

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1690

September 7, 1966

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - SCHILLIZZI v. UNION.
2. APPELLATE DECISIONS - NADELL LIQUOR AND CONFECTIONERY, INC. v. PATERSON.
3. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE DURING PROHIBITED HOURS - FOUL LANGUAGE - HINDERING INVESTIGATION - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 50 DAYS.
4. DISCIPLINARY PROCEEDINGS (Eatontown) - SALE TO MINORS - PRIOR SIMILAR RECORD - AGGRAVATING CIRCUMSTANCE - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Hillside) - SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (West Orange) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
7. STATE LICENSES - NEW APPLICATIONS FILED.

New Jersey State Library

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DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

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September 7, 1966

1. APPELLATE DECISIONS - SCHILLIZZI v. UNION.

Salvatore Schillizzi, )  
 )  
Appellant, )  
 )  
v. )  
 )  
Township Committee of the )  
Township of Union (Union County), )  
 )  
Respondent. )

On Appeal  
CONCLUSIONS and ORDER

-----  
Covine and Levy, Esqs., by Daniel G. Covine, Esq., Attorneys  
for Appellant  
Kein, Scotch, Pollatschek, Iacopino & Kein, Esqs., by Vincent J.  
Iacopino, Esq., Attorneys for Respondent  
McKenzie & Hehl, Esqs., by Thomas A. Kerwin, Esq., Attorneys  
for Five Points Liquor Mart, Inc., an Objector.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the action of respondent which, by a vote of four-to-one of its members, denied an application for person-to-person and place-to-place transfer of plenary retail distribution license from Marie Anna Doberenz, t/a Doberenz, to appellant and from premises 2120 Springfield Avenue to premises 1350-5 Galloping Hill Road, Township of Union.

The petition of appeal filed by appellant contends that the action of the respondent in denying the transfer of the license was erroneous in that there is a public need for and a convenience to be served by the said license at the proposed site in the Galloping Hill Shopping Center.

Respondent's answer denies the aforesaid allegation and asserts that there are sufficient liquor outlets in the immediate area of the proposed premises to meet the requirements of those desiring alcoholic beverages. Moreover, respondent contends that the transfer would aggravate existing traffic conditions especially when cars are entering and leaving the shopping center at Galloping Hill Road.

Marie Anna Doberenz (who has held the license in question since 1944) testified that her licensed premises are now located in an older section of the municipality, and named and described a number of other liquor outlets located in the area.

The testimony of appellant discloses that the location of the shopping center (hereinafter center) to which he applied for the transfer of the license is called the "Five Points" area,

it being a "five-point intersection, with a lot of main arteries running through from the different boroughs in together." The center has a large supermarket, a real estate agency, a drug store, a butcher shop, a beauty salon, a card shop, a delicatessen, a cleaning establishment, a large department store and a gasoline station; the store to which transfer is sought is situated between the beauty salon and the card shop. On the other side of Galloping Hill Road, across from the center, is a plenary retail consumption license (Five Points Liquor Mart, Inc.) with broad package privilege, the main entrance to which is in another shopping center (Five Points Shopping Center), but also with an entrance on Galloping Hill Road. With reference to the traffic situation in Galloping Hill Road, the appellant testified, "I'd say it's pretty bad, heavy, very heavily travelled thoroughfare." Furthermore, appellant stated that traffic in the Five Points area wherein the center is located is "very congested; very congested." Appellant estimated that each week about fifteen thousand shoppers utilize the business establishments in the center. Appellant, referring to liquor outlets, said that the supermarket in the center has a "limited distribution" license; that, in addition to the Five Points Liquor Mart, Inc. aforementioned, on Galloping Hill Road, there is a high-class restaurant which holds a plenary retail consumption license; that at the Five Points is a "hotdog and beer place" and about twelve hundred feet away, on Galloping Hill Road, is a tavern; that in the shopping center located across the street (Five Points Shopping Center) there is a supermarket which holds a limited distribution license; that at Chestnut Street there is another tavern about eight-tenths of a mile away, and also a limited retail distribution license and a package liquor store on the same street, both just under a mile distant. Appellant estimated that the distance between the present licensed premises and the proposed premises is approximately three miles.

Clare Brown Amabile (a consumer market research consultant) testified that under her supervision a survey was made of the center and the area thereof. The method of obtaining information was to approach persons at random, but "we screened out people who, by observation, appeared to be under twenty-one years of age", and in the initial stage of the interview, if the persons interrogated indicated that they did not purchase alcoholic beverages, "we again screened these people out." The survey continued for six days beginning on a Wednesday through the following Tuesday (Sunday excepted), during which time five hundred persons (men and women) said they purchased liquor or wines. Percentagewise (in round figures), the recording of the responses to a question "Where did you last purchase packaged wine or liquor for use at home" disclosed that twenty per cent. of the persons answered at the Five Point Liquor Mart; five per cent. at Park Liquors; twenty-six per cent. at other outlets in Union; ten per cent. in Roselle Park; eight per cent. in Kenilworth; nine per cent. in Elizabeth, and twenty-two per cent. in various other municipalities. Mrs. Amabile further stated that, in her opinion, and based on the result of the survey, there is a definite convenience to be served for the sale of alcoholic beverages at the proposed liquor store.

Rubin Ratzman testified that he is a former tavern owner and presently a realtor and maintains an office in the Galloping Hill Shopping Center and that he is the person who negotiated the lease for the proposed store between appellant and the owner of the center. He testified there is ample parking space in the center and he has never observed any

congestion in the parking area. Moreover, he stated that on Galloping Hill Road the traffic is always heavy, especially in the mornings and afternoons when it becomes heavier due to persons going to and from work. Ratzman also said that he observed that the majority of shoppers come by car and that the number walking into the center is negligible. He further stated that, in his opinion, there is a need for a liquor outlet of the type in question in the center.

Albert Shakerdge testified that he is the owner of the Galloping Hill Shopping Center wherein has been provided parking facilities for "375 to 400 cars." He said that, in his opinion, a liquor store is desirable in the center as it would constitute a convenience to the shoppers who might desire liquor while in the course of doing their shopping in the other business establishments.

Although there is nothing in the Alcoholic Beverage Law which prohibits the transfer of a liquor license to a shopping center, the mere fact that a shopping center may attract crowds of customers from distant points does not necessarily require a local issuing authority to disturb its existing distribution of licenses in various sections of the municipality. The needs of the residents of the municipality may be considered rather than the needs of the residents of other municipalities. Cf. Larijon, Inc. v. Atlantic City, Bulletin 1306, Item 1.

The burden of proving that the respondent abused its discretion rests upon the appellant and he must establish his case by a preponderance of the evidence. Family Finance Corp. v. Gaffney, 11 N.J. 565, 575 (1953); Buyer v. West Orange, Bulletin 1205, Item 2. The appellant's burden becomes especially heavy on his appeal to this Division since, in a discretionary matter such as now being considered, he must show manifest error or some abuse of discretion by the respondent. Nordco, Inc. v. State, 43 N.J. Super. 277, 287; Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598, 600 (App.Div. 1955).

It is clear that a transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4, and cases cited therein.

It has long been established that the number of licenses which should be permitted in any particular area and the determination as to whether or not a license shall be transferred to a particular location are matters within the sound discretion of the issuing authority, and that the Director's function on appeal is not to substitute his opinion for that of the issuing authority but, rather, to determine if proper cause exists for its opinion and, if so, to affirm irrespective of his personal views. Rothman v. Hamilton, Bulletin 1091, Item 1; Food Fair Stores of New Jersey, Inc. v. Union, Bulletin 1129, Item 1; The Grand Union Company v. West Orange, Bulletin 1155, Item 3. This view is stated more positively in Ward v. Scott, 16 N.J. 16 (1954), in the matter of an appeal from a zoning ordinance which had been granted by a municipality wherein the Supreme Court stated, at p. 23:

"...Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are

undoubtedly the best equipped to pass initially on such applications for variance. And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.'". Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913).

See Fanwood v. Rocco and Div. of Alcoholic Beverage Control, 59 N.J. Super. 306 (App.Div. 1960), aff'd 33 N.J. 404 (Sup.Ct. 1960).

This is particularly true here because the matter sub judice concerns the more serious question of a liquor regulation and a municipality did not grant but denied the application. The action of the respondent may not be reversed by the Director unless he finds "the act of the board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Association v. Hoboken, 135 N.J.L. 503, at 511.

The appellant herein contends that the proposed transfer is necessary because of a public need for, and a convenience to be served by, the license in the shopping center. In support of this, appellant produced a consumer market research consultant under whose supervision a survey of the center and the surrounding area was made. The results of said survey merely showed that, if the license had been transferred to the proposed premises, it would make it easier to purchase liquor. However, although convenience may in a proper case be a reason for a municipality's granting a transfer, it is rarely, if ever, a valid basis upon which the Director may compel the municipality to do so. Fanwood v. Rocco and Div. of Alcoholic Beverage Control, supra. The survey disclosed that very little, if any, package goods were sold by plenary retail consumption licensees in the area. However, there are other licensees who exclusively sell package goods for off-premises consumption in the surrounding area and, with present day telephone and transportation facilities, such stores can properly service large areas. Cf. Franklin Stores Co. v. Belleville, Bulletin 102, Item 2.

It is apparent that the denial of the transfer in question was predicated upon the particular location which was objectionable to the respondent. This in itself did not preclude appellant from requesting transfer of the license to a particular area that would be more in harmony with the best interests of the community. There is no dispute that the location of the proposed liquor store is located at an area where great traffic problems have arisen. This was one of the main reasons advanced by the respondent to deny appellant's application.

After reviewing the testimony, the exhibits, and considering the arguments advanced in the well prepared memoranda submitted by the attorneys for the parties and objector herein, I find that there is sufficient evidence to support respondent's findings that the area to which appellant seeks to transfer its license has sufficient liquor establishments to meet its needs. In the absence of improper motivation by respondent, I find that its action under the circumstances was neither arbitrary, capricious, unreasonable nor an abuse of discretion.

I conclude therefore that appellant has failed to sustain the necessary burden to establish that respondent's action was erroneous. Rule 6 of State Regulation No. 15. It is recommended that an order be entered affirming respondent's action and dismissing the appeal hereon.

Conclusions and Order

Exceptions to the Hearer's report and argument in support thereof were filed by appellant pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcripts of testimony, the exhibits, the argument of the attorneys for the respective parties, and the Hearer's report, and the exceptions thereto which I find without merit, I concur in the conclusions and recommendation of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 30th day of June, 1966,

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

JOSEPH P. LORDI  
DIRECTOR

2. APPELLATE DECISIONS - NADELL LIQUOR AND CONFECTIONERY, INC. v. PATERSON.

Nadell Liquor and Confectionery, )  
Inc., )

Appellant, )

v. )

On Appeal

Board of Alcoholic Beverage )  
Control for the City of )  
Paterson, )

CONCLUSIONS and ORDER

Respondent. )

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William J. Rosenberg, Esq., Attorney for Appellant.  
Adolph A. Romei, Esq., by Marino Tedeschi, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the action of respondent Board of Alcoholic Beverage Control for the City of Paterson (hereinafter Board) wherein it suspended appellant's plenary retail distribution license for twenty days effective October 6, 1965, after finding appellant guilty in disciplinary proceedings of sale of alcoholic beverages to a minor, age 19, at its licensed premises at 216 Graham Avenue, Paterson, in violation of Rule 1 of State Regulation No. 20.

Upon the filing of the appeal, an order dated October 5, 1965 was entered by the Director staying the effect of the Board's order of suspension pending determination of the appeal. R.S. 33:1-31.

In its petition of appeal appellant alleges that the action of the Board was erroneous and should be reversed because "the said charge is untrue and was not proved."

Respondent in its answer, after admitting the jurisdictional facts, denied the substantive allegations of the petition and specifically set forth as a separate defense that its action was "fair, reasonable and just and was based on evidence adduced at a fair and impartial hearing at which time the appellant herein appeared through and was represented by counsel."

The hearing on appeal was de novo pursuant to Rule 6 of State Regulation No. 15. The stenographic transcript of the hearing below was submitted in accordance with Rule 8 of State Regulation No. 15, and was supplemented at this hearing by additional testimony of witnesses adduced on appellant's behalf.

The picture, as reflected in the transcript, is as follows: David ---, who was then nineteen years of age, testified that on Friday evening, May 21, 1965, at about 8 or 8:30 p.m., he visited appellant's liquor store and purchased a half-gallon of Thunderbird wine for \$2.25. The sale was made by Samuel Segal. Present at the time of the sale were Segal's wife Sarah Segal, and a light-skinned colored man with a goatee. No proof of age was requested or produced, nor was the minor questioned with reference to his age. Upon leaving the licensed premises the minor went to a nearby alley, consumed most of the wine and, shortly thereafter, was arrested by local police for being drunk and disorderly.

On the following morning, under police questioning he admitted purchasing wine from appellant and stated that he had made numerous purchases on prior occasions and therefore was quite familiar with this liquor store. He then directed police officers to appellant's premises, where he identified Segal as the one who had sold him the said wine.

The witness' testimony was substantially unshaken on cross-examination both with respect to the date and the fact of purchase. He unequivocally pointed to Segal at the hearing before the Board as the person who made the sale to him.

Detective Thomas Henion, of the Paterson Police Department, testified that on May 22, pursuant to assignment, he together with Detective Frank Colvin interrogated this minor and, following information obtained, they asked the minor to direct them to the premises from which the wine was purchased. The minor directed them to appellant's licensed premises and immediately identified Segal as the one who sold him the wine. Segal was then requested to go to police headquarters and was there questioned about this alleged transaction. He refused to make any statement except to give his name and address. A statement from the minor, taken in the presence of Segal, contained the information as stated hereinabove.

Detective Frank Colvin substantially corroborated the testimony of Henion. He admitted that no attempt was made to recover the bottle which this minor "was supposed to have discarded."

At the hearing before me, Samuel Segal (the principal officer of the corporate appellant) testified substantially to the same effect as he had before the Board. He gave the following account: The corporate appellant is a family business owned by his wife, his daughter and himself. He has been in the liquor business for about twelve years. He categorically denied selling

any alcoholic beverages to this minor and stated that in fact he never saw the minor before the confrontation on Saturday morning, May 22. He also stated that he employs only one colored person who works one night a week (on Wednesday night) and that this employee does not have a goatee as described by the minor.

On cross-examination Segal admitted that he does sell Thunderbird wine and that the half-gallon retail price is \$2.25.

Mrs. Sarah Segal (the wife of the previous witness) did not testify below but was first produced at the appeal de novo. She corroborated the testimony of her husband, stating that both she and her husband were in the premises on the evening of May 21 and that she did not see the minor on that night. She also denied that the colored man described by the minor was employed on the date in question. She explained that, whenever a customer appears to be under the age of twenty-one, she insists upon identification and makes him sign the required statement.

On cross-examination Mrs. Segal stated that she had never seen the minor. However, since she was not present at the hearing below, and the minor was not present at this de novo hearing, she would not be able to identify him.

We are dealing here with a purely disciplinary action; such action is civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951). Thus the proof must be supported by a fair preponderance of the credible evidence. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956). There is in this case a sharp conflict in the testimony of the witnesses produced by both the appellant and the Board. Testimony, to be believed, must not only proceed from the mouth of credible witnesses, but must be credible in itself. No testimony need be believed but rather, so much or so little may be believed as the trier finds reliable. 7 Wigmore Evidence, sec. 2100 (1940); Greenleaf Evidence, sec. 201 (16th Ed. 1899).

Since respondent relied upon the transcript on this appeal de novo, I did not have an opportunity to observe the demeanor of the minor as he testified. The only witnesses I was able to observe were appellant's witnesses who testified at this appeal. Thus the Board was better able to evaluate the minor's testimony and determine whether it was credible and believable. The Board apparently believed the minor, notwithstanding the fact that this minor had been convicted of being drunk and disorderly on a number of occasions and clearly was not a person of impeccable reputation. While the Board did not hear the testimony of Mrs. Segal, it did have the benefit of Segal's testimony. After weighing all of the testimony, including that of the police officers, the Board unanimously concluded that respondent had established its case by a fair preponderance of the credible evidence.

I have taken note of the prior unblemished record of this appellant and of the good reputation and integrity of appellant's witnesses. Nevertheless, in fairness to all of the parties, it must be conceded that the account given by the minor was clear, unequivocal, forthright, and was uncontradictory and unshaken under skillful cross examination of competent counsel.

My reading of the minor's testimony produces the response that it is of such probative force as to engender a feeling of reasonable probability in these circumstances. Loew v. Borough of Union Beach, 56 N.J. Super. 93 (1959). Apparently it produced

the same response to the Board. Further, it should be pointed out that the ultimate test in these proceedings must be one of reasonableness on the part of the Board. In other words, could the Board, as reasonable men, acting reasonably, have come to its determination based upon the credible evidence presented? I believe that, under the facts and circumstances herein, they could have come to such reasonable conclusion when they unanimously determined the guilt of the appellant.

The Director, in cases of this type, should not reverse unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the Board.

I have carefully evaluated both the transcript of the hearing below and of this plenary de novo hearing. Although I am generally reluctant to accept the uncorroborated testimony of a minor unless strongly buttressed by circumstantial evidence, each case must be decided on its own facts. In view of the minor's positive identification of both appellant's licensed premises and the person making the sale of the wine, I am imperatively compelled to support the decision of the Board.

I therefore find that, under all of the circumstances, there has been the necessary quantum of proof, namely, by a preponderance of the believable evidence, of appellant's guilt. I conclude that appellant has failed to carry the burden of establishing that the Board's action was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15.

At this hearing appellant additionally asserted (although it did not raise this issue in its petition) that the penalty of twenty days suspension was "an extreme and harsh penalty." It has been generally held by this Division that a suspension imposed in disciplinary proceedings rests in the first instance within the sound discretion of the local issuing authority, and that the power of the Director to reduce or modify it must be sparingly exercised and only with the greatest caution. Harrison Wine and Liquor Co., Inc. v. Harrison, Bulletin 1296, Item 2. I cannot say, under the circumstances of this case, that a penalty of twenty days suspension was so severe as to form a basis for reversal, or even modification, on appeal.

I therefore recommend that an order be entered affirming the Board's action and dismissing the appeal, fixing the effective dates for the suspension imposed by the Board and stayed pending the entry of the order herein.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the evidence, the exhibits and the oral argument in summation presented by the attorneys for the respective parties, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 5th day of July, 1966,

ORDERED that the action of respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Distribution License D-28, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Nadell Liquor and Confectionery, Inc., for premises 216 Graham Avenue, Paterson, be and the same is hereby suspended for twenty (20) days, commencing at 9 a.m. Tuesday, July 12, 1966, and terminating at 9 a.m. Monday, August 1, 1966.

JOSEPH P. LORDI  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS - FOUL LANGUAGE - HINDERING INVESTIGATION - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 50 DAYS.

In the Matter of Disciplinary Proceedings against )

Philip J. Pecoraro and )  
Patrick R. Marchitto )  
t/a Patty and Peck's Bar )  
281 Newark Avenue )  
Jersey City, New Jersey )

CONCLUSIONS  
AND ORDER

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Holders of Plenary Retail Consumption License C-49, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )

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Mylod and Feinberg, Esqs., by Julius A. Feinberg, Esq., Attorneys for Licensees.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensees pleaded not guilty to the following charges:

"1. On Tuesday, December 28, 1965, between 2:00 A.M. and 2:25 A.M., you conducted your licensed business in violation of Section 4 of Ordinance K-1299 adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950.

"2. On Tuesday, December 28, 1965, between 2:00 A.M. and 2:25 A.M., you suffered and permitted persons except yourselves and your actual employees and agents in and upon your licensed premises; in violation of Section 4 of Ordinance K-1299 adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950.

"3. On Tuesday, December 28, 1965, between 2:25 A.M. and 2:50 A.M., you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises, viz., the use of such language by patrons and customers directed at and to Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey while on your premises in performance of official duties; in violation of Rule 5 of State Regulation No. 20.

"4. On Tuesday, December 28, 1965, between 2:25 A.M. and 2:50 A.M., while the above mentioned Investigators were conducting an investigation, inspection and examination at your licensed premises, you failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation, inspection and examination; in violation of R.S. 33:1-35."

Agent B testified that at 12:25 a.m. on December 28, 1965, he and Agents C and H arrived in the vicinity of the licensed premises; that Agent H entered and he (Agent B) and Agent C then left the area, but returned at 1:55 a.m.; that at 2:00 a.m. the exterior lights on the licensed premises were extinguished; that at 2:20 a.m. he looked through the front window of the premises and observed about ten persons at the bar, some of whom were drinking and several were eating sandwiches; that "At that time the lights were on, the juke box was playing, and a male was on duty behind the bar"; that at the hearing herein, Agent B identified the bartender who stated that his name was "Nick Balesterri"; that at "Approximately 2:20 a.m." the said bartender mixed two drinks which were served to two patrons; that he recognized Agent H seated at the bar and also Philip Pecoraro (hereinafter Pecoraro), one of the licensees, seated at the patron's side of the bar; that at 2:25 a.m. he found the door to be locked and, when he and Agent C knocked thereon, a male came to the door, looked out and then shouted "Hey, Philly, are you open or closed?"; that although he (Agent B) heard no response, the man opened the door and admitted him and Agent C; that immediately upon entering, he (Agent B) went to the bar and showed his credentials to Balesterri; that he (Agent B) then went to the far end of the bar, tapped Pecoraro on the shoulder, at which time Pecoraro turned around and said, "Holy Christ! Not you again!"; that there were ten persons at the bar, including Pecoraro, each having drinks in front of them and at each patron's position he observed money on the bar, also "three or four partially eaten sandwiches at the bar at this time"; that he saw Agent H with "a glass which contained an amber-colored fluid with a white head, and he had change lying in his position at the bar in front of him"; that Pecoraro called down to the end of the bar, "Who let these guys in?"; that he (Agent B) pointed out to Pecoraro that there were ten people present and that all were drinking, to which Pecoraro replied, "They are just finishing up their drinks getting ready to leave"; that at this time, a male started to direct filthy remarks at both him and Agent C, the repetition of which will serve no useful purpose but, although Pecoraro was there, he did nothing to stop this conduct; that at approximately 2:40 a.m. all the patrons, with the exception of three males, had left; that among the three was the male who had previously directed filthy remarks at him and his fellow agent, and he then repeated his obscene language; that after "a minute or so" he (Agent B) requested Pecoraro to ask the patrons to leave, saying that they were hindering the investigation, but Pecoraro said he could not do so; that he never obtained the identity of the man who was using vile language; that after receiving the license application from Pecoraro, he (Agent B) asked the bartender (Balesterri) for his full name, address and date of birth but, before he received this information, the man standing on the patron's side of the bar said to Balesterri, "You don't have to tell them nothing. They don't know what they're doing"; that he (Agent B) again asked Balesterri for the date of his birth and the employee's permit issued by the municipality but Balesterri said, "I got a job to do. You will have to wait." Agent B then asked Pecoraro for the desired information and Pecoraro said, "You haven't got any complaint on this place. It is you. You are picking on me. This is your doing." Furthermore, Pecoraro said to Agent B, "What is your name? I am going to

find out all about you." After giving his (Agent B's) name to Pecoraro, the latter went to the telephone and when he returned Agent B again asked him for the desired information. Just then the telephone rang and Pecoraro went to the telephone booth and when he emerged therefrom he left the premises. The agents then left, at which time the man who, on two previous occasions, directed indecent remarks at them stood in the doorway shouting similar filthy language toward the agents.

It was stipulated by the attorneys for the respective parties that the testimony of Agent C, who had accompanied Agent B on the night in question, on direct examination would be similar to and in corroboration of that given by Agent B. Both agents were in agreement that Pecoraro did not use indecent language during the investigation. Agent C testified on cross examination that, upon entering the premises, "There were partial sandwiches at the bar somebody had been eating but I didn't see anybody consuming." Agent C said that when he looked into the bar before he was admitted entrance thereto, he did not observe anybody eating at that time.

Agent H testified that he entered the licensed premises at 12:25 a.m. on December 28, 1965 and sat at the bar; that he saw Pecoraro seated at the extreme far end of the bar near the kitchen area; that at 2:00 a.m. there were approximately ten to twelve male patrons seated at the bar, at which time he (Agent H) said he "had a partially consumed Rolling Rock nip in front of me"; that thereafter at 2:05 and 2:20 a.m. he was served with "a seven-ounce nip of Rolling Rock beer" and that payment for these two drinks was taken by the bartender from money belonging to him (Agent H); that also between 2:00 and 2:25 a.m. he saw other persons being served "Either mixed drinks or the usual drinks" and payment for these drinks was taken from money lying on the bar in front of each respective patron; that he did not see any food being served to anyone after 2:00 a.m.; that at 2:25 a.m. he saw "a gray-haired gentleman" go to the door and, after looking out, yell "Hey, Phil, are you open or closed?" and in response "Mr. Pecoraro looked up, he hesitated a moment, waved his hand and said, 'Let them in'"; that when the door was opened he saw Agents B and C enter the premises; that when Pecoraro saw them, he said "Oh, Christ! Not you again!"; that some time later a male seated directly to his (Agent H's) left shouted filthy remarks at the agents; that as a group of persons walked out, he (Agent H) left the premises; that after he started his car, which had been parked around the corner, and had driven a short distance to the premises in order to rejoin the other agents, he saw Pecoraro crossing the street.

Leo Pellagatti testified that he visited the premises of the licensees every Monday and was there on the evening of December 27, 1965, remaining there until about closing time; that hot meals are served in the premises starting at 8:00 p.m. on Monday nights.

Louis Cevetello testified that he was at the licensees' premises at 8 o'clock on Monday, December 27, and ate a meal consisting of steak, salad and other things; that there are three tables and you may obtain the food by helping yourself or at times "members" volunteer to serve the food.

On cross examination Cevetello said he did not know what occurred in the licensed premises as he was seated at a table reading a newspaper and waiting for a person to drive him home.

Nick Balesterri testified that he was on duty on Monday, December 27, and in the early morning of December 28 and that he did not serve any drinks of alcoholic beverages after five minutes before the closing hour; that on Monday nights a group of men come in at different times and eat dinner in the licensees' establishment; that the agents asked him for his permit and what his name was, and he gave them his name and also his address; that as he was being questioned, he heard a voice from the opposite side of the bar tell him that he did not have to give any information to the agents; that after the establishment was closed, there were about fifteen persons remaining, some of whom were eating sandwiches but none was drinking; that there were some drinks on the bar containing alcoholic beverages but he did not recall seeing any of these drinks consumed after 2 o'clock; and that he had no recollection that the agent asked him for his permit.

Philip Pecoraro testified that he is one of the licensees and was present on Monday, December 27, at which time a group of business men congregate in the establishment and purchase a dinner for the sum of one dollar; that at 2 o'clock he extinguished the lights and locked the door, but there were some people who remained on the premises; that it is the custom to contact the police department to provide an escort after the premises closes when taking the money to the night depository of the bank; that he did not "use our Lord's name in vain" and he has not sworn at any time since the war; that he did nothing to interfere with the investigation in which the agents were engaged.

On cross examination, Pecoraro stated that there were people in the establishment between 2:00 and 2:25 a.m. who were talking to one another, some consuming drinks of alcoholic beverages which they had already purchased; that he did not hear anyone shout to him to ascertain whether the premises were open or closed, but the first time he knew that agents were in the place was when the bartender said, "The ABC is here" and that he then turned around and said, "You again?"; that he did not recall the words spoken by the man who was cursing at the agents as "Things were getting too confused"; that he heard the agents questioning the bartender but he did not recall whether or not they asked him for the permit which had been issued to the bartender.

I have set forth in detail much of the testimony of the agents and of the witnesses produced by the licensees. The testimony of the agents has the ring of truth, whereas that given by the licensee and his witnesses was far from impressive. Section 4 of Ordinance K-1299 provides that no retail consumption licensee shall conduct business or suffer or permit any person whatsoever except the licensee and his actual employees and agents in or upon the licensed premises from 2:00 a.m. until 6:00 a.m. on Monday to Friday, inclusive. It further provides that restaurants and others operating businesses on the same licensed premises, other than for the sale of alcoholic beverages, may keep said premises open after the hours specified, for the conduct of such other business only. Without passing on whether or not the premises in question may be characterized as a restaurant in that it is contended that hot food is served there, the licensees permitted the sale of alcoholic beverages to patrons remaining on the licensed premises after the closing hour of 2:00 a.m. Agent H testified that after 2:00 a.m. he purchased seven-ounce nips of Rolling Rock beer on two occasions. He also testified that he observed service of alcoholic beverages to other patrons during prohibited hours. It is indeed obvious that the licensees herein violated the terms of the ordinance in question. Furthermore, the agents testified that

a man in the premises castigated them and used filthy and obscene language at them on several occasions. On the second occasion, the agents requested Pecoraro to ask the person to leave the premises because the actions of this man were interfering with the proper investigation in the matter. Pecoraro refused to accede to their request. The bartender failed to give information asked for by the agents because someone in the premises had told him not to do so. Finally, Pecoraro stalked out of the premises and left the agents to their own resources.

After careful consideration of all the evidence adduced herein, I conclude that the Division has established the truth of the charges preferred in this matter by a fair preponderance of the believable testimony and recommend that the licensees be adjudged guilty as charged.

Licensees have a previous record of suspension of license by the Director for ten days effective January 4, 1966, for sale during prohibited hours. Re Pecoraro and Marchitto, Bulletin 1656, Item 7.

The prior record of similar violation considered, it is recommended that the license be suspended on the first and second charges for thirty days (Re Turner, Condon and Brophy, Bulletin 1650, Item 3), on the third charge (foul language by patrons) for ten days (Re Zukas, Bulletin 1675, Item 3), and on the fourth charge (refusal of requested information and failure to restrain patrons from interfering in the conduct of the investigation) for ten days (Re Zukas, supra; Re DiPeri, Bulletin 1569, Item 6), or a total of fifty days.

#### Conclusions and Order

Following receipt of the Hearer's report, the attorneys for the licensees advised by letter that the filing of exceptions pursuant to Rule 6 of State Regulation No. 16 was waived, and requested immediate imposition of the recommended penalty.

No reason appearing to the contrary, I shall adopt the Hearer's recommendations.

Accordingly, it is, on this 29th day of June, 1966,

ORDERED that Plenary Retail Consumption License C-49, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Philip J. Pecoraro and Patrick R. Marchitto, t/a Patty and Peck's Bar, for premises 281 Newark Avenue, Jersey City, be and the same is hereby suspended for fifty (50) days, commencing at 2:00 a.m. Monday, July 4, 1966, and terminating at 2:00 a.m. Tuesday, August 23, 1966.

JOSEPH P. LORDI  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR SIMILAR RECORD - AGGRAVATING CIRCUMSTANCE - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
 Rudolph & Evelyn Scheltz  
 t/a Rudy & Evelyn's Shore Road Inn  
 Route #35  
 Eatontown, N. J.,  
 Holders of Plenary Retail Consumption License C-1, issued by the Mayor and Borough Council of the Borough of Eatontown.

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CONCLUSIONS and ORDER

Peter J. Edwardson, Esq., Attorney for Licensees  
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on April 22, 1966, they sold alcoholic beverages to two minors, age 17, viz., a drink of beer and seven 6-packs of cans of beer to one and four quart containers of beer to the other, in violation of Rule 1 of State Regulation No. 20.

Licensees have a previous record of suspension of license by the Director (1) for fifteen days effective January 19, 1959, for sale to minors (Re Scheltz, Bulletin 1263, Item 4), and (2) for thirty days effective May 9, 1966, for sale to minors and false statement in license application (Re Scheltz, Bulletin 1678, Item 2).

It may be noted that the instant violation occurred after entry of a confessional plea on April 19, 1966 in the prior proceeding, albeit the order of suspension was not entered therein until May 2, 1966.

The nature of the violation considered, the license will be suspended for twenty days (Re Riper, Bulletin 1627, Item 4), to which will be added ten days by reason of the record of suspension for similar violation occurring within the past five years (Re Triple Lake Ranch, Inc., Bulletin 1676, Item 3), five days by reason of the suspension of license for similar violation occurring more than five but less than ten years ago (Re Moore, Bulletin 1659, Item 4) and fifteen days by reason of the aggravating circumstance of the occurrence of the instant violation in close proximity to the entry of the confessional plea to the previous charge of similar violation (cf. Re Kit-Kat Club, Inc., Bulletin 1620, Item 4), or a total of fifty days, with remission of five days for the plea entered, leaving a net suspension of forty-five days.

Accordingly, it is, on this 5th day of July, 1966,

ORDERED that Plenary Retail Consumption License C-1, issued by the Mayor and Borough Council of the Borough of Eatontown to Rudolph & Evelyn Scheltz, t/a Rudy & Evelyn's Shore Road Inn, for premises Route #35, Eatontown, be and the same is hereby suspended for forty-five (45) days, commencing at 2 a.m.

Tuesday, July 12, 1966, and terminating at 2 a.m. Friday, August 26, 1966.

JOSEPH P. LORDI  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

William W. Cochrane )  
t/a Cochrane's Cocktail Lounge )  
1274 North Broad St. )  
Hillside, N. J., )

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption License C-11, issued by the Municipal Board of Alcoholic Beverage Control of the Township of Hillside. )  
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Louis R. Cerefice, Esq., Attorney for Licensee  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 22-23, 1966, he sold drinks of beer and mixed alcoholic beverages to four minors, one age 18, one 19 and two 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Crystal Inn, Inc., Bulletin 1499, Item 10.

Accordingly, it is, on this 5th day of July, 1966,

ORDERED that Plenary Retail Consumption License C-11, issued by the Municipal Board of Alcoholic Beverage Control of the Township of Hillside to William W. Cochrane, t/a Cochrane's Cocktail Lounge, for premises 1274 North Broad St., Hillside, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Tuesday, July 12, 1966, and terminating at 2 a.m. Wednesday, July 27, 1966.

JOSEPH P. LORDI  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

Henry D'Alessandro )  
34 So. Valley Road )  
West Orange, New Jersey )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-29, issued by the Municipal Board of Alcoholic Beverage Control of the Town of West Orange )

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Vreeland and Brown, Esqs., by Leonard G. Brown, Esq., Attorneys for Licensee.  
Morton B. Zemel, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 15, 1966, he possessed alcoholic beverages in three bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Birdland Nite Club, Bulletin 1671, Item 11.

Accordingly, it is, on this 6th day of July, 1966,

ORDERED that Plenary Retail Consumption License C-29, issued by the Municipal Board of Alcoholic Beverage Control of the Town of West Orange to Henry D'Alessandro for premises 34 So. Valley Road, West Orange, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Wednesday, July 13, 1966, and terminating at 2:00 a.m. Thursday, July 28, 1966.

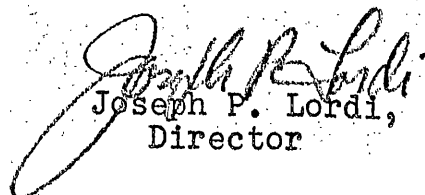
JOSEPH P. LORDI,  
DIRECTOR

7. STATE LICENSES - NEW APPLICATIONS FILED.

Crown Ltd.  
2121 Clement Ave.  
Pennsauken, New Jersey  
Application filed September 2, 1966 for place-to-place transfer of Plenary Wholesale License W-18 to include additional space.

Party Tyme Products, Inc.  
t/a Party Tyme  
Glass Street  
Bridgeton, New Jersey  
Application filed September 6, 1966 for rectifier and blender license.

New Jersey State Library

  
Joseph P. Lordi,  
Director