of Donner and Wells, together with the testimony of Martin Schwarz, whose reputation for honesty, integrity and truthfulness was also vouched for by a number of eminent citizens in this community, does not tip the scale in favor of a finding of guilt.

"I therefore recommend that the charge herein be dismissed. See Re Apt, Bulletin 1166, Item 9; Re Pacilli, Bulletin 1230, Item 1; Re Kreider, Bulletin 1257, Item 4."

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 testimony, the exhibits and the brief filed on behalf of the appellant, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 29th day of September, 1960,

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

WILLIAM HOWE DAVIS
DIRECTOR

3. APPELLATE DECISIONS - ZELENKA et al. v. CLIFTON AND PADALINO.

VINCENT ZELENKA, JOSEPH TULLY, SAM PECORINO AND ANDREW BACHA,)	
)	
Appellants,)	ON APPEAL
)	CONCLUSIONS
v.)	AND ORDER
)	
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF CLIFTON, and)	
JOHN J. PADALINO, t/a PADDY'S,)	
Respondents.)	

 Vincent Zelenka, Joseph Tully, Sam Pecorino and Andrew Bacha,
 Appellants, Pro se.
 Edward F. Johnson, Esq., by Manfred Triebel, Esq., Attorney for
 Respondent Board.
 Martin Klughaupt, Esq., Attorney for Respondent Padalino.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent Board whereby it approved an application for place-to-place transfer of a plenary retail consumption license (for the 1959-60 licensing year) held by respondent John J. Padalino, from premises 621 River Drive to proposed premises designated as 30 South Parkway and 615 River Road (as relocated), Clifton.

"Two members of the respondent three-man Board voted in favor of the transfer and one member disqualified himself from voting.

"Appellants content in their petition of appeal that the action of respondent Board was erroneous upon the following grounds:

- 'a. Tavern and parking area will be located directly across the street of Sunset Manor Playground and Ballfield (public park).

- b. School bus stops are located on the southeast corner of Padalino's property and directly across the street (corner of Park property).
- c. End of Padalino's property directly across the street from a residential area.
- d. Devaluation of property (one case already on record).
- e. Potential traffic hazard and nuisance.
- f. We feel that the decision of the Clifton ABC Board was unwise and detrimental to the interests of our Sunset Manor community.'

"Andrew Bacha, one of the appellants, testified that he objects to the transfer of the license in question because the proposed site would be across the street from a public playground. Furthermore, that a school bus stops to pick up children at a corner in front of the premises, as well as directly across the street therefrom.

"Joseph Tully, an appellant, and Frank Battistella, an objector, testified that they objected to the transfer of the license for the same reasons which were advanced by Bacha.

"Thomas McEvoy, chairman of the respondent Board, testified that because he resides at 190 South Parkway, in the section where the proposed premises are located, and in fairness to the appellants and to the objectors, he disqualified himself from any participation in the instant case. Therefore, he did not express any views with reference to the matter.

"Benjamin Blackman, a member of the respondent Board testified that after listening to arguments pro and con at the public hearing, he and Commissioner Caradina deliberated on the question of the transfer and, as a result thereof, concluded to approve the application for the place-to-place transfer.

"John J. Padalino, respondent-licensee, testified that the property at 621 River Drive was taken for highway purposes; that he acquired the present site because it was the nearest available to his former establishment, it being approximately 150 yards therefrom.

"It appears further that the appellants are apprehensive that the proposed licensed premises will create a moral hazard for those who use the park on the opposite side of the street for recreational purposes. It is readily understandable that such concern may exist. However, if the premises are conducted in a law-abiding manner (and it must be assumed that such will be the case), the appellants or any other objectors have nothing to fear. If, perchance, the licensed premises are permitted to be operated in violation of the Alcoholic Beverage Law, the respondent-licensee will subject his license to either suspension or revocation.

"The question whether or not there is a need or necessity for a liquor outlet at a particular location is within the sound discretion of the issuing authority. In cases of the kind now under consideration, the Director's function is to determine whether reasonable cause exists for the issuing authority's opinion and, if so, to affirm its action. Curry v. Margate City, Bulletin 460, Item 9; Mulcahy et als. v. Maplewood et al., Bulletin 658, Item 4; Krogh's Restaurant, Inc. et als. v. Sparta et al., Bulletin 1258, Item 1.

"No proof has been offered with reference to grounds (d) and (e) in the petition of appeal and thus such allegations will be considered to be abandoned.

"I am satisfied that in all respects proper consideration was given by the members of the respondent Board before action was taken on the application for transfer. Furthermore, there has been no evidence presented therein to indicate that the two members who voted in favor of the transfer were improperly motivated or that there was an abuse of discretion on their part.

"After careful examination of the record herein, I recommend that the action of the respondent Board in approving the application for transfer of the license in question to the proposed site be affirmed and that the appeal herein be dismissed.

"Our records disclose that the application for a renewal of the said license for the 1960-61 license period has been approved by the respondent Board for the proposed site. However, I recommend that the license be withheld by the respondent Board until such time as the licensed premises have been completed in accordance with the plans and specifications submitted to the respondent Board."

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15. Having carefully considered all the facts and circumstances appearing herein, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 28th day of September 1960

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

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HELEN HANSEN)
2085 Lemoine Avenue)
Fort Lee, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Mayor and Council of the Borough of Fort Lee.)

Defendant-licensee, Pro se.
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that she possessed on her licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On June 17, 1960, an ABC agent tested defendant's open bottles of alcoholic beverages and seized six bottles for further tests by the Division's chemist. Subsequent tests by the chemist disclosed that the contents of the seized bottles varied substantially in acids and solids from the contents of genuine bottles of the same brands.

Defendant has no prior record. I shall suspend defendant's license for twenty-five days, the minimum period where six bottles are involved. Re Swiderski, Bulletin 1277, Item 6. Five days will be remitted for the plea herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 27th day of September 1960,

ORDERED that Plenary Retail Consumption License C-4 issued by the Mayor and Council of the Borough of Fort Lee to Helen Hansen, for premises 2085 Lemoine Avenue, Fort Lee, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m., Tuesday, October 4, 1960 and terminating at 3:00 a.m., Monday, October 24, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SUSPENSION FOR TEN DAYS PREVIOUSLY IMPOSED REDUCED TO FIVE DAYS AFTER REVIEWING PREVIOUS RECORD OF DEFENDANT CORPORATION.

In the Matter of Disciplinary Proceedings against)

POINT INN, INC.)
t/a THE INN)
Shore Road and Egg Harbor Bay)
Upper Township)
Beesley's Point, N. J.)

AMENDED ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of Upper Township.)

Boswell and Boswell, Esqs., by John E. Boswell, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On August 15, 1960, I entered an order herein suspending defendant's license for ten days commencing at 3 a.m. Monday, August 22, 1960, and terminating at 3 a.m. Thursday, September 1, 1960.

On August 24, 1960, a letter was received from defendant's attorneys requesting a reduction of the aforesaid penalty to five days because the stockholders, officers and managers of defendant corporation at the time the previous violation was committed in 1952 were entirely different persons from the present stockholders, officers and managers and because none of the persons connected with defendant corporation in 1952 participated in the violation committed on July 8, 1960. After the receipt of said letter, a telegram was sent to defendant and the local issuing authority staying the suspension then in effect at 3 a.m. August 27, 1960, and a letter was sent to defendant's attorneys requesting them to submit an affidavit by the president of defendant corporation in support of the allegations set forth in the attorneys' letter.

There has been submitted to me an affidavit executed by Harry W. Tracey, Jr., president of defendant corporation, which satisfies me that the allegations in the attorneys' letter are true. In accordance with the precedent established in Re Sparrow Cigar Co., Inc., Bulletin 832, Item 3, and followed in subsequent cases, including Re The Aloha, Inc., Bulletin 1246, Item 10, and Re Vike-Inn, Inc., Bulletin 1253, Item 5, the prior record of defendant corporation, under the facts now appearing herein, should not have been considered in fixing the penalty in this case. The order heretofore entered will, therefore, be amended to reduce the suspension from ten days to five days, which have been already served.

Accordingly, it is, on this 27th day of September 1960,

ORDERED that the order heretofore entered be amended to read as follows:

"ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of Upper Township to Point Inn, Inc., t/a The Inn, for premises on Shore Road and Egg Harbor Bay, Upper Township, be and the same is hereby suspended for a period of five (5) days, commencing at 3 a.m. Monday, August 22, 1960, and terminating at 3 a.m. Saturday, August 27, 1960."

Since the suspension has been already served, the licensee may continue to operate.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALES TO MINOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
JACKY HEATON AND JAMES BARBIERI
t/a J & J BAR AND GRILL
Route 46
MONTVILLE TOWNSHIP
PO Pine Brook, N. J.
Holders of Plenary Retail Consumption License C-3, issued by the Montville Township Committee.

CONCLUSIONS
AND ORDER

Defendant-licensees, by Jacky Heaton, Partner
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that they sold, served and delivered alcoholic beverages, directly or indirectly, to a minor, in violation of Rule 1 of State Regulation No. 20.

Acting upon information transmitted to the Division by the Verona Police Department, ABC agents on August 3, 1960, obtained signed, sworn statements from Leonard ---, age 17, in which he states that at about 9:55 p.m. Friday, July 29, 1960, he and a minor companion (Walter ---) drove into a parking lot next to a tavern; that he alone entered the licensed premises and purchased six 12-ounce cans of beer from the bartender; that the bartender asked him his age and that, when he told him he was 26, the bartender gave him the beer without questioning him further. He further states that he returned to the

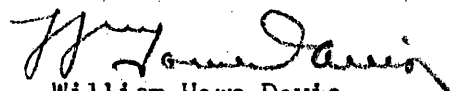
car with his purchase and thereafter re-entered the tavern to get a can-opener, after which he and Walter left the vicinity of the tavern and consumed some of the beer. Walter gave a statement, which corroborates that of Leonard in all respects other than what occurred within the tavern.

On August 3, 1960, the two minors directed the agents to defendants' licensed premises and pointed it out as the place where the beer was obtained, and Leonard identified therein Jacky Heaton (one of the licensees) as the person who made the sale. Heaton verbally stated that he made the sale after Leonard told him he was 23 years of age and showed him a driver's license to verify the fact.

Defendants, as partners, have no prior adjudicated record. However, effective September 19, 1949, a license held by a Jacky Heaton and Ernest Heaton, for premises in Caldwell Township, was suspended for five days for sale to a minor (Bulletin 853, Item 8). Since this violation occurred more than ten years ago, it will not be considered in fixing the penalty herein. I shall suspend defendants' license for twenty days (the minimum penalty for sale to a 17-year-old minor). Re Clinton Point Corp., Bulletin 1337, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 29th day of September 1960,

ORDERED that Plenary Retail Consumption License C-3, issued by the Montville Township Committee to Jacky Heaton and James Barbieri, t/a J & J Bar and Grill, for premises on Route 46, Montville Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Monday, October 10, 1960, and terminating at 2 a.m. Tuesday, October 25, 1960.


William Howe Davis
Director