Director Davis
Sent to Regular Mailing List

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

BULLETIN 1069 JUNE 20, 1955.

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ITEM

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

BULLETIN 1069 JUNE 20, 1955.

1. COURT DECISIONS - HALL LIQUOR CO. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL AND TOWNSHIP OF UNION - ORDER OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
No. A-20-54, September Term, 1954

HALL LIQUOR CO. (a corporation),)
Appellant,)
vs.)
DIVISION OF ALCOHOLIC BEVERAGE CONTROL, and TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UNION (UNION COUNTY),)
Respondents.)

Argued May 2, 1955. Decided May 9, 1955.

Before Judges Clapp, Jayne, and Francis.

Mr. Joseph A. Davis argued the cause for appellant (Mr. Michael Breitkopf, attorney).

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for Division of Alcoholic Beverage Control (Mr. Grover C. Richman, Jr., Attorney General).

Mr. Gustave G. Kein, Jr., argued the cause for respondent Township Committee (Messrs. Kein & Scotch, attorneys; Mr. A. Donald McKenzie, Jr., on the brief).

The opinion of the court was delivered

PER CURIAM:

The Township Committee of the Township of Union resolved that the plenary retail distribution license D14 theretofore issued to Hall Liquor Co. for premises known in that municipality as No. 2041 Springfield Avenue be suspended for a period of ten days in consequence of a sale of intoxicating liquor made indirectly by that licensee to a minor.

The licensee caused the action of the Township Committee to be reviewed by the Director of the Division of Alcoholic Beverage Control, whose determination was in accord with that of the Township Committee, and a suspension of like duration of the appellant's 1954-55 D16 license was ordered.

The present appeal is addressed to the propriety of the Director's findings and conclusions that the appellant had transgressed Rule 1 of State Regulations No. 20 which, in pertinent part, ordains:

"No licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age of twenty-one (21) years * * *."

We desire preliminarily to state that included in the information presented to the Director for consideration was a duly verified written statement of the circumstances accompanying and surrounding the alleged sale, which revelation was made to a municipal police officer within an hour after the sale by one Leopold Kirchner, who was on the occasion the manager and in sole charge of the store and the one who personally made the sale.

Contained in the appellant's brief is the point that the statement of the employee Kirchner was incompetent and inadmissible evidence legally to impute responsibility for the alleged violation to the corporate licensee. Nevertheless at the inception of the oral argument, Mr. Joseph A. Davis, who appeared on behalf of the appellant, in response to a specific inquiry addressed to him by a member of the court, announced that in his opinion the statement was competent and admissible in a purely disciplinary proceeding such as the one sub judice and that he did not intend to advocate that point. Accordingly the subject was not debated by counsel and is therefore considered abandoned. Cf. Marten v. Brown, 81 N.J.L. 599 (E.& A. 1911); O'Connor v. Clawans, 102 N.J.L. 624, 625 (E. & A. 1926); Mascola v. Mascola, 134 N.J. Eq. 48, 50 (E.& A. 1943); Ring v. Mayor and Council of Borough, 1 N.J. 24 (1948); In re Koretzky, 8 N.J. 506, 533 (1951).

We conclude that there is ample evidence to sustain the factual findings of the Director.

Affirmed.

2. APPELLATE DECISIONS - GUARINO v. NEWARK AND SUPPA.

JOSEPH GUARINO,

Appellant,

v.

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, and MICHAEL SUPPA,

Respondents.

On Appeal

CONCLUSIONS AND ORDER

Litwack & Litwack, Esqs., by Julius P. Litwack, Esq., Attorneys for Appellant.
Vincent P. Torppey, Esq., by Nicholas Albano, Esq., Attorney for Respondent Municipal Board of the City of Newark.
Vincent J. Agresti, Esq., Attorney for Respondent Michael Suppa.

BY THE DIRECTOR:

This is an appeal from the action of the respondent Board in approving an application for a place-to-place transfer of the plenary retail consumption license of respondent Michael Suppa, for the 1954-55 licensing period, from premises 175 - 8th Avenue to premises 89 1/2 - 7th Avenue, Newark.

The appellant herein, in his petition of appeal, contends that (1) because of many taverns in the area of the proposed premises there is no public need for another similar liquor outlet; (2) the distance between the present premises and the proposed premises is in excess of 750 feet and therefore the transfer of the license would be in violation of the local ordinance relating thereto and (3) the respondent Board abused its discretion when it approved the said transfer.

At the within hearing a transcript of the testimony taken at the hearing before respondent Board was introduced in evidence and additional testimony was taken, pursuant to Rule 8 of State Regulations No. 15.

The appellant is the holder of a plenary retail consumption license with licensed premises a short distance from the proposed premises. The sentiment of persons who testified below with reference to the transfer was apparently equally divided i.e., 7 voiced their opinion in favor of the transfer and 7 were opposed thereto. A petition containing names of persons objecting to the said transfer was also permitted to be made part of the record herein. The neighborhood wherein the proposed licensed premises is located might properly be described as one of business and for residential purposes.

Insofar as grounds (1) and (3) of the petition of appeal are concerned it has long been held that the number of licenses which should be permitted in any particular area and the determination as to whether or not a license will be transferred to a particular location are matters within the sound discretion of the issuing authority and that my function on appeal is not to substitute my opinion for that of the issuing authority but rather to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of my personal views. Rafalowski v. Trenton, Bulletin 155, Item 8; Northend Tavern Inc. v. Northvale, Bulletin 493, Item 5; Hudson-Bergen County Retail Liquor Stores Association v. North Bergen, Bulletin 997, Item 2; Watson et al. v. Camden et al., supra. "This is particularly so where the proposed location is in an area devoted to business, and the mere fact that other licensed premises also serve the same area is not necessarily dispositive. Hudson-Bergen &c. Association v. Rutherford et al., Bulletin 931, Item 3; Trinity Methodist Church of Rahway v. Rahway et al., Bulletin 972, Item 3." Hudson-Bergen County Retail Liquor Stores Association v. North Bergen et al., supra.

Under the facts and circumstances appearing in the instant case, I cannot find that the Board's determination on this point was an abuse of its discretion warranting reversal of its action.

There remains to be considered the question whether the distance between the premises on 8th Avenue and the proposed premises is in excess of 750 feet and therefore in violation of the section of the ordinance pertaining thereto. At the hearing below a survey was presented for the consideration of the respondent Board which indicated that the shortest distance between the premises at 175 - 8th Avenue and the premises 89 1/2 - 7th Avenue was 748.65 feet. At the hearing on this appeal two surveys were

marked as exhibits, one of which was offered on behalf of appellant and the other on behalf of respondent licensee. Appellant's survey indicated measurements in the alternative both of which disclose a distance of more than 750 feet between the premises in question. However, an examination of this survey coupled with the testimony of the surveyor who prepared it disclose that the measurements thereon were not made in conformity with the accepted standard of this Division.

The proper method of measuring the distance between two places should follow the rule set down in Aldarelli v. Asbury Park, Bulletin 186, Item 12. Therein it is said:

> "*** the rule hereafter will be that the measurement will be made in the direction indicated by the statute in straight lines along the side of walls and street lines nearest to church (or school) and tavern thus to get the shortest distance between them. The courses will commence and terminate at the nearest point on the nearest doors of the respective premises. That is the place where the pedestrian would leave or enter, taking the shortest course, if the door were open."

An examination of respondent licensee's survey coupled with the testimony of the surveyor who prepared same indicates that the measurement was made in accordance with the Aldarelli case aforementioned. The distance between the premises under consideration is shown therein to measure 743.47 feet. Under the circumstances it appears that respondent licensee has won his case by a matter of a comparatively few feet. This being so, I find that the ground of appeal urged by appellant alleging violation of the distance-between-premises ordinance is without merit.

The burden of establishing that respondent Board's action was erroneous and should be reversed rests with appellant. Rule 6 of State Regulations No. 15.

After considering most carefully all of the evidence and all of the facts and circumstances presented in this case, I find that appellant has failed to sustain that burden.

Accordingly, it is, on this 31st day of May 1955,

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

William Howe Davis,
Director.

3. APPELLATE DECISIONS - SAUER v. READINGTON AND ROSANIA.
CRESSY v. READINGTON AND ROSANIA.

George Joseph Sauer,

Appellant,

v.

Township Committee of the Township of Readington, and Nicholas Rosania and Joseph Rosania, Jr.,

Respondents.

Alden F. Cressy,

Appellant,

v.

Township Committee of the Township of Readington, and Nicholas Rosania and Joseph Rosania, Jr.,

Respondents.

On Appeal

CONCLUSIONS AND ORDER

Edwin K. Large, Jr., Esq., Attorney for Appellant George Joseph Sauer.
Henry F. Schenk, Esq., Attorney for Appellant Alden F. Cressy.
Raymond E. Bowkley, Esq., Attorney for Respondent Township Committee.
Hauck and Herrigel, Esqs., by Anthony M. Hauck, Jr., Esq., Attorneys for Respondents Nicholas Rosania and Joseph Rosania, Jr.

BY THE DIRECTOR:

The above appeals were heard at the same time and, because of the circumstances hereinafter set forth, both cases will be decided in a single opinion.

From the evidence it appears that respondent Township Committee, having authorized the issuance of one plenary retail distribution license in accordance with the provisions of P.L. 1947, ch. 94, received applications for said license from numerous individuals including both appellants herein and respondents Nicholas Rosania and Joseph Rosania, Jr. Appellant Sauer sought a license for premises on the south side of Highway #202 just north of Three Bridges; appellant Cressy sought a license for premises at Three Bridges, and respondents Rosania sought a license for premises at Whitehouse Station, all in the Township of Readington.

All applicants appeared before the Township Committee at its meeting held on January 15, 1955, and each was given an opportunity to show why his application should be granted. No action on the pending applications was taken at said meeting. At its meeting held on February 15, 1955, the Township Committee unanimously adopted the following resolution:

"RESOLVED that the application of Nicholas Rosania and Joseph Rosania, Jr., for a Plenary Retail Distribution License be granted on the condition that the said Nicholas Rosania and Joseph Rosania, Jr., move the location of the licensed premises to another location suitable to the Township Committee within one year from the date of the adoption of this resolution."

The other pending applications were accordingly denied. Only one plenary retail distribution license may be issued in the Township because the last Federal census showed that the Township had a population of less than 6,000.

Each appellant alleges that the action of the Township Committee in granting the Rosanias' application and denying his application was erroneous, substantially for the following reasons:

1. There is a concentration of consumption licenses in the Whitehouse Station section, whereas in all the rest of the Township there are only two licenses;

2. The sole reason for granting Rosanias' application was that they were the first in time of all applying;

3. The condition imposed upon Rosanias' license is defective and indicates that the Township Committee does not approve the location at which the licensed premises are located.

As to 1 and 2: The Township has three election districts -- North-1 with 900 registered voters; North-2 with 560 registered voters, and South with 880 registered voters. Consumption licenses have been issued for five premises on State Highway 22 which crosses the North-1 district, and a consumption license has also been issued in said district for the Union Hotel located at the Whitehouse station of the Central Railroad. Rosanias' premises are on Main Street on the opposite side of the railroad and about seventy-five yards therefrom. These premises are in the North-2 district and no consumption licenses have been granted for premises in said district. In the South district consumption licenses have been issued for two premises, one of which is held by the operator of Three Bridges Hotel located in the same section of the Township as the premises of both appellants herein. In the Whitehouse Station section there are numerous stores, a post office and bank. The evidence also indicates that this is the largest shopping district in the Township. On the other hand, the premises of both appellants are located in the South district which has been described as "composed mainly of farms outside of Three Bridges." The three Township committeemen testified that they visited all the proposed locations before granting the Rosania application.

The resolution is silent as to the reason why the Rosania application was granted. It has repeatedly been pointed out that, in all fairness, a local issuing authority should state the reasons for its decisions but such failure is not fatal. Haba Realty Corp. v. Long Branch, Bulletin 984, Item 1. There is some evidence that one of the members of the Township Committee stated at the meeting held on February 15 that he believed the Rosania application should be granted because they were the first to file an application. Standing alone that would not be a sufficient reason for granting their application. Giberti v. Franklin and Eckhardt, Bulletin 150, Item 3. However, I am satisfied from the

evidence of the three members of the Township Committee that they also took into consideration the fact that the Rosania premises are near the railroad station in a concentrated shopping area of the Township.

As to 3: There is some doubt as to whether appellants have a legal right to question the validity of the condition imposed on the license. That question would seem to concern only the Township Committee and the holders of the license. In any event, no question has been raised as to the suitability of the Rosania premises. No reason appears in the present record why the condition was imposed.

The burden of proof to establish that the action of the Township Committee was erroneous rests with appellants. Rule 6 of State Regulations No. 15. I conclude that appellants have not sustained the burden of proof herein. Hence I shall affirm the action of respondent Township Committee. Matweishyn et al. v. Hillside et al., Bulletin 783, Item 1.

Accordingly, it is, on this 31st day of May, 1955,

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

William Howe Davis,
Director.

4. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT ACTIONS AND LANGUAGE) - NUISANCE - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against THE DECK, INC., t/a The Deck, N/W cor. 5th Avenue & F Street, Belmar, New Jersey, Holder of Plenary Retail Consumption License C-9, issued by the Board of Commissioners of the Borough of Belmar.)	CONCLUSIONS AND ORDER

The Deck, Inc., Defendant-licensee, by Jack Gottlaub, Secretary-Treasurer.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On Tuesday night, October 26 and early Wednesday morning, October 27, 1954, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene conduct in and upon your licensed premises and your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered females to perform in a lewd, indecent and immoral manner, to engage in acts of illicit sexual intercourse and acts of perverted sexual relations with male patrons and customers, and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20."

The file herein discloses that the matter came to the attention of the Division of Alcoholic Beverage Control early in December 1954 when it discovered that the Prosecutor of Monmouth County had preferred criminal charges against the person responsible for a lewd performance on October 26, 1954, under the auspices of a prominent fraternal organization, at the licensed premises.

ABC agents obtained statements from the licensee's officers, a number of its employees, various members and officers of the fraternal organization, and a guest at the performance which, in sum, disclose that the organization rented a large hall on the upper floor of the licensed premises for a meeting and show, presented what appeared to be an inoffensive theatrical performance and, shortly after its conclusion, presented two nude girls who engaged in sexual intercourse with a number of the men present and, in addition, indulged in acts of perversion.

During the entire period an officer of the licensee and some of its employees were on duty serving alcoholic beverages to the persons assembled from a service-bar adjacent to the hall, allegedly so located that the activities in the hall were not visible therefrom.

Needless to say, such shocking and outrageous activity is the most aggravated misconduct on licensed premises. The licensee cannot escape responsibility therefor merely because, as it represents, it closely supervised the activities of the fraternal organization for most of the time and put a stop to the indecent performance immediately upon discovery thereof. It is expected of a licensee who has obtained the privilege of conducting an establishment for the sale of alcoholic beverages that no degrading activities will be carried on there. This fundamental principle, phrased in many different ways, has been expressed time and again by the Division and has been approved by the courts. Recent decisions on this subject are: In Re Schneider, 12 N.J.Super. 449 (1951); In Re 219 Tavern, Bulletin 1062, Item 1; In Re Shaw, Bulletin 1028, Item 1; In Re Sevak, Bulletin 1012, Item 2.

It may be noted that the indecent activities continued for a period of about twenty minutes. It appears to be the grossest negligence for a member of the corporate licensee and its employees not to have discovered immediately these indecent activities taking place only a few feet from the service-bar even though, as is contended, such activities were not visible therefrom.

The appropriate penalty gives me great concern. The license would be immediately revoked if it appeared that there was a pattern of such misconduct at the licensed premises or if such revolting activities had occurred with the knowledge or in the presence of officers or employees of defendant corporation. See the cases cited herein, supra. However, this appears to be an isolated incident, initially activated, without the knowledge of the licensee, by a representative of the fraternal organization. The primary offender is the fraternal organization to which the defendant, in apparent good faith, rented the hall, whereupon the organization abused the defendant's confidence. While the defendant cannot escape the suspension of its license for the reasons heretofore expressed, under such circumstances revocation of the license for this single offense, even though of such a highly obnoxious nature, would appear to be too harsh a penalty.

Defendant has no prior adjudicated record. Under all the circumstances of the case, including the plea entered herein, I shall suspend defendant's license for a period of ninety days. Cf. Re Ekelevich, Bulletin 864, Item 6; Neu v. Irvington, Bulletin 923, Item 3.

Accordingly, it is, on this 25th day of May, 1955,

ORDERED that plenary retail consumption license C-9, issued by the Board of Commissioners of the Borough of Belmar to The Deck, Inc., t/a The Deck, for premises at N/W cor. 5th Avenue & F Street, Belmar, be and the same is hereby suspended for the balance of its term, effective at 2 a.m. June 1, 1955; and it is further

ORDERED that, if any license be issued to this licensee or to any other person for the premises in question for the 1955-56 licensing year, such license shall be under suspension until 2 a.m. August 30, 1955.

William Howe Davis,
Director.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against DOMINICK AND MARY TITONE, (t/a Pine Bar), 1401 Bergenline Avenue, Union City, New Jersey, Holders of Plenary Retail Consumption License C-51, issued by the Board of Commissioners of the City of Union City.)	CONCLUSIONS AND ORDER

Dominick and Mary Titone, Defendant-licensees, by Dominick Titone, Pro se.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they possessed on their licensed premises alcoholic beverages in bottles bearing labels which did not truly describe the contents thereof, in violation of Rule 27 of State Regulations No. 20.

The file herein discloses that on April 25, 1955, an ABC agent entered defendants' licensed premises to make a routine inspection of the open stock therein. After identifying himself to Dominick Titone, one of the licensees, the agent noticed an open bottle of "Seagram's Seven Crown Blended Whiskey" on the drainboard under the bar. Questioned why the bottle was there, Mr. Titone stated that he ran out of this brand and refilled the bottle with "Diplomat" whiskey. The agent seized this bottle and then gauged twenty-seven other open bottles of assorted brands of whiskey. The contents of all but three of these bottles were apparently genuine as labeled. The agent seized these three bottles because they appeared to be lower in proof than as labeled. Thereupon the agent obtained a signed statement from Dominick Titone wherein it appears that over the week-end he was short of the brands of whiskey seized, and poured "Diplomat" whiskey into two of the bottles, and poured "Kinsey Blended Whiskey" into the

other two bottles. The agent submitted the four bottles to the Division chemist, whose report shows the contents of three of the bottles to be low in acids and solids and low in proof, and the contents of the fourth bottle to be high in solids and short in proof when compared with samples of the genuine product.

Defendant Dominick Titone urges in mitigation of the offense that on April 24, 1955, he prepared a dinner at the licensed premises for twelve members of a club and furnished the diners with a half-gallon of "Diplomat" whiskey. The diners complained that the half-gallon was unwieldy to handle and he gave them four bottles into which was poured the "Diplomat" whiskey. After the diners left he placed the four bottles on the back bar, intending to throw them away. This explanation, radically different from that given to the agent when he discovered the refills, is obviously an afterthought. In any event, it cannot be accepted as an excuse for having "refills" on licensed premises, especially since two of the refilled bottles were practically full, one containing twenty-two ounces and the other twenty-five ounces.

Defendants have a prior adjudicated record. Effective July 6, 1954, their license was suspended for ten days by the local issuing authority for sale of alcoholic beverages during prohibited hours. The minimum suspension in a "refill" case involving four bottles is twenty days. Re Tersigni, Bulletin 921, Item 4. Because of the prior dissimilar violation within five years, I shall suspend defendants' license for twenty-five days. Re Poirier, Bulletin 1029, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 26th day of May, 1955,

ORDERED that plenary retail consumption license C-51, issued by the Board of Commissioners of the City of Union City to Dominick and Mary Titone, (t/a Pine Bar), for premises 1401 Bergenline Avenue, Union City, be and the same is hereby suspended for twenty (20) days, commencing at 3 a.m. June 7, 1955, and terminating at 3 a.m. June 27, 1955.

William Howe Davis,
Director.

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against JOHN JR. AND MARY DiTHOMAS, t/a Little Jack's Tavern, Blue Anchor Rd., Winslow Township, P.O. Cedar Brook, N. J., Holders of Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Winslow.	CONCLUSIONS AND ORDER

Joseph A. Maressa, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that on April 21, 1955, they sold, served and delivered alcoholic beverages to two minors and permitted the consumption of such beverages by said minors in and upon their licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on April 21, 1955, ABC agents, acting upon information transmitted to the Division by the New Jersey State Police, obtained signed sworn statements from Homer ---, age 17, and Winfield ---, age 18. The minors stated that at about 8 p.m. on the above date, they drove to the rear of defendants' premises which they entered and took seats at the bar; that Winfield ordered two glasses of beer; that while each minor was consuming his drink Winfield requested two "six-can packs" of beer, a pint of wine, peanuts, pretzels and potato chips; that the bartender, who made no inquiry as to their ages, procured the twelve cans of beer from the cellar and placed them and a pint of wine on the steps of the rear entrance after which he put the eatables in front of Winfield from whom he accepted payment for the complete order. The minors stated further that after consuming their drinks they left the premises and took the merchandise to the car; that while driving about they consumed some of the wine; and that thereafter they were apprehended by the State Police when they became involved in an accident. After signing the statements, the youths directed the agents to the licensed premises herein and pointed it out as the tavern where they had purchased the alcoholic beverages and identified therein John DiThomas, Jr., one of the licensees, as the bartender who had served them.

Defendants have no prior adjudicated record. The minimum suspension for a violation of this kind involving a minor 17 years of age is fifteen days. Re Jacobs, Bulletin 995, Item 7. However, considering the amount of alcoholic beverages sold to and consumed by the minors and the resultant effects, I shall suspend defendants' license for twenty-five days. Re Tienken, Bulletin 1051, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 1st day of June, 1955,

ORDERED that Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Winslow to John Jr. and Mary DiThomas, t/a Little Jack's Tavern, Blue Anchor Rd., Winslow Township, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. June 9, 1955, and terminating at 2:00 a.m. June 29, 1955.

William Howe Davis,
Director.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against FELIXA BORKOWSKI, 179 Princeton Avenue, Jersey City 5, New Jersey, Holder of Plenary Retail Consumption License C-410, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	CONCLUSIONS AND ORDER

Felixa Borkowski, Defendant-licensee, Pro se.
Dora P. Rothschild, Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on Sunday, May 8, 1955, she sold alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulations No. 38.

The file herein discloses that at about 1:40 p.m., Sunday, May 8, 1955, an ABC agent who was in defendant's licensed premises overheard a patron ask the bartender for twelve cans of beer. The bartender replied "It's Sunday." Later, however, the bartender approached the patron and audibly whispered "Do you have a car?" Receiving an affirmative reply, the bartender put cans of beer in a brown paper bag. At this juncture the agent left the premises and contacted a fellow agent who had remained outside. Shortly thereafter the aforesaid patron emerged carrying a large package and proceeded to a car parked nearby. The agents identified themselves, ascertained that the package contained alcoholic beverages, seized it for evidential purposes and, together with the patron, re-entered the tavern. The manager of the establishment was summoned and informed of the violation.

Defendant has no prior adjudicated record. I shall suspend her license for a period of fifteen days. Re Markowitz, Bulletin 1061, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 26th day of May 1955,

ORDERED that Plenary Retail Consumption License C-410, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Felixa Borkowski, 179 Princeton Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 2 a.m., June 6, 1955, and terminating at 2 a.m., June 16, 1955.

William Howe Davis,
Director.

8. SEIZURE - FORFEITURE PROCEEDINGS - TAX-PAID ALCOHOLIC BEVERAGES TRANSPORTED UNLAWFULLY ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.

In the Matter of the Seizure on February 28, 1955 of a quantity of alcoholic beverages and a Chevrolet sedan, on a lane known as "Commons", in West Amwell Township, County of Hunterdon and State of New Jersey.	Case No. 8818 On Hearing CONCLUSIONS AND ORDER

Albert Turner, Pro se.
Associates Discount Corporation, by Gene J. Bauvias, Branch Manager.
I. Edward Amada, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages and a Chevrolet sedan, described in a schedule attached hereto, seized on February 28, 1955 on a lane known as the "Commons", West Amwell Township, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66, Albert Turner, the registered owner of the Chevrolet sedan, appeared and sought return of such motor vehicle and the alcoholic beverages, and an appearance was entered on behalf of Associates Discount Corporation, which sought recognition of its alleged lien on such motor vehicle.

The Hearer's report setting forth the facts presented at the hearing in the case, and his recommendations thereon was mailed to Robert Turner and the Associates Discount Corporation. No objection or exception to such report was filed within the time limited therefor.

I have given careful consideration to the complete record in the case, have reviewed the Hearer's report, and make the following findings based on the evidence presented.

On February 28, 1955 New Jersey State Troopers came upon a Chevrolet sedan, mired in the mud in the lane known as the "Commons" in West Amwell Township, with Burton Ansley in the vehicle. When the troopers discovered five one-half gallon bottles, five four-fifth quart bottles, and a quart bottle of various brands of whiskey, one quart bottle of wine, and a four-fifth pint bottle of brandy in the motor vehicle, they took such vehicle, alcoholic beverages, and Ansley into custody and notified the Division of Alcoholic Beverage Control. An ABC agent arrived at the Police Barracks and ascertained that the alcoholic beverages appeared to be tax-paid, but that Ansley did not have any license or permit issued by the Division of Alcoholic Beverage Control authorizing the transportation of such alcoholic beverages, and that the quantity being transported exceeded the amount permitted to be transported without a license or permit, even if intended for personal consumption. R.S. 33:1-2. The agent then took possession of the alcoholic beverages and motor vehicle.

Ansley told the officers that he had borrowed the motor vehicle from its owner, Albert Turner. Ansley disclaimed ownership of, or responsibility for, the presence of the alcoholic beverages in the motor vehicle.

Mr. Turner offered the explanation that on the day in question he drove to a designated street in Trenton, and parked his car preparatory to visiting a friend, when he was accosted by a stranger, who inquired whether Turner would be interested in purchasing alcoholic beverages; that he could offer him a good deal, and needed some "fast" money. Turner inspected the alcoholic beverages, which were in the stranger's car, and agreed to purchase them for $25.00. The stranger brought his car close to Turner's, and transferred the alcoholic beverages to the latter's car. Thereafter Turner met Ansley and both visited various taverns, where they spent considerable time. While in one of the taverns, Ansley borrowed Turner's car to drive some acquaintances to Lambertville.

Mr. Turner asserted that he intended to transport the alcoholic beverages to his home in Pennsylvania for personal use. He characterizes his purchase, "At first I didn't realize that someone would like to get rid of some hot stuff, and then I figured that thirteen bottles was a good bargain - I figured after he (the stranger) left, there must have been something wrong with it".

The seized alcoholic beverages constitute illicit alcoholic beverages because they were transported without any license or permit. R.S. 33:1-1(i). Such illicit beverages and the motor vehicle in which they were transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66. To obtain relief from such forfeiture, Mr. Turner must establish that he acted in good faith and unknowingly violated the law. R.S. 33:1-66(e).

The transaction between Mr. Turner and the stranger was not entered into either in good faith or in ignorance of the law. Mr. Turner, as a non-resident, may have been unfamiliar with the provisions of the law of this State governing transportation of alcoholic beverages but I am satisfied that he was fully aware that it was unlawful for him to purchase alcoholic beverages at other than licensed premises, and that, nevertheless, he purchased the alcoholic beverages in question because he was getting a bargain. His surreptitious purchase of the beverages from a stranger met in the street, who had the alcoholic beverages in his car, obviously was not the conduct of an honest, law-abiding person acting in good faith and hence, Mr. Turner cannot obtain the benefit of my discretionary authority to relieve him from forfeiture. Moreover, under Pennsylvania law, Mr. Turner is prohibited from importing alcoholic beverages into that state, even for personal consumption. Cf. Seizure Case No. 6534, Bulletin 659, Item 9. Albert Turner's request for return of the alcoholic beverages and the Chevrolet sedan is therefore denied.

Associates Discount Corporation has presented a Pennsylvania bailment lease, dated August 12, 1954, signed by Albert Turner, assigned to such corporation, covering the Chevrolet sedan, securing the sum of $888.30. The present balance due thereon is $592.30.

Before extending credit to Mr. Turner, the finance company received information that he had resided at a specific address in Yardley, Pennsylvania, for the past nine years, was thirty-one years of age, married, with four dependents, and was employed by a concern in the sand and gravel business, as a machine operator, at a salary of $100.00 a week. The finance company had previously dealt with Turner by extending credit to him, and that account was paid in a satisfactory manner.

The finance company verified Turner's employment and residence, and on the basis of this information and its previous transaction with him, it approved the loan. Albert Turner does not appear to have any previous criminal record for violating any liquor laws.

I am satisfied that Associates Discount Corporation acted in good faith and did not know or have any reason to suspect that illicit alcoholic beverages would be transported in the motor vehicle. I shall therefore recognize its lien to the extent of $592.30. R.S. 33:1-66(f).

I am advised that the amount of such lien together with the costs of the seizure and storage of the motor vehicle exceeds its retail value. The motor vehicle will therefore be returned to Associates Discount Corporation upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 7th day of June, 1955 Associates Discount Corporation pays the costs incurred in the seizure and storage of the Chevrolet sedan, described in Schedule "A" attached hereto, such motor vehicle will be returned to it; and it is further

DETERMINED and ORDERED that the alcoholic beverages listed in the aforesaid Schedule "A" constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66 and that they be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

William Howe Davis,
Director.

Dated: May 27, 1955.

SCHEDULE "A"

10 - bottles of whiskey
1 - bottle of wine
1 - bottle of Rock and Rye
1 - bottle of brandy
1 - Chevrolet sedan, Serial No. 14JKC53148, Engine No. 10608165, Pennsylvania Registration 355K8.

9. ELIGIBILITY - BREAKING AND ENTERING - CRIME FOUND TO INVOLVE MORAL TURPITUDE - CONVICTION OF ANY CRIME WITHIN FIVE-YEAR PERIOD AS AFFECTING PROCEEDINGS TO REMOVE DISQUALIFICATION.

Re: Case No. 665 June 1, 1955.

Applicant seeks a determination as to whether or not he is ineligible for employment by the holder of a liquor license in New Jersey by reason of his conviction of crime.

In 1927, applicant was placed on probation for one year for violation of the Hobart Act. In 1938, he pleaded guilty to Breaking and Entering and was sentenced to 1-1/2 to 3 years in State Prison. The sentence was suspended and he was placed on probation for two years. In 1948, he pleaded guilty to Conspiracy to Make Book and was fined $250. In May 1952, he pleaded non vult to Conspiracy to Make Book and was sentenced to 1 to 1-1/2 years in State Prison. The sentence was suspended and he was placed on probation for five years and fined $1,000.

Considering the above record, I recommend that applicant be advised that, in the opinion of the Director, he has been convicted of a crime involving moral turpitude (Breaking and Entering) and that any licensee who employs him or permits him to be connected in any business capacity with his licensed premises would subject his license to suspension or revocation. R.S. 33:1-25, 26. I further recommend that applicant be informed that his conviction in 1952 precludes relief by way of disqualification removal proceedings until May 1957, since the statute appertaining thereto (R.S. 33:1-31.2) requires satisfactory proof that he has conducted himself in a law-abiding manner for at least five years last past.

Joseph A. Burns,
Attorney.

Approved:

William Howe Davis,
Director.

10. STATE LICENSES - NEW APPLICATIONS.

Harry A. Bode, t/a Raritan Beverage Co.,
Southeasterly side of Lincoln Highway,
Route 27 (Lot 15, Block 1130 on Assessment Map & also known as Nixon Shopping Center),
Edison Township
PO Nixon, New Jersey.
Application filed June 14, 1955, for person to person transfer of State Beverage Distributor's License SBD-173 from Michael J. Hammell, t/a Raritan Beverage Co., Southeasterly side of Lincoln Highway, Lot 15, Block 1130 on Assessment Map, Edison Township, PO Nixon, New Jersey.

James E. Cambria & Pasquale A. Albanese,
t/a Hedrick Distributing Company,
11 Gypsum Street,
Kearny, New Jersey
Application filed June 15, 1955, for person to person & place to place transfer of State Beverage Distributor's License SBD-154 from Louis W. Wright, t/a Thurman Bottling Co., 1176-86 Thurman Street, Camden, New Jersey.

William Howe Davis,
Director.