

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 830

JANUARY 27, 1949.

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

January 27, 1949.

BULLETIN 830

1. DISCIPLINARY PROCEEDINGS - ALLOWING IMMORAL ACTIVITIES (FOUL AND INDECENT LANGUAGE) ON LICENSED PREMISES - HOSTESSES - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CHRISTINE ARNO)
t/a GARDEN REST)
202 Hudson Street)
Hoboken, N. J.,)

CONCLUSIONS
AND ORDER.

Holder of Plenary Retail Consumption License C-18, issued by the Board of Commissioners of the City of Hoboken.)

Rudolph R. Naddeo, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging (1) that she allowed, permitted and suffered lewdness and immoral activities (i.e., foul and indecent language) on her licensed premises, in violation of Rule 5 of State Regulations No. 20; and (2) that she allowed, permitted and suffered "hostess" activities on her licensed premises, in violation of Rule 22 of State Regulations No. 20.

On the night of October 13, 1948 and early morning of October 14, two agents of the Division of Alcoholic Beverage Control visited defendant's licensed premises. Anthony Arno, defendant's husband and manager-bartender, was in charge of the licensed premises in the absence of defendant. One Anna Lee ---, then regularly employed by defendant as a barmaid, was observed drinking at the expense of several customers. Finally, one of the agents asked Tony the bartender if he could buy Anna a drink and, after readily receiving the go ahead signal from Tony, purchased for her a glass of whiskey. During the time the agents were in the premises Anna "conversed" with most of the customers, using language that can be characterized only as foul and indecent. Tony's language was substantially of the same character.

I am advised that defendant's health condition prevents her presence on the licensed premises. This is no excuse. A licensee is responsible for the manner in which the premises are conducted, despite his or her absence. The defendant has no prior adjudicated record. The minimum suspension for hostesses is twenty days. Re Grether, Bulletin 571, Item 2. Considering that the type of language was more filthy, foul and indecent than otherwise lewd, and that Anna no longer is in the employ of defendant, I shall add ten days for charge (1), making a total suspension of thirty days. Remitting five days because of the plea will leave a net suspension of twenty-five days.

Accordingly, it is, on this 12th day of January, 1949,

ORDERED that Plenary Retail Consumption License C-18, issued by the Board of Commissioners of the City of Hoboken to Christine Arno, t/a Garden Rest, for premises 202 Hudson Street, Hoboken, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. January 24, 1949, and terminating at 2:00 a.m. February 18, 1949.

ERWIN B. HOCK

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JOHN J. WEINMANN)
T/a DOWN TOWN CLUB)
24 Passaic Street)
Trenton, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-284 issued by the Board of Commissioners of the City of Trenton.)
-----)

John J. Weinmann, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he possessed an illicit alcoholic beverage, namely, one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

On December 9, 1948, an ABC agent tested the contents of 44 opened bottles of alcoholic beverages on defendant's premises. He seized the bottle mentioned in the charge when the contents thereof did not appear to be genuine as labeled. Subsequent analysis disclosed that the contents of the seized bottle were substantially lower in acids and higher in solids than the contents of a genuine sample of the same product. Defendant denied any knowledge as to the manner in which the violation occurred. Nevertheless he is responsible for any "refills" found in his stock of liquor.

Defendant has no prior record. The usual fifteen-day suspension, less five for the plea, leaving a net suspension of ten days, will be imposed. See Bulletin 820, Item 1.

Accordingly, it is, on this 18th day of January, 1949,

ORDERED that Plenary Retail Consumption License C-284, issued by the Board of Commissioners of the City of Trenton to John J. Weinmann, t/a Down Town Club, for premises 24 Passaic Street, Trenton, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. January 25, 1949, and terminating at 2:00 a.m. February 4, 1949.

ERWIN B. HOCK
Director.

3. CANCELLATION PROCEEDINGS - ORDER HERETOFORE ENTERED SET ASIDE TO PERMIT ISSUING AUTHORITY TO CONSIDER APPLICATION FILED FOR TRANSFER OF LICENSE.

In the Matter of Cancellation)
 Proceedings against)
 STELLA PAPPAS)
 T/a OUR HOMESTEAD)
 Route 23, Mountain View)
 Wayne Township)
 P.O. R.F.D. 1, Little Falls, N.J.,)
 Holder of Plenary Retail Consump-)
 tion License C-42 issued by the)
 Wayne Township Committee.)

ON PETITION
O R D E R

Joseph P. Winberry, Esq., Attorney for Frank J. Rafter, Jr., and William A. Murray, Petitioners.

BY THE DIRECTOR:

On January 12, 1949, I entered an order herein canceling the license issued to Stella Pappas because she was a non-resident of New Jersey and it thus appeared that the license had been improvidently issued to a non-resident in violation of R. S. 33:1-25.

The petition herein recites that on January 11, 1949, the petitioners filed with the Township Clerk of Wayne Township an application for a transfer of License C-42 from Stella Pappas to petitioners, which application contained a consent, signed by Stella Pappas, to the transfer of said license. The petition further recites that on the same day petitioners caused an advertisement of their notice of intention to apply for said transfer to be inserted in the "North Jersey Times". The petition further recites that on January 14, 1949, they were informed by the Township Clerk that the license had been cancelled by the Director of Alcoholic Beverage Control, and that this information came as a complete surprise to them. The petition is accompanied by a letter from the Township Clerk stating that "there is no doubt in my mind that the governing body of Wayne Township would approve their application for a transfer of Retail Consumption License No. C-42 from Stella Pappas".

If the municipal issuing authority had actually transferred the license to petitioners prior to January 12, 1949, I would have dismissed the rule to show cause herein. Cf. Re Morrison, Bulletin 652, Item 1. From the evidence submitted I am satisfied that petitioners acted in good faith and without any knowledge of the pending cancellation proceedings. Under all the circumstances, I shall set aside the order previously entered herein so that the Township Committee may consider, on its merits, the pending application filed by petitioners for the transfer of the license. Cf. Re Pearse, Bulletin 202, Item 3; Re Bailey, Bulletin 69, Item 1.

Accordingly, it is, on this 19th day of January, 1949,

ORDERED that the order heretofore entered herein on January 12, 1949 be and the same is hereby set aside, and the order to show cause be and the same is hereby dismissed, solely, however, for the purpose set forth above.

ERWIN B. HOCK
Director.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

NICHOLAS SCANDONE)
10 Tilt Street)
Haledon, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-2, issued by the Borough Council of the Borough of Haledon.)

Nicholas Scandone, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that he sold alcoholic beverages below the minimum consumer price, on two occasions, both in violation of Rule 6 of State Regulations No. 30.

On August 31, 1948, defendant sold to a regular customer six 4/5 quart bottles, one each of six different whiskeys, i.e., Corby's Reserve Blended Whiskey, Gallagher & Burton's Black Label Blended Whiskey, Golden Wedding Blended Whiskey, Imperial Blended Whiskey, Kinsey Silver Label Blended Whiskey and PM DeLuxe Blended Whiskey. Again, on September 3, 1948, he sold to the same customer a case of Mount Vernon Whiskey and three 4/5 quart bottles of Corby's Reserve Blended Whiskey and three 4/5 quart bottles of Imperial Blended Whiskey. In both these sales defendant gave the customer a 5% discount on the total cost of all the whiskey. Permissive discounts on case lots, when allowable within the Fair Trade structure, are only on full cases, or multiples thereof, of that one brand. Cf. Re Schiffman, Bulletin 517, Item 7; Re City Hall Delicatessen, Bulletin 277, Item 5.

Defendant has no prior adjudicated record. I shall suspend the license for the minimum period of ten days. Remitting five days because of the plea will leave a net suspension of five days. Cf. Re Markowitz, Bulletin 792, Item 9.

Accordingly, it is, on this 19th day of January, 1949,

ORDERED that Plenary Retail Distribution License D-2, issued by the Borough Council of the Borough of Haledon to Nicholas Scandone, for premises 10 Tilt Street, Haledon, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. January 31, 1949, and terminating at 9:00 a.m. February 5, 1949.

ERWIN B. HOCK
Director.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 JEANETTE BELK
 T/a BELK'S LIQUOR STORE
 Berlin-Haddonfield Road, Ashland Terrace
 Voorhees Township
 P. O. Haddonfield, N. J.,

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Voorhees.

 Jeanette Belk, Defendant-licensee, Pro Se.
 William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to a charge alleging that she sold alcoholic beverages below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On December 23, 1948, the licensee, through her agent, a clerk employed by her on her said licensed premises, sold to an ABC agent a case of twelve 4/5 quart bottles of Carstairs White Seal Blended Whiskey for the sum of \$38.50. The effective minimum consumer price, allowing for a 5% permissible discount on case lots, was \$40.93. Bulletin No. 814.

Defendant has no previous adjudicated record. I shall suspend her license for the minimum period for first violations of the Fair Trade Law, ten days. Re Markowitz, Bulletin 792, Item 9. Remitting five days thereof because of the plea, will leave a net suspension of five days.

Accordingly, it is, on this 19th day of January, 1949,

ORDERED that Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Voorhees to Jeanette Belk, t/a Belk's Liquor Store, Berlin-Haddonfield Road, Ashland Terrace, Voorhees Township, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. January 31, 1949, and terminating at 9:00 a.m. February 5, 1949.

ERWIN B. HOCK
 Director.

6. APPELLATE DECISIONS - MOONEY v. KEARNY.

JOHN A. MOONEY, JR., trading as)
 JACK'S BAR AND GRILL,)

Appellant,)

-vs-)

MAYOR AND COUNCIL OF THE TOWN OF)
 KEARNY,)

Respondent)

ON APPEAL
 CONCLUSIONS AND ORDER

 Harold Simandl, Esq., Attorney for Appellant.
 Louis J. Miller, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it denied appellant's application for transfer of his plenary retail consumption license from 96 Kearny Avenue to 467 Kearny Avenue, Town of Kearny.

The Town of Kearny contains four wards and two councilmen are elected from each ward. The Mayor is elected by the voters of the town and has the right to vote in any matter upon which the vote of the councilmen is evenly divided. When appellant's application was considered, four councilmen voted to deny the application, four councilmen voted to grant the application, and the Mayor cast the deciding vote whereby the application was denied. Hence this appeal.

Appellant seeks to transfer his license to a store which is located approximately seven blocks north of his present location. The evidence shows that Kearny Avenue is the principal business street of the town. The southerly portion of Kearny Avenue, where appellant's premises are presently located, is a highly developed business section and numerous liquor licenses have been issued for premises on that portion of Kearny Avenue. The evidence further shows, however, that no liquor licenses are presently in existence for premises on the northerly portion of Kearny Avenue between Quincy Avenue and Belleville Turnpike, a distance of approximately one and one-half miles. The premises to which appellant seeks to transfer his license are located on Kearny Avenue a short distance north of Quincy Avenue. This northerly section of Kearny Avenue is devoted partly to business purposes and is partly residential in character. It also appears that a memorial park is located directly opposite 467 Kearny Avenue and that in the northern part of the town there are approximately ten churches within a radius of six blocks of the premises known as 467 Kearny Avenue.

The four councilmen who voted in favor of the transfer represent the first and second wards which are located in the southern part of the town. The four councilmen who voted to deny the transfer represent the third and fourth wards which are located in the northern portion of the town and which are highly residential in character except for such businesses as may exist on the northerly portion of Kearny Avenue. A petition containing the names of numerous residents who had no objection to the transfer, and a petition containing the names of numerous residents who did object to the transfer, were presented to the Town Council. Councilman MacPhail, representing the third ward, and Mayor Gilzean testified that, in addition to the petitions, they received numerous letters and telephone calls opposing the transfer of the license.

The councilmen from the first and second wards testified that they felt that they were bound by the decisions rendered by the Commissioner in Conn v. Kearny, Bulletin 173, Item 1, and Morgan v. Kearny, Bulletin 398, Item 7. However, both of these cases concern transfers of

licenses within or to the highly developed business section of Kearny Avenue. In the present case appellant is seeking to transfer his license to a section of Kearny Avenue upon which no licenses have been issued for a period of at least thirteen years. I cannot say that respondent abused its discretion in refusing to open up the northern portion of Kearny Avenue to licensed premises merely because it appears that there are some premises devoted to business on this portion of Kearny Avenue. It is not alleged that the councilmen or the Mayor who voted to deny the transfer were improperly motivated, and it appears from the evidence that they believed it would be to the best interest of the Town of Kearny to keep taverns out of this particular section of the town. Under all the circumstances, I conclude that appellant has failed to sustain the burden of proof in showing that the action of respondent was arbitrary or unreasonable. Cf. Kemo v. Trenton, Bulletin 822, Item 13. Hence, the action of respondent will be affirmed.

Accordingly, it is, on this 19th day of January, 1949,

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

ERWIN B. HOCK
Director.

- 7. DISCIPLINARY PROCEEDINGS - PERMITTING PREMISES TO BE USED IN CONNECTION WITH SOLICITATION FOR PROSTITUTION - PERMITTING LEWDNESS AND IMMORAL ACTIVITY ON LICENSED PREMISES - PERMITTING LICENSED PREMISES TO BE CONDUCTED AS A NUISANCE - LICENSEE RESPONSIBLE FOR ACTIONS OF ITS BARTENDER - RENEWAL LICENSE TO BE SUSPENDED FOR BALANCE OF ITS TERM.

In the Matter of Disciplinary Proceedings against
 COSFAIR CORPORATION
 11 Park Avenue
 Paterson 1, N. J.,
 Holder of Plenary Retail Consumption License C-25 for the 1947-48 licensing year, issued by the Board of Alcoholic Beverage Control of the City of Paterson, and extended pending appeal.

CONCLUSIONS AND ORDER

Reuben H. Reiffin, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleads not guilty to charges alleging that (1) on May 4 and 5, 1948, and on divers days prior thereto, it allowed, permitted and suffered its licensed premises to be used in furtherance and aid of, and in connection with, an illegal activity or enterprise, viz., solicitation for prostitution, in violation of Rule 4 of State Regulations No. 20; (2) on the aforesaid dates it allowed, permitted and suffered lewdness and immoral activities, viz., solicitation for prostitution, in and upon its licensed premises, in violation of Rule 5 of State Regulations No. 20; and (3) on the aforesaid dates it allowed, permitted and suffered its licensed place of business to be conducted in such manner as to become a nuisance, in violation of Rule 5 of State Regulations No. 20.

An ABC agent testified that on May 4, 1948 he visited the licensed premises of defendant and, during the course of a conversation with Vincent Labriola, the bartender then in charge of said premises,

inquired of him if there "were any women around to be had". The agent testified that the bartender, pointing to a girl named Vicky, said that "She's all right" and subsequently introduced the agent to the girl. The agent alleges that the bartender was near enough to hear the subsequent conversation between himself and the girl, during the course of which they made plans to go to a hotel for the purpose of engaging in sexual intercourse. While it is immaterial to this case, the events which occurred at the hotel are set forth in Re Bell Hotel, Inc. (decided herewith).

The same ABC agent testified that on the following day he and another agent met Vicky and another girl named Terry in defendant's premises. The first agent testified that he inquired of the bartender whether he had heard what had transpired on the previous day and quoted the bartender as saying, "Yes, I heard the story *** Vicky told me the whole story." This agent testified that, immediately before leaving the premises, he asked the bartender if he had any contraceptives but was told by the bartender that he had no more.

The testimony of the ABC agent was substantially corroborated by Vicky and Terry, both of whom admitted that on May 5, 1948 they made arrangements in defendant's premises to go with the agents to the hotel for the purpose of engaging in sexual intercourse.

On behalf of defendant, Dominick Cosman and Eleanor Cosman, his wife, testified that they are, respectively, the president and vice-president of defendant corporation. Dominick testified that he had hired Vincent Labriola as a day bartender approximately two weeks prior to May 4, 1948, and that he discharged the bartender after the events hereinabove related. Dominick and his wife testified that they are the sole persons interested in the corporation, and that neither of them took any part in the illegal activities alleged to have been permitted by the bartender. Dominick was not present on either occasion, and Eleanor, who was probably present on May 4, apparently had no knowledge of the conversation between the agents and the girls. Dominick and Eleanor deny that they knew that either of the girls was a prostitute. Vicky testified that Dominick had introduced her on prior occasions to male patrons for immoral purposes. Terry, on the other hand, stated that on prior visits to the licensed premises she had never been introduced to men. Dominick Cosman testified that "I never introduced any man to any woman all the time I was in business." There is no evidence that Dominick or Eleanor Cosman participated directly or indirectly in the alleged illegal activities occurring on the licensed premises or that they overheard any of the conversations that took place as aforesaid. If there had been any such evidence, I would have no hesitancy in revoking the license outright in this proceeding. Cf. Re Grassot and Ovecka, Bulletin 757, Item 1; Re Kaiman, Bulletin 791, Item 4; Re Flax, Bulletin 791, Item 5; Pierce v. Hamilton, Bulletin 797, Item 1.

Despite the fact that neither of the officers of defendant corporation participated in the events which occurred on the licensed premises, nevertheless defendant is responsible for the acts of its agent (the bartender). After considering all the evidence, I find defendant guilty of all charges.

Under all the circumstances of this case, however, and considering the fact that defendant has no prior adjudicated record, I shall suspend the license for the balance of its term. The license held by defendant when these proceedings were instituted has expired. Hence, any renewal license issued to defendant for the 1948-49 licensing year pursuant to order entered today in the appeal of Cosfair Corp. v. Paterson (decided herewith) will be so suspended. See Rule 3 of State Regulations No. 16.

Accordingly, it is, on this 24th day of January, 1949,

ORDERED that the renewal license for the 1948-49 licensing year, when issued by the Board of Alcoholic Beverage Control of the City of Paterson to Cosfair Corporation, for premises 11 Park Avenue, Paterson, be and the same is hereby suspended for the balance of its term, namely, until midnight June 30, 1949, effective at 3:00 a.m. January 31, 1949.

ERWIN B. HOCK
Director.

NOTE: The delay in deciding the above case was due to the fact that the Court Reporter, because of prolonged illness, was unable, until recently, to complete the transcript of testimony.

ERWIN B. HOCK
Director.

8. APPELLATE DECISIONS - COSFAIR CORPORATION v. PATERSON.

COSFAIR CORPORATION,)
Appellant,)
-vs-)
BOARD OF ALCOHOLIC BEVERAGE CONTROL)
OF THE CITY OF PATERSON,)
Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
Reuben H. Reiffin, Esq., Attorney for Appellant.
George Surosky, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from denial of appellant's application for renewal for the current fiscal year of its 1947-48 plenary retail consumption license for premises 11 Park Avenue, Paterson.

Respondent denied the application on June 30, 1948 because disciplinary proceedings (decided herewith) were then pending and undetermined.

A licensee's record of previous adjudicated violations may be considered in connection with an application for renewal of license and, in a proper case, justifies denial of renewal. Zicherman v. Driscoll, 133 N.J.L. 586. However, the mere fact that disciplinary proceedings are pending and undetermined is not in and of itself sufficient cause for denial of renewal. Re Reichenstein, Bulletin 325, Item 11.

The action of respondent in denying renewal will be reversed, and the license applied for ordered to be issued, subject, however, to the penalty imposed in disciplinary proceedings against the licensee (decided herewith).

Accordingly, it is, on this 24th day of January, 1949,

ORDERED that the action of respondent in denying renewal of the license be and the same is hereby reversed, and respondent is directed to issue the license applied for, subject to suspension of the said license for the balance of its term, namely, until midnight June 30, 1949; and it is further

ORDERED that the order heretofore entered herein on July 2, 1948, extending the term of the license held by appellant for the 1947-48 fiscal year, be and the same is hereby vacated, effective at 3:00 a.m. January 31, 1949.

ERWIN B. HOCK
Director.

9. DISCIPLINARY PROCEEDINGS - PERMITTING LICENSED PREMISES TO BE USED FOR PROSTITUTION - PERMITTING LEWDNESS AND IMMORAL ACTIVITY ON LICENSED PREMISES - PERMITTING SALE OF CONTRACEPTIVES ON LICENSED PREMISES - PERMITTING LICENSED PREMISES TO BE CONDUCTED AS A NUISANCE - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

BELL HOTEL, INC.)
217-219 Straight Street)
Paterson 1, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-147 for the 1947-48 licensing year, issued by the Board of Alcoholic Beverage Control of the City of Paterson, and extended pending appeal.)

-----)
Theodore D. Rosenberg, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded not guilty to the following charges:

"1. On May 4th and 5th, 1948, and on divers days prior thereto, you allowed, permitted and suffered your licensed premises and your licensed business to be used in furtherance and aid of and in connection with an illegal activity or enterprise, viz., prostitution; in violation of Rule 4 of State Regulations No. 20.

"2. On the dates aforesaid, you allowed, permitted and suffered lewdness and immoral activity, viz., the maintenance of a place of assignation in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20.

"3. On May 5th, 1948, and on divers days prior thereto, you possessed, allowed, permitted and suffered, upon and about your licensed premises, the sale and distribution of contraceptives or contraceptive devices; in violation of Rule 9 of State Regulations No. 20.

"4. On the dates aforesaid you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance; in violation of Rule 5 of State Regulations No. 20."

An ABC investigator testified that on May 4, 1948, at about 7:00 p.m., he and two female companions (Vincenza --- and Mary ---, also known as Vicky and Terry, respectively) visited defendant's licensed premises. The investigator further testified that he and his female companions occupied a booth and, upon being approached by a man, subsequently identified as Louis Lottenberg, president of defendant corporate-licensee, ordered three short glasses of beer. The ABC agent thereupon testified, "Mr. Lottenberg brought the three short beers; Vincenza P--- moved the money, \$2.80, towards Mr. Lottenberg, and said to him, 'that's right, isn't it!'; he looked at the \$2.80 and picked it up and put it in his pocket. He then advised us that we should go upstairs and pick out whatever room we wanted and use it". Mr. Lottenberg further suggested that they push the buzzerto indicate what room they were in. The ABC agent testified that, after ordering three more "beers", he and Vicky went upstairs. They had not been required to sign a register and they had no baggage. Upon returning downstairs some time later, the investigator testified that he told

Louis Lottenberg he had been physically incapable of having intercourse. The investigator testified that he discussed the matter of obtaining a room and also contraceptives on the following day and, being advised by Mr. Lottenberg that he could obtain same, he and his two girl companions left the licensed premises.

The same ABC investigator testified that the following day he returned to defendant's premises in the company of the two girls who had been with him the day before and also another ABC agent. A bartender, later identified as John Bergen, served drinks to them and, in response to Vicky's request for two rooms, accompanied the two couples upstairs after they had signed a register. Vicky paid John Bergen \$5.00 for the rooms and then the investigators purchased two packages of contraceptives from Bergen.

Vicky and Mary (also known as Terry) and the other ABC investigator testified in corroboration of the facts as related by the one ABC investigator. An ABC inspector testified that, on entering the rooms in question, one of the girls was nude and the other was clad in a slip and shoes. He also related that he found numerous boxes of contraceptives behind the bar in the barroom.

Louis Lottenberg, president of defendant corporate-licensee, was not produced as a witness to testify at the instant hearing.

John Bergen admitted the sale of the contraceptives, as well as the renting of the rooms to the ABC agents and their girl companions.

From the evidence before me, I am satisfied that not only did Louis Lottenberg, president of the corporate-licensee, have knowledge of the immoral activities conducted on the licensed premises but actually encouraged and permitted such conduct. I find defendant guilty of charges (1), (2) and (3).

As to charge (4): The outrageous course of conduct of the licensed place of business clearly constitutes a nuisance. In State v. Berman, 120 N.J.L. 381, Chief Justice Brogan stated:

"It has been repeatedly held that any place of public resort is a public nuisance where illegal practices are habitually carried on or when such place becomes the habitual resort of thieves, drunkards, prostitutes, &c., who gather there for an unlawful purpose or make it a rendezvous where plans may be concocted for depredations upon society and disturbing either its peace or its rights of property."

See also State v. Williams, 30 N.J.L. 102.

A licensee who deliberately encourages such practices and conditions as existed in the instant case is not one to be associated with the alcoholic beverage industry. I shall, therefore, revoke the defendant's license, effective immediately.

Annie Walters, owner of the building 217-219 Straight Street, Paterson, wherein the licensed premises is located, did not enter an appearance at the within hearing, pursuant to an order to show cause why the licensed premises should not be declared ineligible to become the subject of further license for a period of two years. There is nothing in the record, however, to indicate culpability or knowledge on the part of the owner with respect to the unlawful conduct occurring at the tavern and, therefore, no order for disqualification of the premises will be entered. Cf. Petrulio v. Caldwell, Bulletin 309, Item 8, and Re Talmadge, Bulletin 315, Item 11.

Accordingly, it is, on this 24th day of January, 1949,

ORDERED that Plenary Retail Consumption License C-147, issued for the 1947-48 licensing year by the Board of Alcoholic Beverage Control of the City of Paterson to Bell Hotel, Inc., for premises 217-219 Straight Street, Paterson, and extended for the present licensing year pending appeal, be and the same is hereby revoked, effective immediately.

ERWIN B. HOCK
Director.

NOTE: The delay in deciding the above case was due to the fact that the Court Reporter, because of prolonged illness, was unable, until recently, to complete the transcript of testimony.

ERWIN B. HOCK
Director.

10. APPELLATE DECISIONS - BELL HOTEL, INC. v. PATERSON.

BELL HOTEL, INC.,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
BOARD OF ALCOHOLIC BEVERAGE)	
CONTROL OF THE CITY OF PATERSON,)	
)	
Respondent.)	

Theodore D. Rosenberg, Esq., Attorney for Appellant.
George Surosky, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the denial of appellant's application for renewal of its 1947-48 plenary retail consumption license for premises 217-219 Straight Street, City of Paterson.

Respondent denied the application on June 30, 1948 because disciplinary proceedings (decided herewith) were then pending and undetermined.

A licensee's record of previous adjudicated violations may be considered in connection with an application for renewal of license and in a proper case justifies denial of renewal. Zicherman v. Driscoll, 133 N.J.L. 586. However, the mere fact that disciplinary proceedings are pending and undetermined is not, in and of itself, sufficient cause for denial of renewal. Re Reichenstein, Bulletin 325, Item 11.

The action of respondent denying renewal would, for the reasons aforestated, ordinarily be reversed. However, where the former license is revoked as a result of disciplinary proceedings, said license could not be renewed. R. S. 33:1-31 provides in part as follows:

"A revocation shall render the licensee ineligible to hold or receive any other license of any kind or class under this chapter, for a period of two years from the effective date (of such revocation) ***."

Under all the circumstances, the appeal will be dismissed.

Accordingly, it is, on this 24th day of January, 1949,

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the Order heretofore entered herein on July 1, 1948, extending the term of the license held by appellant for the year 1947-48, be and the same is hereby vacated, effective immediately.

ERWIN B. HOCK
Director.

11. APPELLATE DECISIONS - STIEGLER v. MONTVILLE TOWNSHIP AND KUFTA.
FOGELSON v. MONTVILLE TOWNSHIP AND KUFTA.

HAROLD R. STIEGLER, et al.,)
Appellants,)

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF MONTVILLE, and JOHN A. KUFTA,)
Respondents.)

-----)
SAMUEL FOGELSON,)
Appellant,)

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF MONTVILLE, and JOHN A. KUFTA,)
Respondents.)

-----)
SAMUEL FOGELSON, (Case No. 1))
Appellant,)

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF MONTVILLE, and JOHN A. KUFTA,)
Respondents.)

-----)
SAMUEL FOGELSON, (Case No. 2))
Appellant,)

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF MONTVILLE, and JOHN A. KUFTA,)
Respondents.)

-----)
Scerbo, Porzio & Kennelly, Esqs., by Ralph Porzio, Esq., Attorneys)
for Appellants, Harold R. Stiegler et al.)

Kasen, Schnitzer & Kasen, Esqs., by Morris M. Schnitzer, Esq.,)
Attorneys for Appellant, Samuel Fogelson.)

David Young, 3rd, Esq., Attorney for Respondents Township of Montville)
and John A. Kufta.)

BY THE DIRECTOR:

The first appeal is from the issuance of a 1947-1948 plenary retail distribution license to the respondent Kufta. The other three appeals are from the issuance of said license, the renewal thereof, and the denial of the appellant Fogelson's similar applications. The issues being so similar and so interwoven, the cases were heard together and, for the same reason, will be decided together herein.

ON APPEAL

CONCLUSIONS AND ORDERS

On May 15, 1948, the respondent Township Committee, on proper application, issued a plenary retail distribution license to the respondent Kufta, for the license period ending June 30, 1948, to cover premises situated in the unincorporated village of Montville, a part of Montville Township adjacent to the Town of Boonton. Three of the taverns in the township are located within three-quarters of a mile of said premises.

On June 8, 1948, the said Township Committee denied the application by the appellant Fogelson for a similar license for the license period ending June 30, 1948, for premises in the unincorporated village of Towaco, another part of Montville Township, located near the Borough of Lincoln Park. The nearest licensed premises is about three-quarters of a mile distant and there are no other licensed premises within approximately two miles of the premises sought to be licensed.

On June 24, 1948, the Township Committee granted a 1948-1949 renewal of John A. Kufta's plenary retail distribution license, and it denied the application of the appellant Fogelson for a similar license for said license period for the premises in Towaco.

The Township of Montville, with a 1940 Federal census population of 3,207, has an area of some sixteen square miles, sixteen plenary retail consumption licenses and one (Kufta's) plenary retail distribution license. Prior to the issuance of the Kufta license, no plenary retail distribution license had been issued in the township during the preceding ten years.

The State Limitation Law, Chapter 94, P. L. 1947, limits retail consumption licenses to one for each 1,000 of a municipality's population, according to the last Federal census, and one plenary retail distribution license for each 3,000 such population, renewals excepted.

In July 1947, the appellant Fogelson's application for a 1947-1948 plenary retail distribution license was denied by the respondent Township Committee. Upon an appeal, decided on October 20, 1947, I affirmed the action of the Township Committee for the reason that there was not sufficient proof to warrant a finding that the Committee had abused its discretion or that its determination was so arbitrary and unreasonable that it could not be permitted to stand. Re Fogelson v. Montville, Bulletin 780, Item 10. The stenographic transcript of that appeal hearing was, by stipulation, admitted in evidence in the present proceedings. On the former appeal, one member of the Township Committee testified: "And I voted against it (the Fogelson application) for the simple reason that I think for a population that we have in Montville Township of approximately 32 to 35 hundred people, 15 or 16 licenses are sufficient. I grant you that perhaps this isn't a retail consumption license; it is a package license. I feel as though it is just one more that we have to contend with, and I feel as though it should not be granted. I feel as though if I want a bottle of liquor I know where I can go. I can go into the taverns in the township. I have nothing to hide. I am not afraid to go there to get it, and I don't think anyone else should. For that reason I think we have enough. We can go to those particular establishments and get our liquor regardless of what kind we want." In response to a question by the Hearer as follows: "You mean in having considered the fact that you have 16 licenses in the municipality weighed against the fact that you have no package stores you still felt there was no necessity for any additional license of any kind in the municipality?", the Committeeman stated: "That's correct."

A second Committeeman testified at the former appeal from the denial of Fogelson's application: "I feel we have plenty of licenses in the Township. We have rejected other licenses in that neighborhood

and we have rejected another license where they wanted a license in a different location, for the simple reason that we have 16 there and we feel it is enough."

This testimony of the two Township Committeemen, who voted against the Fogelson application for a 1947-1948 license, was the crux of the testimony leading to my affirmance of the Committee's action in the former appeal.

The same two Committeemen (hereinafter designated Committeeman No. 1 and Committeeman No. 2, respectively) who voted in favor of the Kufra application, testified at the instant hearing as follows: Committeeman No. 1 testified that he voted "Yes" because of his belief that there was a public need for the Kufra license "due to the fact that we do not have a distribution license in the township. And from what I understand this license is a distribution license whereby a man is going to be permitted to deliver the goods. And I don't believe under the license that is held by our tavern owners today that they can do such a thing, to deliver a bottle of goods or a case of goods to any particular individual's home." The Committeeman's stated "understanding" was, of course, a mistake of law. A retail consumption licensee, complying with regulations, may deliver. Committeeman No. 2 testified, as to the Kufra application: "And there was no objection. There were four tavern owners that were against it there.... And there was no other objection to it.... There was other people there and they didn't object to it. For that reason I voted for the license."

(The third Committeeman voted favorably on the first Fogelson application and on the Kufra applications.)

The Kufra license was issued ten months after the first Fogelson application was denied and eight months after the hearing on appeal therein, yet the factual situation upon which the respondent Township Committee based its denial of the Fogelson application in 1947 was essentially the same in May, 1948 when it issued the Kufra license. The township's area continued to be some sixteen square miles; sixteen plenary retail consumption licenses were still outstanding there; the population was approximately 3,200; and the three Committeemen were the same three individuals.

Testimony was adduced on behalf of the respondent Township Committee, at the hearing on the instant appeal, with respect to differences between the community of Montville wherein the Kufra license is located and the community of Towaco wherein the Fogelson license was sought. Similarly, testimony designed to indicate differences in the local sentiment, for and against the licenses in the two communities, was introduced. A thorough examination of the record reveals, however, that this line of testimony is tenuous indeed.

A choice between applicants will not be upset as arbitrary and discriminatory unless unreasonable (Wenger v. Ridgewood, Bulletin 110, Item 3; Giberti v. Franklin, Bulletin 150, Item 3; Kristen v. Pequannock, Bulletin 169, Item 1), but I find from the full record before me that the Township Committee's action in granting the Kufra license, and renewal thereof, was not in proper exercise of its discretionary authority but, instead, was arbitrary and unreasonable. Its action will, therefore, be reversed. (Cf. Van Schoick v. Howell, Bulletin 150, Item 7). It must be stated here, however, that there is no evidence showing the Township Committee's action to have been based upon or influenced by improper motives.

For the reasons set forth herein, which are substantially the same as those set forth in Fogelson v. Montville, supra, the Township

Committee's denial of the appellant Fogelson's applications must be and is affirmed.

Accordingly, it is, on this 24th day of January, 1949,

ORDERED that the appeals from the respondent Township Committee's action with respect to the appellant Fogelson's applications be and the same are hereby dismissed; and it is

FURTHER ORDERED, that the action of the respondent Township Committee in granting the plenary retail distribution license applications of John A. Kufte be and the same is hereby reversed; and it is

FURTHER ORDERED that Plenary Retail Distribution License D-1 issued to John A. Kufte for premises on Main Road, Route 32, Montville Township, be and the same is hereby cancelled, set aside and declared null and void and the respondent John A. Kufte is hereby directed forthwith to cease all alcoholic beverage activity under the said license heretofore issued to him.

ERWIN B. HOCK
Director.

12. STATE LICENSES -- NEW APPLICATIONS FILED.

Clark F. Hahn
405 Thomas St.

Phillipsburg, N. J.

Application for Transportation License filed January 21, 1949.

Anthony DeBeradinis
T/a Fine Motor Transportation
501 West 40th St.
New York, New York.

Application for Transportation License filed January 24, 1949.

Carillon Importers, Ltd.
610 Fifth Ave.
New York, New York.

Application for Plenary Wholesale License filed January 25, 1949.

Gennaro D'Annunzio
256 Chester Ave.
Delran Township, N. J.

Application filed January 25, 1949 for transfer of State Beverage Distributor's License SBD-18 from George J. Carucci, Pavilion Ave. & Polk Street, Riverside, N. J.

Erwin B. Hock
Director.