

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

BULLETIN 1484

December 3, 1962

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STATE OF NEW JERSEY
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1. COURT DECISIONS - ESSEX COUNTY RETAIL LIQUOR STORES ASSOCIATION
v. NEWARK, SMITH, HOME LIQUORS INCORPORATED AND DAVIS -
DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-749-61

ESSEX COUNTY RETAIL LIQUOR STORES)
ASSOCIATION)

Appellant,)

v.)

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
NEWARK, BARTLETT M. SMITH, trading as)
MULDOON LIQUORS, and HOME LIQUORS)
INCORPORATED of New Jersey and)
WILLIAM HOWE DAVIS, Director, Division)
of Alcoholic Beverage Control.)

Respondents.)

Argued September 24, 1962 - Decided November 2, 1962

Before Judges Goldmann, Freund and Foley

Mr. Leonard Brass argued the cause for appellant
(Messrs. Brass and Brass, attorneys).

Mr. Richard L. Amster argued the cause for
respondent, Bartlett M. Smith.

Mr. Abe W. Wasserman argued the cause for
respondent, Home Liquors, Inc.

Mr. Herbert S. Alterman, Deputy Attorney General,
argued the cause for respondent, William Howe Davis,
Director of Division of Alcoholic Beverage Control.
(Mr. Arthur J. Sills, Attorney General, attorney).

The opinion of the court was delivered by FOLEY, J.A.D.

Plaintiff appeals from a determination of the Division of Alcoholic Beverage Control (Division) affirming two transfer orders issued by the Board of Alcoholic Beverage Control of the City of Newark (Board). (Essex County RLS. v. Newark, et als., Bulletin 1449, Item 1.)

Bartlett M. Smith was the holder of a retail consumption license for premises located at 776 South Orange Avenue, Newark. On July 6, 1961 he filed an application to transfer this license to 773 South Orange Avenue (place-to-place transfer). The application came on for hearing on July 19, when plaintiff through its attorney appeared as an objector and requested assurance from Smith that he intended to operate the premises

at 773 South Orange Avenue if the license was granted. After a lengthy colloquy the Chairman of the Board, in effect, declined to oblige Smith to state his present intention with respect to future operation. The transfer was granted.

On August 3, 1961 an application was made by Home Liquors for the transfer to it of Smith's license at the new premises (person-to-person transfer). A hearing on this application was conducted on August 16, 1961 during which it developed that on June 20, 1961 Smith had entered a contract of sale with Home Liquors conditioned upon the transfer of the license to 773. This application for transfer was also granted.

Plaintiff then appealed to the Division from both transfers. The petition of appeal alleged that the actions of the Municipal Board should be reversed for the following reasons: (a) the filing of the separate applications by respondents Smith and Home Liquors were made to circumvent Section 3.29 of the Revised Ordinance of the City of Newark, and (b) the procedure followed by respondents Smith and Home Liquors to effect aforesaid transfers was made in violation of Rule 14 of State Regulation No. 6.

The pertinent portion of Section 3.29 of the Revised Ordinance of the City of Newark provides:

"No plenary retail consumption license, except renewals for the same premises and transfers of license from person to person within the same premises, shall be granted or transfer made to other premises within a distance of one thousand feet from any other premises then covered by a plenary retail consumption license, provided, however, that the local license issuing authority may, in its discretion, grant a transfer of an existing license to the same licensee to other premises within six hundred feet of the premises from which the transfer is made, notwithstanding that the premises to which the license is so transferred is within one thousand feet of an existing plenary retail consumption licensed premises."

Rule 14 of State Regulation No. 6 provides:

"Transfers of licenses both as to person and place may be applied for simultaneously and in a single application; but if there is such combined application for person-to-person and place-to-place transfer, the license shall not be transferred to the applicant unless the place-to-place transfer is also effected."

The answer filed on behalf of respondent Smith denied appellant's allegations and, by way of separate defense, stated:

"The evidence adduced at the hearings below established that the transfer of the licensed premises from No. 776 to No. 773 South Orange Avenue, Newark, New Jersey, being the opposite side of the street on the same block, in no way aggravated the concentration of licenses and was beneficial to the public interest.

The evidence adduced at the hearings below established that a denial of such transfer would impose a hardship upon the licensee.

The evidence adduced at the hearings below established that the licensee actually intended, in good faith, to conduct the licensed business at the new address if his pending sale to Home Liquors was not consummated."

The answer filed on behalf of respondent Home Liquors denied the allegations of the appellant. The answer of respondent Board denied the allegations of the appellant and alleged that "the grounds upon which the issuing authority made its decision were based upon the factual testimony before the Board from which it, in its sound discretion, concluded that the transfer should be granted."

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

The Division Director, in affirming the A.B.C. hearer's report and dismissing the appeal from the Board, found:

"While I am convinced that the methods used by licensee Smith and Home Liquors were without question for the purpose of circumventing the local ordinance, nevertheless this fact was forcibly called to the attention of the respondent Board and argued at length. However, the Board saw fit to grant the transfer and, regardless of my personal opinion of the means devised to effect the transfer, I will not question the discretionary authority, in this case, of the Board to grant the transfer."

The essence of appellant Association's attack on the transfers is that the local licensing board and the Director of the Division of Alcoholic Beverage Control abused their respective discretionary powers. It charges that there was a clear evasion of the provisions of section 3.29 of the Revised Ordinances of the City of Newark. The Board, it is said, had no jurisdiction to transfer respondent Smith's license in violation of the ordinance (citing Petrangeli v. Barrett, 33 N.J. Super. 378, 384 (App. Div. 1954), and Tube Bar, Inc. v. Commuters Bar, Inc. 18 N.J. Super. 351, 354 (App. Div. 1952)), and in further violation of Rule 14 of State Regulation No. 6 (citing Dal. Roth v. Div. of Alcoholic Beverage Control, 28 N.J. Super. 246 (App. Div. 1953), and Wilner's Liquors v. Jersey City, A.B.C. Bulletin 1332, Item 3).

Our decision in Dal Roth, and the A.B.C. Director's determination in Wilner's Liquors are completely distinguishable. Those cases involved a single, combined application, not by the licensee but by the proposed transferee for a place-to-place and person-to-person transfers of a plenary retail consumption license under the Jersey City ordinance which forbade the granting of the transfer of a plenary retail consumption license to any premises whose entrance was within 750 feet of the entrance to an existing licensed premises, but permitted an exception in the case of any existing licensee seeking a transfer who was compelled to vacate the licensed premises for any reason which, in the opinion of the local governing body, was not caused by any action on his part.

It should also be observed that the language of Rule 14, State Regulation No. 6, is permissive, not mandatory: transfers

of licenses both as to person and place "may be applied for simultaneously and in a single application." This clearly implies the propriety of separate applications, as was done here.

As the Supreme Court pointed out in Fanwood v. Rocco, 33 N.J. 404, 414-415 (1960), on an appeal from the action of the local licensing Board, the Director conducts a de novo hearing and makes necessary factual and legal determinations on the record before him. The settled practice is that he will affirm the municipality's grant or denial of the license transfer so long as the local board's exercise of judgment and discretion was reasonable. The appellate court, on review, will not interfere with his determination so long as it was not unreasonable or illegally grounded.

The language of section 3.29 of the Newark ordinance is clear and unambiguous, and this is expressly conceded by appellant. Despite the concession, it insists upon reading into the exception clause the requirement that the "same licensee" seeking the place-to-place transfer must intend to continue to operate his business at the new location. Nothing in the ordinance requires such construction. "Same licensee" refers to a licensee already holding a license within 600 feet of the premises to which the transfer is sought. Section 3.29 imposes no further limitation.

Appellant argues that the "intent" of the ordinance was violated. Section 3.29 of course, makes no mention of what the transferor's intention might be. Although our goal in construing an ordinance is to discover and effectuate the local legislative intent, that intent must be found in the language used. See Brundage v. Randolph Tp., 54 N.J. Super. 384, 396 (App. Div. 1959), affirmed on opinion 30 N.J. 555 (1959); Wright v. Volk, 7 N.J. 1, 5-6 (1951). Ordinances are to receive a reasonable construction and application, to serve the apparent legislative purpose. We will not depart from the plain meaning of language which is free of ambiguity, for an ordinance must be construed according to the ordinary meaning of its words and phrases. These are to be taken in their ordinary or popular sense, unless it plainly appears that they are used in a different sense. Sexton v. Bates, 17 N.J. Super. 246, 253 et seq. (Law Div. 1951) affirmed on opinion below, 21 N.J. Super 329 (App. Div. 1952); 6 McQuillin, Municipal Corporations (3rd ed. 1949), ss 20.47, p. 114; cf. R.S. 1:1-1. Applying ordinary meaning to the words "same licensee," there appears little reason for interpreting those words in the manner asserted by appellant.

In this connection, and indicative of the fact that the Board and the Director of the Division properly construed the exception in section 3.29 of the ordinance in accordance with the local legislative purpose, is the fact that Newark found it advisable to amend the ordinance in November 1961 as follows:

- "1. (a) No plenary retail consumption license, except renewals for the same premises and transfers of licenses from person to person within the same premises, shall be granted or transfer made to other premises within a distance of one thousand feet from any other premises then covered by [a] any other plenary retail consumption license [b] or any plenary retail distribution license, provided, however, that the local license issuing authority may, in its discretion, grant a transfer of an existing license to the same licensee only, to other premises within six hundred feet of the premises from which the transfer is made, notwithstanding that the premises to which the license is so

transferred is within one thousand feet of an existing plenary retail consumption [licensed premises] license or plenary retail distribution license, provided, however, that such transfer shall be made in good faith and shall inure solely for the benefit of the same licensee." (Brackets indicate matter omitted from the original ordinance; italics indicate new matter.)

Thus, an existing license may now be transferred to the same licensee only, and the transfer must be made in good faith and inure solely for the benefit of the same licensee. While the provisions of the amendatory ordinance can have no determinative effect upon the outcome of the case before us, the fact that the Newark governing body considered this amendment advisable is clearly indicative of its understanding of the ordinance in effect at the time when the transfers here involved were approved: i.e., the words "same licensee" were to be given their common and popular meaning.

The effect of the amendment is discussed in 1 Sutherland, Statutory Construction (3rd ed. 1943), ss 1930, p. 412 et seq.:

"* * * [T]he courts have declared that the mere fact that the legislature enacts an amendment indicates that it thereby intended to change the original act by creating a new right or withdrawing an existing one. Therefore, any material change in the language of the original act is presumed to indicate a change in legal rights. The legislature is presumed to know the prior construction of terms in the original act, and an amendment substituting a new term or phrase for one previously construed indicates that the judicial or executive construction of the former term or phrase did not correspond with the legislative intent and a different interpretation should be given the new term or phrase." (at pages 412-413)

and

"Not only is this presumption of change used in construing the provisions of the amendatory act, but it is frequently resorted to in litigation arising after the amendment to determine rights accrued under the original act. Thus, it is presumed that the provisions added by amendment were not included in the original act." (at page 415)

A change of language in a statute or ordinance ordinarily implies a purposeful alteration in substance. See Nagy v. Ford Motor Co., 6 N.J. 341,348 (1951).

Our consideration of the amendatory ordinance of November 1961, adopted several months after the granting of the transfer in question, indicates that the ordinance in effect at the time of the transfers did not have the meaning urged by appellant association. The words "same licensee" in the original ordinance were not modified by the word "only," nor was there a provision requiring the transfer to "inure solely for the benefit of the same licensee." Thus, the ordinance meant just what the Board and the Director construed it to mean -- that licensee Smith was the "same licensee" applying for a transfer to the premises across the street at 773 South Orange Avenue, and was entitled to such a transfer.

Much of appellant's argument is devoted to the assertion that respondents "circumvented" the Newark ordinance. Forgetting for the moment that the language of the ordinance is clear and unambiguous, it is not inappropriate to note that there is a real distinction between avoiding the limitations of an ordinance and evading them. Avoidance of the prescriptions of a statute or ordinance is entirely permissible; evasion of its requirements falls outside the bounds of legal activity. This distinction is most often found in the field of taxation. For example, see Jones v. Grinell, 179 F. 2d 873 (10 Cir. 1950); Distinctive Theatres of Columbus v. Lookery, 165 F. Supp. 410, 411 (D.C. Ohio 1958).

Notwithstanding the fact that the Director may have considered that respondents circumvented the ordinance by avoiding it, he correctly determined that he would not question the discretionary authority of the Board to grant the transfers. At the hearing before the Board, counsel for appellant Smith, in answer to a question put by the chairman, stated that the application for a place-to-place transfer was bona fide. Continuing, he said:

"If he [counsel for appellant] is asking what our future intentions are, have we made any commitments, I say it is improper.

It is our intention to transfer this license, if you grant it."

The Board, with knowledge of the pertinent facts, determined that licensee Smith came within the exceptive provision of section 3.29 in that he was the "same licensee" insofar as the place-to-place transfer was concerned. Respondents made known to the Board their reasons for proceeding in the manner they did. The ordinance and the steps taken by respondents to obtain the place-to-place and person-to-person transfers were argued at length, both before the Board and the Division hearer. Substantial testimony was introduced in support of the propriety of the actions taken. The Board, the hearer, and the Director were satisfied that what Smith did was compatible with the language of the ordinance. The Director was not bound to reverse the Board's decision unless he found its action unreasonable. As noted, he found no abuse of its discretion.

Although the interpretation of the ordinance is a question peculiarly suited to judicial treatment, and the opinions of the Board and Director would not be as persuasive as they would be on questions of fact within their purview, Jantausch v. Borough of Verona, 41 N.J. Super. 89, 96-97 (Law Div. 1956), affirmed 24 N.J. 326 (1957), the court in that case made clear that this does not mean that the views of the administrative bodies "should not receive respectful consideration." (at page 97) Cf. DeVita v. Housing Authority of City of Paterson, 17 N.J. 350, 357 (1955); No. Central Counties Retail Liquor etc., v. Edison Tp., 68 N.J. Super. 351, 359 (App. Div. 1961).

Affirmed.

2. APPELLATE DECISIONS - KALMAN v. SOUTHAMPTON - PRICKETT v. SOUTHAMPTON.

ANDREW KALMAN,)
Appellant,)
v.)

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF SOUTHAMPTON,)
Respondent.)

ON APPEAL
CONCLUSIONS
AND ORDER

Ada I. Prickett,)
Appellant,)
v.)

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF SOUTHAMPTON,)
Respondent.)

Powell and Davis, Esqs., by James M. Davis, Jr., Esq., Attorneys
for Appellants.
Dimon, Haines & Bunting, Esqs., by Martin L. Haines, Esq.,
Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The within appeals (wherein the same license is involved),
having been heard simultaneously, may properly be decided
together.

"Appellant Andrew Kalman appeals from the unanimous action
of respondent in denying a person-to-person and place-to-place
transfer of a plenary retail consumption license from Ada I.
Prickett to him and from premises formerly located at Route
206, Vincentown, to premises on Route 206 one mile south of
Vincentown, both Township of Southampton.

"Appellant Kalman contends in his petition of appeal that
the action of respondent was erroneous and should be reversed
because 'No traffic hazard could possibly exist (Route 206 for
many miles in both directions is straight, and level with wide
shoulders). There are only two dwelling houses within a 500
yard radius; there are ample off-road parking facilities. The
basis that the premises to be licensed are situate 1/2 mile
from another tavern is completely incorrect, the distance being
approximately 2 miles.'

"The answer of respondent denies said allegation contained
in the petition of appeal. In addition thereto respondent avers:

- '(a) The operation of a taproom at the desired location
would constitute a traffic hazard by reason of the
fact that the premises are located in a sparsely
settled area primarily reached only by automobile so
that patrons consuming alcoholic beverages on the

premises would be likely to depart therefrom driving motor vehicles while under the influence of alcohol.

- (b) The Township Committee of Southampton Township exercised its discretion in all respects with propriety and its decision was made in the public interest.

"Appellant Ada I. Prickett appeals from the unanimous action of respondent in denying a renewal of her plenary retail consumption license for premises to be constructed on the site where her former licensed premises existed on Route 206, Vincentown. Although the petition of appeal from the denial of renewal had not been filed at the date of the within hearing, it was stipulated by the parties hereto that the matter be heard and that the said petition of appeal be filed subsequent thereto. The said petition of appeal was filed with this Division in accordance with the stipulation.

"Appellant Prickett alleges in her petition of appeal that the purpose in filing an application for renewal of the license for the current period was to keep the license in existence pending the outcome of appeal filed by appellant Kalman, and that the denial of the renewal by respondent was erroneous.

"Respondent in its answer contends in substance that the non-use of the said license by appellant Prickett for so many years was contrary to public interest and thus the action of respondent in denying the application for renewal was proper.

"It appears from the testimony of appellant Prickett that the license in question had been transferred to her in 1954 (the records of this Division disclose the date of said transfer to be December 29, 1954) and had been renewed each successive year thereafter including 1961-62. It further appears from the testimony of appellant Prickett that, since the license was transferred to her, she never used the privilege of the license because shortly after becoming the holder thereof in 1954 the premises were completely damaged by vandals and the necessary repairs were never made. As a result thereof, the building eventually disintegrated and was finally condemned by the authorities. She further testified that the premises of appellant Kalman, to which transfer is sought, is in excess of four and one-half miles from her former location.

"Appellant Kalman testified that he has entered into a ten-year lease for the proposed licensed premises, the latter being a one-story building of cinder blocks and covered with stucco containing 'about two rooms'; that the building is located '75 to 80 feet' from the highway along which there are no sidewalks so that persons patronizing the establishment would of necessity have to use an automobile to reach the premises.

"Four persons, including a clergyman, testified in opposition to the transfer of the license to the proposed location. It appears from the testimony of William A. Ewen, one of the objectors, that he attended the meeting before the respondent at which 'within the neighborhood of 100' persons were present objecting to the transfer and that petitions 'containing somewhat over 500 signatures' opposing the transfer were presented to respondent.

"Justice Jacobs, speaking for the New Jersey Supreme Court in a matter very similar to the instant case, stated that the

municipal governing body may reasonably honor local sentiments by declining to license taverns and package stores in designated areas within the municipality. See Borough of Fanwood, a Municipal Corporation v. Antonio Rocco and Division of Alcoholic Beverage Control, 33 N.J. 404 (pp. 412, 413) and cases cited.

"In Fanwood v. Rocco, 59 N.J. Super. 306, Judge Gaulkin, referring to Ward v. Scott, 16 N.J. 16 (1954) wherein the Supreme Court dealt with an appeal from the grant of a zoning variance, stated:

'***what the court said in that case is doubly weighty here, for here the more serious matter of liquor is involved, and here the municipality did not grant, but denied, the application.'

"The Court said in Ward v. Scott, supra:

'Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications***. And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: "Universal distrust creates universal incompetence." Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913). Where, as here, the application *** has been given careful and conscientious consideration by the zoning board and the town council and has been acted upon by both of them in strict conformity with the procedural and substantive terms of the statute, the ultimate interests of effective zoning will be advanced by permitting the action of the municipal officials to stand, in the absence of an affirmative showing that it was manifestly in abuse of their discretionary authority.'

"It is well established that the transfer of a liquor license is not an inherent or automatic right, and that the issuing authority may grant or deny the transfer in the exercise of a reasonable discretion. After considering the evidence herein, I conclude that appellant Kalman has failed to sustain the burden that the action of the respondent was arbitrary or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15.

"I shall now discuss the matter of denial of renewal of appellant Prickett's license to be issued for a building to be constructed at its former site.

"It appears that respondent renewed each year, including the 1961-62 licensing term, appellant Prickett's license acquired in 1954. In explanation of her failure to exercise the privilege of the license and the reason she seeks renewal thereof, appellant Prickett testified as follows:

'Q Will you tell Mr. Kremer why you have not exercised the privileges of that license?

'A Well, this last year, of course, my mother died and my father died and I had those expenses. This last year I was going to try to build, and I went to the lawyer who had my mother's estate, who owns the real

estate that the license was issued for, to find out how we could go about settling it so I could try to put a building on, and he informed me Mr. Ferouse, who I believe is the Burlington county welfare department, they had placed a lien against the property for six thousand dollars for my mother's care in Trenton Hospital.

* * * * *

'Q Is it your desire that a renewal of the license marked here in evidence as Exhibit A-1 be granted for the purpose solely of enabling you to transfer it to Mr. Kalman?

'A Yes, sir. My husband is ill. He hasn't been working. I have to work. I have three young children to support, plus him and his medical bills.'

"On June 17, 1962, the members of the respondent Township Committee unanimously disapproved the application for renewal of the license.

"Mere non-user will not of itself void a license. See Re Tarantola, Bulletin 570, Item 5. However, a municipal issuing authority should not be required to renew a license under which no business has been conducted for a protracted period unless convincing evidence in explanation and justification of non-user is adduced. Hall v. Mt. Ephraim, Bulletin 786, Item 2. No one is entitled to a renewal of a license as a matter of right. Zicherman v. Driscoll, 133 N.J.L. 586. See also Re Smith, Bulletin 784, Item 5, wherein (the fact being a six-year non-use of the license) the then Commissioner said:

'This practice of non-user over a substantial length of time does violence to the paramount principle underlying the issuance of licenses, to wit, that licenses shall be issued only in the interest of the public necessity and convenience.'

"On the assurance of appellant Prickett that premises were to be erected, respondent has renewed the license in question for many years. However, respondent should not be compelled indefinitely to continue the course it had formerly pursued. Appellant Prickett's explanation that she desires renewal of the current license for the sole purpose of its transfer to Kalman, and her continued failure for many years in the past to erect proper premises in furtherance of her application for renewal does not constitute convincing evidence in explanation and justification of the non-user of the license in question. There has been nothing presented which might indicate in any way whatsoever that any members of the said respondent issuing authority were improperly motivated. I am satisfied that proper consideration was given by the members of respondent Committee before action was taken in each case.

"For the reasons aforesaid, it is recommended that orders be entered affirming the action of the respondent in both appeals, and that said appeals be dismissed."

Written exceptions to the Hearer's Report and written arguments in substantiation of the exceptions were filed with me by the attorneys for the respective appellants and written answering argument was filed by the attorneys for respondent Township Committee within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the record herein, including the transcript of the testimony, the exhibits, the Hearer's Report, the written exceptions and the arguments pro and con, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 18th day of October 1962,

ORDERED that the action of the Township Committee of the Township of Southampton be and the same is hereby affirmed, and that the appeals herein be and the same are hereby dismissed.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISQUALIFICATION REMOVAL PROCEEDINGS - CONSPIRACY TO CHEAT AND DEFRAUD - ORDER REMOVING DISQUALIFICATION.

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

Case No. 1720

BY THE DIRECTOR:

Petitioner's criminal record discloses that on January 30, 1948, following a plea of guilty to a charge of assault and battery, he was given a six-months suspended sentence and placed on probation for one year; that on September 25, 1953, as a result of a plea of non vult to a charge of conspiring to cheat and defraud a finance company, he was sentenced to serve from two and one-half to three years in New Jersey State Prison; the sentence was suspended and he was placed on probation for five years; and that on October 18, 1956, he was arrested in another State for failing to register as a criminal. Since the crime of conspiring to cheat and defraud involves the element of moral turpitude (Re Case No. 122, Bulletin 184, Item 4), the petitioner was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing held herein petitioner (thirty-eight years old) testified that he is married and living with his wife; that for the past thirty years he has lived in same area where he presently resides, and that he has been associated with the restaurant business for more than ten years last past.

Petitioner further testified that he is asking for the removal of his disqualification to be free to conduct a restaurant business as a concessionaire on a licensed premises and to be otherwise eligible to engage in the alcoholic beverage industry in this State; that, ever since his aforesaid conviction on September 25, 1953, he has not been convicted of any crime.

The Police Department of the municipality wherein petitioner resides reports that there are no complaints or investigations presently pending against the petitioner.

The petitioner produced three character witnesses (a printer, a retired group leader and a parking garage operator) who testified that they have known petitioner for more than five years last past, and that, in their opinion, he is now an honest, law-abiding person with a good reputation.

Considering all of the aforesaid facts and circumstances, I am satisfied that the petitioner has conducted himself in a law-abiding manner for five years last past, and that his association with the alcoholic beverage industry in this State will not be contrary to the public interest.

Accordingly, it is, on this 19th day of October 1962,

ORDERED that petitioner's statutory disqualification because of the convictions described herein be and the same is hereby removed, in accordance with the provisions of R.S. 33:1-31.2.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR SIMILAR OFFENSE WITHIN 5 YEARS - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

CHARLES SANDERLIN
t/a CHARLIE'S BAR & GRILL
587 Ocean Avenue
Jersey City, N. J.

)
)
) CONCLUSIONS
) AND ORDER

Holder of Plenary Retail Consumption License C-56, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Licensee, Pro se.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on September 24, 1962, he possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for fifteen days effective June 9, 1959, for a similar offense. Re Sanderlin, Bulletin 1286, Item 10.

The prior record considered, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Facciponte, Bulletin 1482, Item 15.

Accordingly, it is, on this 17th day of October, 1962,

ORDERED that Plenary Retail Consumption License C-56, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Charles Sanderlin, t/a Charlie's Bar & Grill, for premises 587 Ocean Avenue, Jersey City, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Wednesday, October 24, 1962, and terminating at 2:00 a.m. Tuesday, November 13, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

GEORGE KOCHMAR and HOWARD OPENSHAW)
t/a KOZY KORNER TAVERN)
135 Jackson Avenue)
Jersey City 5, N. J.)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-227, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Licensees, Pro se.

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on October 6, 1962, at 11:10 p.m., they sold six cans of beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Suk, Bulletin 1477, Item 5.

Accordingly, it is, on this 22d day of October, 1962,

ORDERED that Plenary Retail Consumption License C-227, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to George Kochmar and Howard Openshaw, t/a Kozy Korner Tavern, for premises 135 Jackson Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, October 29, 1962, and terminating at 2:00 a.m. Thursday, November 8, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against)
)
 FRANKE'S BAR & GRILL, INC.,)
 352 West Passaic Street)
 Rochelle Park, N. J.)
)
 Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Rochelle Park.)

CONCLUSIONS AND ORDER

 Benedict E. Lucchi, Esq., Attorney for Licensee
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Licensee pleaded not guilty to the following charge:

'On July 26, 1961, and on divers days prior thereto, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Phyllis ---, age 16, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.'

"Phyllis --- testified that she was born on November 3, 1944; that on July 26, 1961, she and an adult male companion visited the licensee's premises and, while seated in a booth, she was served and consumed on two separate occasions a mixed drink containing whiskey and soda, which drinks were ordered for her by her companion; that the said drinks were served by Elizabeth Hubinger, a waitress known to her as Betty; that the latter made no inquiry at any time with reference to her age. Phyllis further testified that on the Monday and Tuesday preceding July 26 she was in the licensee's premises and on each occasion was served alcoholic beverages by the same waitress. During extensive cross examination by the licensee's attorney the testimony of Phyllis varied slightly from that elicited on direct examination.

"Theodore Rowan testified that he accompanied Phyllis to the licensee's premises 'more than once,' the last occasion being on July 26, 1961, when he ordered 'Seagram's 7 and 7-Up' for both Phyllis and himself from Betty (who was a waitress at the time in question) and that at no time was Phyllis interrogated about her age; that he went to the bar on occasion and consumed some drinks while Phyllis remained in the booth.

"An ABC agent testified that on August 16, 1961, in the company of a fellow-agent, a local detective, Rowan and Phyllis, he went to the licensee's premises and, upon entering the same, he acquainted William McEllen (the bartender) and Elizabeth Hubinger (the waitress) concerning the purpose of their visit; that, when Phyllis identified Elizabeth Hubinger as the person who served her alcoholic beverages on July 26 and dates prior

thereto, Mrs. Hubinger stated that she did not recall ever seeing Phyllis on the premises.

"Elizabeth Hubinger testified that, although she was not on duty on the licensee's premises on July 25, 1961, she recalled Theodore Rowan being in the premises on July 26 and that he was accompanied by a young girl; that he ordered and was served Seagram's 7 and 7-Up and that his female companion was served 'only 7-Up' in addition to the service of a shrimp cocktail. During cross examination the waitress testified that on July 26, 1961, she was quite sure the female companion of Rowan was not Phyllis but a young lady who appeared to be 'fifteen years older.'

"Peter Hynes testified on behalf of the licensee that on July 26, 1961, he was in the licensed premises and while there observed Rowan seated 'in the corner by the window' with a girl companion; that at one time Rowan went to the bar, returned with 'two shots,' one of which he placed in front of himself and the other in front of his female companion; that he then 'put them in the glass, and they had some left over from another drink which he poured in'; that he did not see Phyllis with Rowan but a girl who 'looked to be twenty-five or better'; and that he observed both the girl and Rowan drinking on that evening.

"William McEllen (the bartender) testified that on July 26, 1961, he served Rowan 'two shots of Seagram's 7' at the bar and that Rowan 'took the two glasses and walked to the back with them'; that he had served Rowan on previous occasions, and that it was Rowan's custom to have several glasses before him at one time.

"I am satisfied, after careful examination of all the testimony adduced herein, that it was Phyllis who accompanied Theodore Rowan to the licensee's premises on July 26, 1961. I am further satisfied that while in the said premises Phyllis was served and consumed alcoholic beverages. Although the testimony of Phyllis at the instant hearing varied in some details from that given in other court proceedings, and totally disregarding any visits to the licensee's premises on dates other than July 26, the evidence is sufficiently clear to establish that on the latter date she accompanied Rowan to the licensee's premises and while there consumed alcoholic beverages. The positive testimony of Rowan was not refuted in any manner whatsoever that on July 26 he and Phyllis drank alcoholic beverages in the licensee's premises. Elizabeth Hubinger's testimony was not convincing, her story being that Rowan was not accompanied by Phyllis but by an older female to whom she (Elizabeth Hubinger) served only a glass containing 7-Up. Peter Hynes' testimony is that, according to his recollection, a woman older than Phyllis was with Rowan and that he observed both drinking. I have examined divers guest checks offered by the licensee showing various orders allegedly filled by the waitress on July 26, 1961, and other dates prior thereto. However, such evidence in itself does not establish with any degree of conclusiveness that on July 26, Phyllis was neither present nor had not consumed alcoholic beverages on said occasion.

"Under the circumstances, I recommend that the licensee be found guilty of sale of alcoholic beverages to Phyllis on July 26, 1961. In view of the absence of a prior record, it is further recommended that an order be entered suspending the license for twenty-five days, the minimum penalty imposed for sale of alcoholic beverages to a sixteen-year-old minor. Re West

Paterson Liquors, Inc., Bulletin 1399, Item 5."

Pursuant to Rule 6 of State Regulation No. 16, exceptions to the Hearer's Report and written argument thereto were filed with me by the attorney for the licensee.

Having carefully considered all of the facts and circumstances herein, including the transcript, the exhibits, the Hearer's Report and exceptions and written argument thereto, I concur in the conclusions of the Hearer and adopt his recommendation. Hence I find the licensee guilty as charged.

Accordingly, it is, on this 22nd day of October 1962,

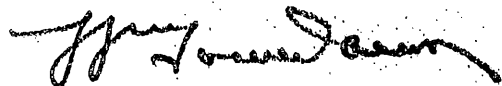
ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Rochelle Park to Franke's Bar & Grill, Inc., for premises 352 West Passaic Street, Rochelle Park, be and the same is hereby suspended for twenty-five (25) days, commencing at 3 a.m. Monday, October 29, 1962, and terminating at 3 a.m. Friday, November 23, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

7. STATE LICENSES - NEW APPLICATION FILED.

Penn Beverage Company, Inc.
Room #1, 1113 Boardwalk
Atlantic City, N. J.

Application filed November 28, 1962 for Additional Salesroom License in connection with Limited Wholesale License WL-29, for premises located at Washington Highway, Route 24 and Hensfoo Road, Lopatcong Township, New Jersey.



William Howe Davis
Director