

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

BULLETIN 703

MARCH 22, 1946.

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DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C.

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

BULLETIN 703

MARCH 22, 1946.

1. APPELLATE DECISIONS - SPECTOR v. ROSELLE.

GEORGE SPECTOR,)
Appellant,)
-vs-)
MAYOR AND COUNCIL OF THE)
BOROUGH OF ROSELLE,)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Earl Pollack, Esq. and Sol J. Cohen, Esq., Attorneys for Appellant.
Guy W. Gordon, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial by respondent of appellant's application for a plenary retail distribution license for premises 310 Amsterdam Avenue.

The application was denied by unanimous vote of the members of the Borough Council. Appellant urges, as reason for reversal, that there is a public need and convenience to be served by the issuance of the license for which he has applied.

The section of the Borough in which the proposed premises are located is residential in character except for a few small stores. In Gorelick and Roseman v. Roselle, Bulletin 457, Item 9, involving an appeal from the denial of a plenary retail distribution license for premises 308 Amsterdam Avenue (adjacent to the premises involved in the present appeal), it was determined that the area in question was at that time (1941) a residential neighborhood. There is no testimony indicating any change in the character of the neighborhood. It further appears that respondent denied an application for a plenary retail distribution license for 308 Amsterdam Avenue in 1940 on similar grounds.

The burden of proving that public convenience and necessity requires the granting of a license rests with the appellant. Adelphi Witte Hotel Co. v. Wildwood, Bulletin 685, Item 10. This is particularly true when the area involved is a residential neighborhood.

There are presently outstanding in the Borough of Roselle eleven plenary retail distribution licenses and eight plenary retail consumption licenses, all nineteen of which have the privilege of selling in original packages for off-premises consumption. The population of the Borough is estimated to be 14,200 as of this year, and the Borough occupies an area of 2.58 square miles.

Two petitions were presented to respondent at the hearing below; one, presented by objectors, was "signed" by 75 persons who stated that they opposed the granting of the license, the other, presented by appellant herein, was "signed" by 125 persons who stated that they had "no objection to the granting of the plenary retail distribution license." It is apparent how much weight can be afforded such petitions when it appears that in 1940 the appellant and his wife signed the petition against the granting of a license for premises at 308 Amsterdam Avenue, and in 1941 the appellant's wife and daughter signed a similar petition against the application then pending for said premises.

Aside from the petitions referred to herein, there is practically no evidence as to need or necessity. As was said in the Gorelick case, supra:

"The most that has been shown in the present case is that there exists a difference of opinion as to whether any license should be issued in the westerly section of the borough."

It is now well established that my function in these cases is not to inflict or substitute my opinion upon or for the issuing authority but, rather, to determine if reasonable grounds support its decision and, if so, to affirm whatever their view and irrespective of my own. Petti v. Bayonne, Bulletin 564, Item 7. The judgment of the issuing authority, where supported by evidence, is entitled to great weight. There is reasonable ground for the action of the municipal issuing authority in this case. Accordingly, in the absence of any evidence that the issuing authority abused its discretion, its decision must be affirmed.

Accordingly, it is, on this 18th day of March, 1946,

ORDERED, that the appeal herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - FRONT - FALSE ANSWERS IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LACK OF REQUISITE POSSESSION OF CLUB QUARTERS - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against

3rd WARD REGULAR REPUBLICAN CLUB
523 South 3rd Street
Camden, New Jersey,

CONCLUSIONS
AND ORDER

Holder of Club License CB-42, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

Meyer L. Sakin, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded not guilty to charges which may be summarized as follows:

- (1) and (2) It falsified its license application by concealing the fact that Daniel Auletto, its president, was the real and beneficial owner of its license and business conducted thereunder and that, ever since July 9, 1945, it permitted the said Daniel Auletto to exercise the privileges of its license.

- (3) It falsified its license application by affirming that it had exclusive continuous possession of club quarters for at least three years prior to submitting said application.

In addition, the defendant was directed to show cause why its license should not be cancelled for lack of the requisite three years' possession of club quarters.

Daniel Auletto, president of the defendant club, deposed in a sworn statement given to an ABC agent on October 30, 1945 that the license in question, although nominally issued to the defendant on July 9, 1945, in reality belonged to him and that he retained all of the income derived from the liquor business conducted under that license. This situation was confirmed in sworn statements obtained from four other officers of the club, to wit, its vice-president, financial secretary, recording secretary and treasurer.

In a subsequent statement dated December 5, 1945, Daniel Auletto admitted that the defendant had maintained club quarters until the year 1935, when it became inactive, and that it did not have any clubhouse thereafter until July 1945, when it occupied its present quarters.

At the hearing Daniel Auletto attempted to repudiate both statements given by him to the ABC agent. He stated that he was operating the bar business merely to secure certain moneys loaned by him to the club. This purported arrangement, even if true, nevertheless constitutes a violation of the Alcoholic Beverage Law. It is unlawful for anyone other than the licensee to have a proprietary interest in the licensed business, whether on a permanent basis, or temporarily to secure an indebtedness due to the undisclosed person from the licensee.

In any event, I am not now impressed with the testimony given at the hearing by Daniel Auletto. His subsequent attempt to change the story originally given to the agent, and corroborated by several other officers of the defendant club, does not ring true. This impression of his testimony is fortified by the flat contradiction of another portion of his testimony by an impartial witness produced by the prosecution. Daniel Auletto sought to justify the possession of club quarters for a period of three years prior to July 1945 by claiming that the defendant had exclusively occupied a store in a three-story building at 303 South Third Street, Camden, for a period of three and one-half years beginning with 1942 and that, during that time, the defendant held regular monthly meetings at those premises. The witness produced by the prosecution testified, however, that he and his family had occupied the whole building at 303 South Third Street from the fall of 1939 until March 1945, and that at no time during any of those years did the defendant have possession of the store at that address or hold any of its meetings there. This witness further testified that the prior owner of the building, from whom Daniel Auletto had stated that the club obtained permission to use the store, had been dead for approximately ten years.

I find the defendant guilty as charged and the license will be revoked outright. It is, therefore, unnecessary to direct that the license be cancelled pursuant to the order to show cause herein.

Accordingly, it is, on this 18th day of March, 1946,

ORDERED, that Club License CB-42, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to 3rd Ward Regular Republican Club, for premises 523 South 3rd Street, Camden, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

3. APPELLATE DECISIONS - RIDOLFI, T/A HUB BAR v. TRENTON.
RIDOLFI, T/A NOVEL BAR AND GRILL v. TRENTON.

BENJAMIN RIDOLFI,)
t/a HUB BAR,)
Appellant,)

-vs-

BOARD OF COMMISSIONERS OF)
THE CITY OF TRENTON,)
Respondent)

ON APPEAL

BENJAMIN RIDOLFI,)
t/a NOVEL BAR AND GRILL,)
Appellant,)

CONCLUSIONS AND ORDER

-vs-

BOARD OF COMMISSIONERS OF THE)
CITY OF TRENTON,)
Respondent)

Crawford Jamieson, Esq., Attorney for Appellant.
Louis Josephson, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

These appeals, involving the same issues, were consolidated at the hearing. Appellant appeals from the action of respondent whereby it denied his applications for renewal of his plenary retail consumption licenses for the current fiscal year. The premises involved in the first appeal are located at 886 South Broad Street and rear of 884 South Broad Street, and the premises involved in the second appeal are located at 203 East State Street and rear of stores at 10-12 South Montgomery Street, Trenton.

At the time the appeals were filed, orders were entered by the Commissioner whereby the licenses for both premises were extended until further order of the Commissioner.

The answers filed allege that the renewal of both licenses was denied because

"1. The past record, actions, and conduct of the appellant establish his unfitness to hold a plenary retail consumption license," and

"2. The conduct of the appellant after a City Commission meeting held on June 7, 1945, *** which conduct consisted in engaging in fighting in the City Hall and the use of opprobrious, vile and indecent language against a member of the respondent board in a public portion of the said City Hall, renders the appellant an unfit person to hold a Plenary Retail Consumption License."

The evidence herein and the records of the Department of Alcoholic Beverage Control show that appellant held a plenary retail consumption license in the City of Trenton during the license years 1935 and 1936; that from 1940 to February 1945 he was the owner of 97% of the stock of Hub Bar, Inc., which during that time held a plenary retail consumption license in the City of Trenton for the

South Broad Street premises; that from 1939 to February 1945 he was the owner of 97% of the stock of Novel Bar and Grill, Inc., which during that time held a plenary retail consumption license in the City of Trenton for the East State Street premises; and that in February 1945 both of the corporation licenses referred to herein were transferred by respondent to the appellant individually.

No disciplinary proceedings were ever instituted against appellant while he was a licensee. The only disciplinary proceedings instituted against either of the corporations mentioned above was that taken against the Novel Bar and Grill, Inc. in September 1944, wherein it was alleged that the licensee was guilty of selling alcoholic beverages to minors. Those charges were subsequently dismissed by the respondent.

On June 7, 1945 a hearing was held by respondent Board of Commissioners in the City Hall to consider a proposed ordinance concerning employment of bar maids on licensed premises in the City of Trenton. The hearing was attended by two or three hundred people, including appellant and many other licensees. There is nothing in the record to show that appellant misconducted himself in any way at the meeting. After the meeting adjourned, Commissioner Page was "jostled" by some persons in the elevator which was descending from the second to the first floor. It is not contended that appellant was in any way involved in this incident. Shortly after this incident occurred, a disturbance, in which appellant and Daniel Chell (another licensee) were involved, took place on the first floor of City Hall. Appellant and his witnesses testified that Daniel Chell was the aggressor and caused the disturbance. Daniel Chell and his witnesses testified that the appellant was the aggressor and that appellant kicked Chell and apparently blackened one of his eyes. In any event, the appellant was arrested on a charge of disorderly conduct. On June 13, 1945, after a hearing in the First District Police Court, appellant was found not guilty and discharged.

From the testimony it is apparent that, shortly after the disturbance occurred on the first floor of the City Hall, Daniel Chell and his brother appeared before the five members of the respondent Board to explain to Mayor Duch "what happened downstairs; what they done to Mr. Page, and the way they beat him up."

I am satisfied that the renewals were denied principally because of the incident which occurred on June 7, 1945. At the hearing herein Mayor Duch testified that, despite the other reason for denial hereafter considered, he would have voted to renew the license if that occurrence had not happened. Commissioner Rieker testified at the appellate hearing that he would have voted to renew if he had known that appellant had been found not guilty in the Police Court of disorderly conduct. Commissioner Geraghty testified at the hearing that he would not have voted to deny if he had known that appellant had not insulted, or attempted to attack, Commissioner Page. Commissioner Page testified at the hearing that he had no contact at all, either on the first or second floor, with Mr. Ridolfi on the day in question, and that no vile or indecent language had been used against him by Mr. Ridolfi. He stated, however, that he voted against renewal because of the fracas in the City Hall and appellant's record hereafter considered. Commissioner Waldron testified that he voted against renewal for the same reasons expressed by Commissioner Geraghty, and stated that the incident in the City Hall "occurred after the City Commission had been subjected to disrespect and contempt on three separate occasions at a public meeting by three separate groups, including the bar maids, which provoked a rebuke from the Mayor and a threat to remove them from the hearing."

There is no question about the legal right of an issuing authority to deny a license or a renewal thereof where it appears that the applicant is an unfit person. Hodanish v. Trenton, Bulletin 121, Item 6. If the evidence herein disclosed that appellant had acted improperly at the hearing held upon the proposed ordinance, or had attacked, or insulted, Commissioner Page, I would have promptly upheld a decision that he was an unfit person to hold a liquor license. However, I find no such evidence. The dismissal of the disorderly conduct charge in the Police Court after a complete hearing tends to support appellant's testimony that Daniel Chell was the aggressor and that he (the appellant) merely defended himself at the disturbance which took place on the first floor of the City Hall. After considering all the evidence concerning the events which occurred on June 7, 1945, I conclude that it, standing alone, is not sufficient to demonstrate the unfitness of the appellant to hold a license.

Appellant has never been convicted of a crime, let alone a crime involving moral turpitude. He was arrested on June 13, 1933, July 2, 1934, March 6, 1935 and November 13, 1937, on various charges, and these arrests have been set forth by Mayor Duch as additional evidence to demonstrate appellant's unfitness to hold a license. However, since the time of appellant's last arrest, respondent has issued eight successive licenses to appellant, or to corporations in which he was a majority stockholder. In the absence of a subsequent record, these arrests should not be considered in determining appellant's unfitness. Zicherman v. Newark, Bulletin 227, Item 7. In other words, respondent having once decided to issue a license (a very important decision) and having renewed that license from year to year, should not refuse to renew in the absence of more new evidence or adverse record. The issuing authority, of course, has ample authority to "police" premises licensed for the sale of alcoholic beverages and to institute disciplinary proceedings whenever it determines that the licensee has violated the law or the regulations. If the licensee is found guilty, his license may be suspended or revoked. Thereafter, on an application for renewal, the issuing authority may reconsider the entire question of the licensee's qualifications for a license.

Appellant has recently received a suspended sentence in the Trenton Police Court for an OPA violation involving an overcharge of five cents on one of about two hundred items sold at Novel Bar and Grill. On October 5, 1943 he paid to the Collector of Internal Revenue an additional assessment and penalty on floor taxes due on distilled spirits located at the Novel Bar and Grill. As to the latter, the accountant employed by appellant testified that the original report was computed and filed on a basis of physical inventory of merchandise on the licensed premises, but that the Federal agents computed the additional tax based on the gallonage which should have appeared on a report "even though it may not be on the premises."

As aforesaid, respondent granted repeated renewals of licenses to the corporations of which appellant was the majority stockholder, and also transferred those licenses to him individually, as recently as February 1945, in spite of the various marks against his record. It must be assumed that, in taking such action, respondent did not heretofore consider the appellant unfit to be entrusted with the privileges of a liquor license. In effect, therefore, respondent put appellant to the test of his future good behavior. Those black marks may not now be dug up and used as a lever for denying renewal unless coupled with a new offense, either of the same or different kind. If coupled with such new offense for which the appellant is in any wise responsible, the previous record may be reverted to as a

link in the chain-proof of general unworthiness. Here, however, the record supports the appellant's contention that he was entirely innocent of any wrongdoing in connection with the incident of June 7, 1945. It follows, therefore, that such incident may not form the basis for present consideration of the previous record in support of a finding of unfitness. I have no alternative, under the circumstances of the record presented to me, other than to reverse the action of the respondent.

The result reached herein is not to be considered as a criticism of the action of the members of respondent Board, all of whom acted in good faith and all of whom are to be commended for their attitude in deciding to limit the issuance of licenses solely to those who have shown themselves worthy of the privilege. I agree with Commissioner Waldron's thought that the members of an issuing authority should not be subjected to disrespect and contempt by any licensee. However, after reviewing all the evidence herein, I can find nothing which would lead to the conclusion that appellant treated the Board, or any member thereof, with disrespect or contempt.

For the reasons aforesaid, I must somewhat regretfully reverse the action of respondent.

Accordingly, it is, on this 18th day of March, 1946,

ORDERED, that the action of respondent herein be and the same is hereby reversed, and respondent is directed to issue both licenses for which applications have been made.

ALFRED E. DRISCOLL
Commissioner.

4. REGULATIONS NO. 22 -- RULE 2 ABROGATED.

Rule 2 of State Regulations No. 22 reads:

"Plenary and seasonal retail consumption licensees shall, at all times, maintain on the interior of their licensed premises a sign, prominently displayed, listing the manufacturers' names or brands of the draught brewed malt alcoholic beverages sold thereon."

It appearing that the above quoted rule no longer serves a useful purpose, the rule is hereby abrogated, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

Dated: March 19, 1946.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against

MRS. WALLACE OLSZEWSKI
T/a OLSZEWSKI'S TAVERN
148 Turnpike
South River, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-30, issued by the Borough Council of the Borough of South River.

Mrs. Wallace Olszewski, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to a charge alleging that, on February 11, 1946, she possessed a 4/5 quart bottle labeled "Calvert Reserve Blended Whiskey", which bottle contained an alcoholic beverage not genuine as labeled, in violation of R.S. 33:1-50.

On February 11, 1946, an ABC agent, after preliminary tests of defendant's open stock of liquor, seized the bottle in question when tests thereof indicated that the contents of the bottle were not genuine as labeled. Subsequent analysis by the Department chemist disclosed that the bottle had been definitely refilled.

Defendant disclaims any knowledge of the fact that the bottle had been refilled. Even though personally innocent of the violation, a licensee is nonetheless strictly accountable for any "refills" found in his or her stock of liquor. Cf. Re Kurian, Bulletin 517, Item 2.

Defendant has no previous adjudicated record. Therefore, a minimum suspension of defendant's license for a period of fifteen days will be imposed. Re Rudolph, Bulletin 680, Item 1.

Accordingly, it is, on this 19th day of March, 1946,

ORDERED, that Plenary Retail Consumption License C-30, issued by the Borough Council of the Borough of South River to Mrs. Wallace Olszewski, t/a Olszewski's Tavern, for premises 148 Turnpike, South River, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. March 25, 1946, and terminating at 2:00 a.m. April 9, 1946.

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - ORDER ESTABLISHING SUSPENSION PERIOD (SEE BULLETIN 680, ITEM 6).

In the Matter of Disciplinary Proceedings against HAROLD B. GORMAN & W. HARRY STEELE, JR. T/a HOTEL WILDWOOD N/W Corner Spicer & Atlantic Aves. Wildwood, N. J.,

O R D E R

Holder of Plenary Retail Consumption License C-33, issued by the Board of Commissioners of the City of Wildwood and, upon dissolution of the partnership, continued in the sole name of HAROLD B. GORMAN.

T. Millet Hand, Esq., Attorney for the Defendant-licensee.

BY THE COMMISSIONER:

A plea of non vult was entered in this case to a charge alleging the possession of a bottle of alcoholic beverages whose contents were not genuine as labeled. Because the licensed premises were then closed, my order of October 15, 1945, suspending the license for a period of fifteen days, provided that the effective date of the suspension would be postponed until the premises were reopened for business. See Bulletin 680, Item 6.

It now appears that the defendant proposes to resume activity under the license at the end of this month.

Under the circumstances, the penalty of fifteen days will be reimposed, commencing Monday, April 1, 1946.

Accordingly, it is, on this 19th day of March, 1946,

ORDERED, that License C-33, issued by the Board of Commissioners of the City of Wildwood to Harold B. Gorman and W. Harry Steele, Jr. and, upon dissolution of the partnership, continued in the sole name of Harold B. Gorman, for premises on N/W Corner Spicer and Atlantic Avenues, Wildwood, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. April 1, 1946, and terminating at 2:00 a.m. April 16, 1946.

ALFRED E. DRISCOLL Commissioner.

7. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - FALSE ANSWERS IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.

In the Matter of Disciplinary Proceedings against FIRST WARD ITALIAN DEMOCRATE CLUB 628 North Front Street Camden, N. J.,

CONCLUSIONS AND ORDER

Holder of Club License CB-41, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

Rose & Epstein, Esqs., Attorneys for Defendant-licensee. Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges which, in substance, allege:

- (1) It falsified its license application by failing to reveal that George Raspa and Frank Tomasso received a percentage of the profits derived from the business conducted under said license.
(2) It falsified its license application by concealing the fact that said individuals had an interest in its license and business conducted thereunder, and that ever since December 3, 1944 it permitted them to exercise the privileges of its license.

Pursuant to an agreement with the defendant, George Raspa and Frank Tomasso virtually took over the operation of the club's bar and treated the receipts of the business as their own. Each month an accounting was had and, after paying the defendant an amount in accordance with the quantity of liquor sold, the two individuals retained the balance for themselves.

This type of arrangement had apparently been the practice of the defendant for many years last past. So far as can be ascertained, the violation was committed in ignorance of the fact that it was contrary to law. When the defendant was advised to this effect, the two individuals were discharged and a new bartender was appointed on a straight salary basis. Under the circumstances, the penalty, in the absence of any prior record, would have been fixed at ten days. Cf. Re Plainfield Gesang & Turn Verein, Inc., Bulletin 663, Item 4.

This is, however, the defendant's third offense. In August, 1944, it received a net penalty of ten days for sales during prohibited hours on Sunday. See Bulletin 630, Item 11. In October, 1945 its license was suspended for a period of sixty days upon its non vult plea to a similar charge and for failing to reveal the previous suspension in its license application. See Bulletin 683, Item 1. In view of this prior record, a suspension of thirty days will be imposed for the instant violations.

Accordingly, it is, on this 18th day of March, 1946,

ORDERED, that Club License CB-41, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to First Ward Italian Democate Club, for premises 628 North Front Street, Camden, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 a.m. March 25, 1946, and terminating at 2:00 a.m. April 24, 1946.

ALFRED E. DRISCOLL
Commissioner.

8. APPELLATE DECISIONS - HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION v. HOBOKEN AND LUPO - ORDER CANCELLING LICENSE STAYED PENDING APPLICATION FOR WRIT OF CERTIORARI.

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION,)
)
Appellant,)
)
-vs-)
)
BOARD OF COMMISSIONERS OF THE)
CITY OF HOBOKEN and ANGELO)
ANTHONY LUPO,)
)
Respondents)

O R D E R

BY THE COMMISSIONER:

It appearing that by Conclusions and Orders herein dated March 18, 1946, Plenary Retail Distribution License D-27 held by Angelo Anthony Lupo for premises 422 Grand Street, Hoboken, was cancelled, set aside and declared null and void, and said licensee was directed forthwith to cease all alcoholic beverage activity under the license theretofore issued to him, and

It further appearing that said licensee has declared his intention to apply to a Justice of the Supreme Court for a writ of certiorari to review the said Conclusions and Orders and to prosecute the writ, if granted, with due diligence, and

It further appearing to my satisfaction that said licensee may suffer serious harm if a stay is not granted by me pending application to a Justice of the Supreme Court for said writ;

It is, on this 19th day of March, 1946,

ORDERED, that the Order dated March 18, 1946 be and the same is hereby stayed until a further order is entered herein; on condition, however, that application for writ of certiorari shall be made to a Justice of the New Jersey Supreme Court within fifteen (15) days from the date hereof and thereafter prosecuted with diligence.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 30 - DISMISSED.

In the Matter of Disciplinary Proceedings against)

SILVER ROD STORES, INC.)
12 Journal Square)
Jersey City 6, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-122, issued by the Board of Commissioners of the City of Jersey City.)
-----)

Frank S. Farley, Esq., by Murray Fredericks, Esq., Attorney for Defendant-licensee.

Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to a charge alleging that, on August 23, 1945, it sold a 30-ounce bottle of Martini & Rossi Vermouth Regular below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

It is admitted that a clerk in defendant's store sold the 30-ounce bottle of the product in question to an ABC investigator for the sum of \$1.93. Defendant alleges that the clerk was confused because of the slight difference in size between the 30-ounce bottle (for which the minimum consumer price was \$2.19) and the "fifth" or 25.6 fluid ounce bottle (for which the minimum consumer price was \$1.93). The label of the 30-ounce bottle states, "1 pint and 14 fluid ounces." The label of the "fifth" quart bottle states, "1 pint and 9.6 fluid ounces." It is quite conceivable that the clerk, in placing the 30-ounce bottle on the shelf, mistook same for a "fifth" bottle of the same product.

It is apparent that the manufacturer of this product, in placing the vermouth in the same types of bottles and with such slight variation in size, created a situation which was very confusing to licensees and their employees. Upon my suggestion, the manufacturer of the product in question has discontinued listing of the 30-ounce bottle in the Minimum Resale Price Pamphlets or Supplements issued by this Department and such bottles are no longer being shipped into New Jersey. Hence, this confusion should not arise in the future.

I shall give defendant the benefit of the doubt as to its guilt and dismiss the charge.

Accordingly, it is, on this 19th day of March, 1946,

ORDERED, that the charge herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

10. APPELLATE DECISIONS - MARK v. NEWARK.

MICHAEL MARK,)
)
 Appellant,)
)
 -vs-)
)
 MUNICIPAL BOARD OF ALCOHOLIC)
 BEVERAGE CONTROL OF THE CITY)
 OF NEWARK,)
)
 Respondent)
 -----)

ON APPEAL
CONCLUSIONS AND ORDER

- Abraham Mankowitz, Esq., Attorney for Appellant.
- Charles Gansler, Esq., Attorney for Respondent.
- Samuel Poleshuck, Esq., Attorney for Essex County "D" Licensees Association, an Objector.
- Samuel Moskowitz, Esq., Attorney for New Jersey Liquor Stores Association, an Objector.
- Harry Cohen, Esq., Attorney for Essex County Retail Liquor Dealers Association, an Objector.

BY THE COMMISSIONER:

This is an appeal from the denial of an application to transfer appellant's plenary retail consumption license from 381 to 381-383 South Orange Avenue, Newark.

Appellant alleges that the action of respondent Board, was erroneous for the following reasons: (a) the decision was contrary to and against the weight of evidence; (b) respondent exceeded its discretionary powers; and (c) the decision was influenced by an extraneous appeal for a change in policy rather than on the merits of the appellant's application.

The evidence discloses that there are two stores located on the ground floor of a three-story brick building at the Northwest corner of Eleventh Street and South Orange Avenue, Newark. One of these stores, now occupied by appellant as his licensed premises, is situated in the corner of the building with its entrance at the intersection of Eleventh Street and South Orange Avenue. The other store which appellant seeks to include in his licensed premises by the transfer of his license faces South Orange Avenue. Appellant apparently intends to use the additional store for the sale of packaged goods. Two hallways with stairs leading to the upper stories of the building separate the two stores. Appellant and also the owner of the building testified, however, that in the rear of the building both stores have a common wall, of which a portion thereof might be removed to make an opening between the two stores of ten and one-half feet.

Respondent, in its answer, alleges that the enlarging of the premises herein, in the opinion of the members of the local issuing authority, was not in the best interests of the public, nor was there any need or convenience to be served to the people in the immediate neighborhood.

Appellant testified, in answer to a question why he made application to enlarge his licensed premises to include a package goods department, that "When I purchased the place I found there was tw thousand dollars worth of liquor I cannot use."

Appellant admitted that there are now in existence six other liquor establishments on South Orange Avenue within 500 feet of his

tavern. One of these establishments, located between Ninth and Tenth Streets, is conducted by the holder of a plenary retail distribution license.

Respondent Board members testified that each case coming before it is considered individually on its merits and that, in view of the large number of existing licensed premises, the particular neighborhood, in its judgment, did not require additional alcoholic beverage facilities.

Appellant's present license permits him to sell for on-premises consumption and, in addition, by the bottle for off-premises consumption. It is insisted, however, by appellant that "he has a right to expand his business and use additional space for the sale of package goods."

A transfer of a liquor license is not a right inherent in the license but is, rather, a privilege which the issuing authority may grant or deny in the exercise of a reasonable discretion. Where the transfer is denied on reasonable grounds, such action will be affirmed. VanSchoick v. Howell, Bulletin 120, Item 6. The burden of proof is upon the appellant to show that the action of respondent in denying the transfer was arbitrary or unreasonable. Henderson v. Gloucester, Bulletin 542, Item 2. Respondent's conclusion that existing tavern facilities are sufficient to serve the needs of those residing in the area is entitled to great weight. Cf. Samalonis v. Pennsauken, Bulletin 622, Item 2.

The motivating reason for requesting the enlargement of his licensed premises, according to appellant's testimony, is the fact that he has a large supply of alcoholic beverages on hand which is not readily saleable. This merchandise was bought from the former licensee on June 1, 1945, at the time he purchased the licensed premises. Appellant claims that, if he were permitted to enlarge the licensed premises, he would have an opportunity to display this liquor on shelves which might attract prospective purchasers. There appears to be no basis in the record for the contention that the action of the respondent Board was arbitrary or unreasonable in denying appellant's application to transfer his license so that he would have additional facilities for a package department, in the tavern now operated by him. Approval of transfers to include greater facilities in an area adequately serviced must rest on firmer grounds.

The appellant failed to satisfy the municipal issuing authority, and the facts presented herein have failed to satisfy me, that the public interest would be best served by granting him a transfer of his license to include the additional store.

Under the circumstances I conclude that the members of the Municipal Board of Alcoholic Beverage Control of the City of Newark, in the exercise of the discretion vested in them by law, were of the opinion that the best interests of the general public would be served by their refusal to approve the transfer. There is nothing presented herein to indicate that they were arbitrary or unreasonable in their judgment, or inspired by improper motives. Consequently, I shall sustain the denial and the appeal will be dismissed.

Accordingly, it is, on this 18th day of March, 1946,

ORDERED, that the appeal herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

11. APPELLATE DECISIONS - MOTT AND ROGERS v. TUCKERTON.

JOSEPH E. MOTT and)
JAMES WOODROW ROGERS,)
Appellants,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

MAYOR AND COUNCIL OF THE)
BOROUGH OF TUCKERTON,)
Respondent)
-----)

Robert A. Lederer, Esq., Attorney for Appellants.
Herman M. Gerber, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's denial of appellants' application for a plenary retail consumption license for premises on Main Street, Borough of Tuckerton.

At the outset it may be noted that both appellants are apparently qualified to hold a license, and that no question has been raised as to the personal fitness of either appellant.

At the hearing below a number of residents of the Borough appeared and objected to the issuance of the license in question. They based their objections upon the "moral issue" and upon the ground that a sufficient number of plenary retail consumption licenses had previously been issued to take care of the needs of the residents of the Borough. Four members of the respondent Council voted against the granting of the license and two members voted in favor thereof.

Appellants argue that the action of respondent is erroneous because the local ordinance limits the number of plenary retail consumption licenses to five and only three such licenses have been issued. However, in Levitt v. Township of Liberty, Bulletin 169, Item 4, it was held that:

"The fact that the full number of licenses authorized by respondent's ordinance has not been issued and that a vacancy exists does not thereby entitle appellant to a license. I have already determined that a limitation in mere numbers must give way to a municipality's determination to restrict the number of licenses in a particular area."

Under the circumstances of this case, it is incumbent upon the appellants herein to establish that respondent abused its discretionary power in denying an additional license in the area in which their premises are located. Clayton v. Brielle, Bulletin 664, Item 12.

Main Street, Tuckerton, is part of a highway leading from New York City to Atlantic City. Lake Pohatcong extends in a northerly direction from the highway and divides the Borough into two sections, locally known as West Tuckerton and East Tuckerton. Appellants' premises are in the West Tuckerton section. Two plenary retail consumption licenses are in existence for premises in close proximity to each other on the same highway in the East Tuckerton section of the Borough. These two premises are located about one-quarter of a mile from appellants' premises.

The population of the Borough is approximately 1,350; two thirds of its population reside in the East Tuckerton section, and one-third of its population resides in the West Tuckerton section. As already indicated, two consumption licenses have been issued in the former section. A third plenary retail consumption license has been issued for premises west of Lake Pohatcong and about one-quarter of a mile south of appellants' premises. The existing licenses appear to be sufficient to take care of the needs of the residents of both sections of the Borough. The testimony produced by appellants, that some residents of West Tuckerton must now walk more than one-quarter of a mile to licensed premises, is not sufficient to lead me to conclude otherwise. It is also apparent that one consumption license for each 450 inhabitants should be sufficient, and respondent would be well advised to reduce the permissible number of plenary retail consumption licenses to three in order to avoid further difficulties. Houtkin v. Lakewood, Bulletin 646, Item 1.

It is now well established that my function in these cases is not to inflict or substitute my opinion upon or for the issuing authority but, rather, to determine if reasonable grounds support its decision and, if so, to affirm whatever their view and irrespective of my own. Petti v. Bayonne, Bulletin 564, Item 7. The judgment of the issuing authority, where supported by evidence, is entitled to great weight. There is reasonable ground for the action of the municipal issuing authority in this case. Accordingly, in the absence of any evidence that the issuing authority abused its discretion, its decision must be affirmed.

Accordingly, it is, on this 18th day of March, 1946,

ORDERED, that the appeal herein be and the same is hereby dismissed.

Alfred E. Driscoll
Commissioner.