

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

BULLETIN 1555

April 9, 1964

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

BULLETIN 1555

APRIL 9, 1964

1. APPELLATE DECISIONS - NORTH CENTRAL COUNTIES RETAIL LIQUOR STORES ASSN. and WRIGHT v. LOPATCONG and PACKARD-BAMBERGER & CO.

North Central Counties Retail )  
Liquor Stores Association, and )  
John Wright, )  
Appellants, ) On Appeal  
v. ) CONCLUSIONS and ORDER  
Township Committee of the Town- )  
ship of Lopatcong, and Packard- )  
Bamberger & Co., Inc., )  
Respondents. )

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Howard W. Swick, Esq., Attorney for Appellants  
Thomas C. Swick, Esq., Attorney for Respondant Township Committee  
Meyner and Wiley, Esqs., by Edwin C. Landis, Jr., Esq., Attorneys  
for Respondent Packard-Bamberger & Co., Inc.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"Appellants appeal from the action of respondent Township Committee (hereafter Committee) in approving on August 2, 1962, an application for a person-to-person and place-to-place transfer of a plenary retail consumption license from John Vitale, t/a Airport Inn, to Packard-Bamberger & Co., Inc., t/a Packard's Quality Bar, and from premises located on Route 24 to premises to be constructed in the Hillcrest Shopping Center at the corner of Roseberry Street and Memorial Parkway, Lopatcong Township.

"The reasons given by appellants in the petition of appeal, contending that the action of the Committee was erroneous, are as follows:

- '(a) Rules 2 and 8 of State Regulation 6 of the Division of Alcoholic Beverage Control, Department of Law and Public Safety were not complied with in that no plans and/or specifications of a proposed building were filed with the application; and no notice of the date, hour and place of hearing on the application was given by the municipality to persons filing written objections to the transfer applied for.
- '(b) The determination of the said Respondent, Township Committee, was contrary to the facts before it.
- '(c) The issuance of the transfer was contrary to the intention of Revised Statutes of New Jersey 33:1-12.14.
- '(d) The issuance of the transfer is against public policy in that the area is adequately served by presently existing licensed premises which fully take care of the public convenience, need and necessity.

- '(e) The issuance of the transfer is socially and morally undesirable, and not in the interest of public temperance or public welfare.
- '(f) The action of said Respondent, Township Committee, constituted an abuse of discretion, was capricious, unreasonable, arbitrary and contrary to law.
- '(g) The Respondent, Township Committee, has not to date issued the transfer applied for either as to person or to place, and the Respondent, John Vitale, continues his operation at the premises on Route 24, Lopatcong Township. Therefore, the issuance of the transfer, if and when the special condition placed thereon by the Respondent, Township Committee, is met, will be contrary to Chapter 152 of the Laws of 1962 of the State of New Jersey prohibiting any person from acquiring a beneficial interest in more than two alcoholic beverage retail licenses.'

"Respondents, in answers filed, deny the allegations contained in the petition of appeal and allege that Assembly Bill No. 415 (Chapter 152 of the Laws of 1962) has no application to the instant case.

"The pertinent section of P.L. 1962, c. 152 aforementioned, effective August 3, 1962, reads as follows:

'1. On and after the effective date of this act no person, as the same is defined in section 33:1-1 of the Revised Statutes, shall, except as hereinafter provided, acquire a beneficial interest in more than a total of 2 alcoholic beverage retail licenses, but nothing herein shall require any such person who has, on the effective date of this act, such interest in more than 2 such licenses to surrender, dispose of, or release his interest in any such license or licenses.'

"In order that the issues raised by the petition of appeal and the answers filed in this matter may be fully understood, a brief chronology of the events which took place before the Committee is necessary.

"The evidence herein discloses that on July 13, 1962, respondent-licensee filed an application with the Committee and the notice thereof was published on July 18 and 25, 1962, respectively, in 'The Star' (a weekly newspaper published in the Borough of Washington, County of Warren and State of New Jersey); that four letters objecting to the transfer were received by Martha Schaffer, Township Clerk; that on the afternoon before the special meeting on August 2, 1962, the three members of the Committee met in the office of the township attorney and discussed the application for transfer of the license; that it was then agreed that the meeting be held on the following day and that, after the Chairman of the Committee opened the meeting, the township attorney would conduct the hearing. Pursuant thereto the hearing was held in the Municipal Building at 7 p.m. on August 2, 1962. Mayor Stewart called upon Reverend Robinson for prayer and then introduced the Committee members (J. Clifford Miller and Clark A. Fritz) and stated the purpose of the hearing. Thereafter the hearing was turned over to Thomas C. Swick, Committee attorney, who conducted the hearing as its presiding officer.

"The attorney representing appellants requested an adjournment as the objectors were not properly notified, publicity as to

the time and place of the hearing was lacking, and no plans and specifications accompanied the application. The Committee attorney denied the request. The Township Clerk stated that three sets of petitions containing signatures of residents in the community objecting to the transfer in question were received by her, and that the 'one set came in I think maybe five days, four or five days previous to the hearing. Another set came in within two days of the hearing and the last set came in the day before the hearing, I think it was.\*\*\*' The Committee attorney ruled that the petitions (containing 272 signatures) would not be considered because they had not been submitted in time.

"The four objectors who had sent written objections to the transfer appeared at the hearing. The two clergymen urged denial of the transfer of the license in question and appellants' attorney, speaking for appellants, objected to the transfer. Peter Packard, vice president of respondent-licensee, testified in its behalf.

"Martha Schaffer, Township Clerk, testified at the instant hearing that she had not notified the objectors that a special meeting was scheduled for August 2, 1962, with reference to the application for transfer of the license. She also testified that, in so far as she could recall, only a small plan was filed in her office when the application for transfer was filed. The small plan referred to is described as a 'site plan' showing the location of the proposed premises in the proposed shopping center. Another plan depicting the proposed premises in the shopping center was marked as an exhibit herein. With the exception of the application, there was no indication when any other papers were received and the Clerk could not provide accurate information with reference to the matter.

"Rule 8 of State Regulation No. 6 provides that, upon the receipt of a written objection, it shall become the immediate duty of each issuing authority to afford a hearing to all parties and immediately notify the applicant, the licensee and the objector of the date, hour and place thereof. Where individual written objections are filed, it seems clear that each objector must be notified of the hearing. Where a petition containing a large number of signatures is filed, ordinarily the action of a local issuing authority would not be disturbed merely because individual notices had not been sent to each person whose name appeared on the petition if in fact it appeared that the objectors knew of the hearing. Cf. Wardach and Jaskulski v. Camden and Oreb, Bulletin 487, Item 4.

"In the instant case the four objectors who had filed written objections appeared at the hearing before the Committee and, either personally or through their attorney, voiced objections. Moreover, if, for lack of notice, an objector failed to appear before the Committee, he or she had ample opportunity to appear at the instant appeal hearing where the matter was heard de novo. Cf. Ashton v. Hopewell et al., Bulletin 782, Item 11; Marsteller v. Somers Point et al., Bulletin 244, Item 7.

"R.S. 40:146-13.1 provides that:

'Every township committee when duly elected, appointed and qualified shall have power and authority to elect one of their number as chairman of said committee, who shall preside at all of the meetings thereof, and who shall be known as mayor of such township but shall have no additional authority by virtue of such designation except as may be otherwise provided by law applicable to the township.\*\*\*'

"It appears that at the close of the hearing the members of

the Committee and the Committee attorney left the public hearing-room and retired to another room where the matter in question was discussed. Approximately twenty-five minutes thereafter the Committee returned to the hearing-room where the Mayor assumed the chairmanship. All of the members of the Committee then voted on the transfer -- two committeemen for approval of the application for transfer and the Mayor opposed.

"If this were all that occurred, it might justifiably be held that, although the conduct of the meeting had been irregular, the action of the Mayor participating at the hearing and voting on the transfer might be considered ratification of the irregularity. However, during the course of the hearing petitions which had theretofore been filed expressing the sentiment of the objectors were ruled by the Committee attorney to be inadmissible for consideration by the Committee. Petitions in themselves cannot be a substitute for proof but do serve as a convenient method for presenting to the issuing authority the views of the group, and the weight to be accorded petitions is entirely within the discretion of the issuing authority. Cf. Dunster v. Bernards, Bulletin 99, Item 1. Hence the ruling of the Committee attorney that the petitions theretofore filed could not in any manner be considered by the members of the Committee was improper.

"Although certain aspects of the procedure and conduct of the hearing in question might have been remedied by subsequent action of a member or members of the Committee, in addition to the improper rulings and irregular conduct of the hearing, the failure to file specifications and a proper plan of the proposed premises as required by Rule 2 of State Regulation No. 6 cannot be sanctioned.

"It has been held to be an essential requirement that, when an application is filed for a liquor license for premises not yet constructed, plans and specifications of the proposed building must accompany the application. Birdsall v. Mullica, Bulletin 1320, Item 3.

"Additionally, this was a special meeting with no notification being given to interested persons by the authorities as to when and where said meeting was to be held. It also appears significant that the meeting was held on the evening of the day before Assembly Bill No. 415 (Chapter 152 of the Laws of 1962) became effective. It is not clear from the testimony whether the Mayor (whose duty it was to call special meetings) or the Committee attorney called the special meeting in question. However, it is quite obvious that the time for the meeting to hear the application for transfer was arranged with undue haste.

"In McNeal v. Burlington, 56 N.J.L. 443 (Sup.Ct. 1893), a liquor license had been issued to an applicant at a special meeting of the common council. Application for adjournment of the hearing, requested by counsel for an objector, was denied. The court set aside the issuance of the license stating, among other things, that the notice given to the objector on the day of the hearing did not afford the attorney representing objector a reasonable opportunity to properly present his case and, furthermore, general notice of the special meeting should have been given so that citizens of the community might have had an opportunity to be heard if they so desired.

"I am satisfied from the evidence adduced herein that the proceedings in this matter were so irregular as to warrant reversal of the Committee's action and thus it is not necessary to consider the merits of the case.

"Because of the reasons set forth herein, it is recommended that an order be entered reversing the action of the Committee, denying the transfer sought, and sustaining the appeal."

Respondent-licensee filed written exceptions to the Hearer's Report and written argument thereto; appellants filed answering argument, and thereafter I heard oral argument by the attorneys representing the appellants and the respondent-licensee, all pursuant to Rule 14 of State Regulation No. 15. Respondent Committee neither filed exceptions nor appeared at the oral argument.

I have examined the site plan marked Exhibit A-2 showing the proposed store to be twenty feet by one hundred feet and located adjacent to the proposed Acme Market in Store Block G of the shopping center complex, and also Exhibit A-3, the plans depicting the Hillcrest Shopping Center, Memorial Parkway and Roseberry Street, prepared by Ale and Ewing, architects, whereon the proposed location of the proposed licensed premises appears. I find that Exhibits A-2 and A-3 were both filed with the application for transfer and conclude that, under the circumstances, they constitute plans and specifications adequate and acceptable within the intendment of the applicable rule considering its purpose. Cf. Passarella v. Atlantic City et al., Bulletin 818, Item 1, affirmed Passarella v. Board of Commissioners et als., 1 N.J. Super. 313, wherein the Director stated:

"While actually it appears the first plans, a preliminary architect's sketch, were not filed until May 12, 1948, and that the final and complete plans and specifications were not filed until May 20th, I find that such plans and specifications were a sufficient compliance with the rule and that the delay in filing did not adversely affect the interests of appellant, who was the sole objector. Actually, no suggestion is made in the record herein that the premises, if erected as planned, will not be entirely satisfactory as a building in which a licensed business may be conducted. The requirement of filing plans and specifications is to enable the local issuing authority and any other person interested therein to determine if such proposed building will be sufficient and satisfactory." (emphasis supplied).

Birdsall v. Mullica, supra, cited in the Hearer's Report as controlling, is not applicable because in that case no plans were filed and the advertisement did not set forth that they had been, whereas in this case plans were filed and the advertisement did so state.

I am further of the opinion that the lack of notice of the special meeting was not fatal in view of the fact that the four specific objectors appeared at the hearing before the respondent Committee and also at the de novo appeal hearing and voiced their objections to the transfer. In addition, a large number of persons attended the hearing below, and objections from the floor were invited.

Since as early as July 19, 1962, it was determined to hold the meeting on August 2, 1962, I conclude that the meeting was not arranged with undue haste.

In view of the foregoing, I disagree that the proceedings were so irregular as to warrant reversal of the Committee's action.

I conclude that the testimony adduced by appellants is insufficient to overcome the finding and determination by the Committee, in its resolution granting the application, that the "transfer will serve the convenience of the citizens of this Township and there is a public need for the aforesaid transfer...." In this connection it is pertinent to reiterate that this is a matter within the sound discretion of the municipal issuing authority and that it is not the function of the Director to substitute his discretion for that of the issuing authority.

I further conclude that the enactment of P.L. 1962, c. 152, effective August 3, 1962, did not in any way invalidate the action of the Committee in granting the application for transfer on August 2, 1962, albeit such grant was subject to condition concerning completion of premises.

The burden of proof that the action of the issuing authority was erroneous rests with the appellant. Rule 6 of State Regulation No. 15. I am satisfied that the appellants have failed to sustain that burden or to establish any abuse of discretion or error by the Committee. Thus, I shall reject the recommendation of the Hearer, and affirm the action of the Committee granting transfer of the license.

Accordingly, it is, on this 10th day of February 1964,

ORDERED that the action of the respondent Township Committee of the Township of Lopatcong, granting the application for the person-to-person and place-to-place transfer of the license, be and the same is hereby affirmed and that the appeal filed herein be dismissed.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

2. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against )

Robert E. Trawinski & George Trawinski )  
t/a Eddie's Tavern )  
2 Third Street )  
Passaic, N. J., )

CONCLUSIONS  
and  
ORDER

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Holders of Plenary Retail Consumption License C-40, issued by the Board of Commissioners of the City of Passaic. )

Joseph M. Keegan, Esq., Attorney for Licensees  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report.

Licensees pleaded not guilty to the following charge:

"On September 10, 1963, you possessed, had custody of and

allowed, permitted and suffered tickets and participation rights in a lottery commonly known as the 'numbers game' in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

At the opening of the instant hearing the attorney for the licensees made a motion for an adjournment because of pending criminal indictments against the said licensees based on the alleged gambling which forms the basis of the charge preferred herein. The motion was denied and the hearing proceeded according to schedule. See Re DuPree, Bulletin 108, Item 8; Re Messina & Ruisi, Bulletin 392, Item 12; Re Rosenthal & Geller, Bulletin 843, Item 4, and In re Schneider, 12 N.J. Super. 449.

Three members of the New Jersey State Police (hereinafter referred to as Detective D, Detective M and Trooper M) testified on behalf of the Division. It appears from their testimony that the three officers aforementioned entered the front door of the licensees' premises; Detective D went through to the rear room, whereas Detective M and Trooper M remained in the barroom. Both of the licensees were on the premises -- Robert behind the bar in the barroom, and George seated at a table in the rear room. A pad containing two sheets of paper (Exhibits 2 and 3), on which numbers were written in blue and in red ink, was found on the back bar by Trooper M, who gave it to Detective D (the officer in charge of the investigation).

Detective D testified that during a period of sixteen years he has investigated "300 to 400 gambling complaints" and that half of the investigations involved the "numbers game." Both exhibits have vertical columns of figures and Detective D identified them as numbers slips or tickets used in connection with the operation of a lottery. Detective M and Trooper M testified that, although they have had limited experience with gambling investigations, they were of the opinions that the sheets whereon the figures were written appeared to be numbers slips.

The licensees did not present any testimony in their own behalf.

In State v. Martinek, 12 N.J. Super. 320 (App.Div. 1951), where, among other things, betting slips were admitted as exhibits in evidence, Judge Eastwood cited 22A C.J.S. Criminal Law, sec. 710, p. 954:

"Property found at or near the scene of the crime, and concerning which there is evidence showing or tending to show its ownership or possession by accused when the crime was committed, may be exhibited to the jury, as may any property sufficiently identified which throws light on the crime or connects accused with it, and is shown to have come from his possession or to have been found on his premises, or, there being sufficient evidence to implicate him, on the premises of a co-conspirator."

Judge Eastwood further stated:

"The admission of betting slips, racing forms and other gambling paraphernalia found on the premises in the possession of the accused has generally been recognized by our courts as evidence from which the jury might conclude the guilt or innocence of the accused on an indictment for book-making."

Also see State v. Morehous, 97 N.J.L. 285 (E.& A. 1922); State v. Sage, 99 N.J.L. 229 (E.& A. 1923).

In State v. Fiorello, 36 N.J. 80, 91, 92 (Sup.Ct. 1961), Justice Jacobs, speaking for the court, upheld the admission into evidence of tally or record sheets which the State's expert witness testified resembled tally sheets or records found during gambling investigations he had conducted in the past. Justice Jacobs also remarked that:

"The ingenuity of bookmakers and the sparcity of their recorded indicia have been frequently noted, and while courts must be alert to avoid the lessening of the procedural safeguards to which persons accused of bookmaking are fairly entitled, they must be equally alert to avoid the frustration of bookmaking prosecutions legitimately based on inferences which may reasonably be drawn from furtive conduct and scanty records."

Under the circumstances appearing herein and pursuant to a careful examination of the evidence, I find as a fact that Exhibits 2 and 3 found on the back bar of the licensed premises are numbers slips used in the operation of a lottery. I conclude that the Division has established the truth of the charge by a fair preponderance of the evidence and recommend that the licensees be found guilty as charged.

Licensees have no prior adjudicated record. It is therefore further recommended that an order be entered suspending the license for twenty-five days, the minimum penalty for a first offense involving possession of numbers slips. Re Gerofsky, Bulletin 1495, Item 9.

#### Conclusions and Order.

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 3rd day of February 1964,

ORDERED that plenary retail consumption license C-40, issued by the Board of Commissioners of the City of Passaic to Robert E. Trawinski & George Trawinski, t/a Eddie's Tavern, for premises 2 Third Street, Passaic, be and the same is hereby suspended for twenty-five (25) days, commencing at 3 a.m. Monday, February 10, 1964, and terminating at 3 a.m. Friday, March 6, 1964.

EMERSON A. TSCHUPP  
ACTING DIRECTOR



The prior record considered, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Family Tavern, Inc., Bulletin 1469, Item 11.

Accordingly, it is, on this 11th day of February, 1964,

ORDERED that Plenary Retail Consumption License C-144, issued by the Municipal Council of the City of Bayonne to John Stark, Inc. for premises 506 Boulevard, Bayonne, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Monday, February 17, 1964, and terminating at 2:00 a.m. Friday, March 13, 1964.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

Hugo A. Cabrino )  
t/a Hugo's Cafe )  
86 No. Seventh Street )  
Paterson, New Jersey )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-49, issued by the Board of Alcoholic Beverage Control for the City of Paterson. )

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

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on Sunday, January 26, 1964, he sold a four-fifth quart bottle of whiskey for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Stein, Bulletin 1547, Item 12.

Accordingly, it is, on this 11th day of February, 1964,

ORDERED that Plenary Retail Consumption License C-49, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Hugo A. Cabrino, t/a Hugo's Cafe, for premises 86 No. Seventh Street, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. Tuesday, February 18, 1964 and terminating at 3:00 a.m. Friday, February 28, 1964.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

6. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto. Susp. #242	)	
In the Matter of a Petition to Lift	)	
the Automatic Suspension of Plenary	)	
Retail Consumption License C-35,	)	
Issued by the Board of Commissioners	)	On Petition
of the Township of Lyndhurst to	)	
	)	O R D E R
Patsy Montagna	)	
t/a Paddy's Bar & Grill	)	
507 Valley Brook Ave.	)	
Lyndhurst, N. J.	)	

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Anthony C. Meola, Esq., Attorney for Petitioner

BY THE ACTING DIRECTOR:

It appears from the petition filed herein and the records of this Division that on January 23, 1964, the petitioner was fined \$50 and \$5 costs in the Lyndhurst Municipal Court after plea of guilty to a charge of sale of alcoholic beverages to minors on December 26, 1963, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioner's license for the balance of its term. R.S. 33:1-31.1. The suspension has not been effectuated because of the pendency of this proceeding.

It further appears that disciplinary proceedings are presently pending before the municipal issuing authority against the licensee because of said sale of alcoholic beverages to the minors. A supplemental petition to lift the automatic suspension may be filed with me by petitioner after the disciplinary proceedings have been decided. In fairness to petitioner, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Pasch, Bulletin 1538, Item 8.

Accordingly, it is, on this 11th day of February, 1964,

ORDERED that the aforesaid automatic suspension be stayed pending the entry of a further order herein.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - SALE IN VIOLATION OF MUNICIPAL HOURS ORDINANCE - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against Thomas J. Soriano t/a Korner Inn 26 Second Avenue Raritan (Borough), New Jersey,

CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Raritan.

Seymour S. Weinblatt, Esq., Attorney for Licensee Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

The licensee pleaded not guilty to the following charges:

- "1. On Saturday, June 29, 1963, at about 1:05 A.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a quart size bottle of Seagram's Seven Crown Blended Whiskey, at retail, in its original container for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverage in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38.
"2. On Saturday, June 29, 1963, between 1:00 A.M. and 1:05 A.M. you sold, served, delivered and allowed, suffered and permitted the sale, service, delivery and the consumption of alcoholic beverages on your licensed premises; in violation of Section 6 of an Ordinance adopted by the Mayor and Council of the Borough of Raritan on October 4, 1948.
"3. On Saturday, June 29, 1963, between 1:00 A.M. and 1:05 A.M. you failed to have your licensed premises closed; in violation of Section 6 of an Ordinance adopted by the Mayor and Council of the Borough of Raritan on October 4, 1948."

To substantiate the charges the Division produced ABC agents S and McC who participated in the investigation of the licensee's business.

Succinctly stated, the agents' testimony shows that at 11:20 p.m. Friday, June 28, 1963, they entered the licensed premises and seated themselves at the mid section of the bar, behind which was Thomas Soriano (hereafter Soriano), the licensee. Seated at the far end of the bar was Daniel Zangrando (known as Dinch) and seated to the agents' left were two males, and to the agents' right were Mrs. Soriano and a mixed couple. At 12:55 a.m. Soriano announced "Last call for drinks" but no drinks were ordered. At 1 a.m. (the closing hour) the agents and patrons con-

tinued consuming the drinks served to them at about 12:55 a.m., while Soriano checked the cash register, extinguished some of the interior lights, entered the kitchen and performed other closing duties but did not lock the doors. At 1:04 a.m. Agent McC went to the men's room and Agent S requested another glass of beer. Soriano obliged but took no money. Agent S then asked Soriano, "How is chances of getting a fifth of 7?" Soriano, after looking over his stock, replied "... I don't have any." At that point Agent McC returned to the bar and Agent S asked Soriano "What have you got?" When Soriano said "Only quarts," Agent S added \$2 to \$5 he had on the bar and said "All right, give me a quart." Soriano took a quart bottle of Seagram's 7 Crown whiskey, put it in a paper bag, placed the package on some beer cases in the rear section of the barroom, took \$6 off the bar, put them in the cash register and made a notation on a white paper pad but did not ring up the sale. Both agents finished their drinks, and at 1:05 a.m., when they stood up to leave, Dinch brought the bag containing the whiskey to them and handed it to Agent S. The agents departed, leaving the other patrons in the barroom. Within minutes the agents returned, identified themselves to Soriano, and Agent McC, after dialing the time bureau (Trinity 8-1212), called Soriano over and put the receiver to his ear. The response, audible to the agents was "The time is 8 minutes and 30 seconds after 1:00 a.m." Soriano said "I don't want to hear it." However, respecting the time when he sold the whiskey, he said "I guess it was about 1:02 a.m." and wrote on the bag containing the whiskey "T.S., 6 29 63, 1:02 a.m." The bag with the bottle of whiskey and the paper on which Soriano had made the notation "1 quart S S \$6" which one of the agents had taken from the back bar were received in evidence.

After the agents had been cross examined at length, Violet Soriano, Daniel Zangrando and John Granzetto were called as witnesses for the licensee. Soriano also testified in his own behalf.

Succinctly stated, the testimony of Soriano shows that on the dates involved he arrived in the licensed premises about 10 p.m. or probably later, and that the agents were there when he arrived. He then synchronized his watch with the clocks on the walls which are always ten minutes fast, so that he would know when to close up, and announced "Last call for alcohol." At that time the couple left. He then sold one of the agents a quart bottle of whiskey, refilled their glasses with beer, took \$6 which he put in the register, made a notation on a pad, placed the bottle on the empty cases, and Dinch handed it to one of the agents as both of them were leaving. He then locked the door and went into the kitchen and, when he returned to the barroom, the agents were there "only because a customer left his stool and unlocked the door" and left. After the agents identified themselves, Agent McC went to the telephone and called "Tom, come over here. I want you to hear something" and he replied, "You caught me. I don't want to hear nothing." Complying with his wife's suggestion he went to the phone, held the receiver to his ear and heard "At the tone time 1:02;" that, at the request of Agent S, he initialed the bag containing the whiskey, put the date on it, and 1:02 a.m., and that there was no discussion about it being any other time.

The testimony of Mrs. Soriano corroborates that of her husband as to the occurrences in the licensed premises on the night in question except that she testified she didn't have any knowledge of the exact time that the incidents took place.

Zangrando testified in substance that he was tending bar on the night in question between 10 p.m. and 12:50 a.m., and that he saw the agents come in after 10 p.m. At almost one o'clock one of the agents asked Soriano for a bottle of liquor, and Soriano

"looked at me. I went 'No' but he gave it to them. They left the bar and they went out." John Granzetto, who was there, "unlocked the door, and as he went out they popped in." It was just about one o'clock when the agents came back. Soriano had told him that the clocks in the place are always eight to ten minutes fast, but he never checked them as to their accuracy. The agents identified themselves, and Agent McC asked Soriano to come to the phone. He didn't hear what was said on the phone, but heard Agent S say "1:02" and ask Soriano to sign his name on the bag and Soriano put his initials on it.

John Granzetto testified in substance that he was in the licensed premises on the night in question and saw Soriano serve one of the agents a quart bottle of whiskey and observed them drinking beer but couldn't swear as to the time; that, after the agents finished their drinks, they left; that shortly thereafter "I got up, I opened the door, it was locked, and I walked out, and I just left the door open, and the two gentlemen I figured they were going back in for something, I left the door open and continued to walk home."

It appears from the testimony of all of the licensee's witnesses that the incidents which occurred in the licensee's premises on the night in question coincide with those testified to by the agents. The only question to be determined herein is whether or not those incidents occurred after the 1 a.m. closing hour. Mrs. Soriano had no knowledge of the exact time; Zangrando never checked the clocks in the licensed premises to ascertain their accuracy but relied upon Soriano's statement to him that the clocks were always eight to ten minutes fast, and Granzetto wouldn't swear as to the time the sale of liquor was made or the time he left the premises. The licensee himself was the only witness who sought to establish that the alleged violations occurred before 1:00 a.m. by asserting that, when he arrived, he synchronized the time of his watch with the time on the two clocks in the tavern which is always ten minutes fast and that, when he called out "Last call for alcohol," the clocks showed the time to be "around one o'clock" although the correct time was about 12:50 a.m. On cross examination, however, he testified that he didn't have any watch.

I have carefully considered the evidence herein and I find that the testimony of the agents correctly and convincingly establishes that the incidents, which all agree occurred in and upon the licensed premises on the night in question, occurred after the closing hour of 1:00 a.m., and I conclude that the Division has established the guilt of the licensee as to the three charges by the necessary preponderance of the believable evidence. I recommend, therefore, that an order be entered finding the licensee guilty as charged and, lacking a prior record, that his license be suspended for a period of twenty days. Re Mandiberg's Delicatessen Corp., Bulletin 1541, Item 2.

#### Conclusions and Order.

No written exceptions to the Hearer's Report were filed with me within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the record herein, including the transcript of the testimony, the exhibits, the summation of the attorneys for the parties hereto and the Hearer's Report, I concur in the findings and conclusion of the Hearer and adopt his recommendations.

Accordingly, it is, on this 13th day of February 1964,

ORDERED that Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Raritan to Thomas J. Soriano, t/a Korner Inn, for premises 26 Second Avenue, Raritan (Borough), be and the same is hereby suspended for twenty (20) days, commencing at 1 a.m. Thursday, February 20, 1964, and terminating at 1 a.m. Wednesday, March 11, 1964.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

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

In the Matter of Disciplinary Proceedings against )

587 Tavern Corp. )  
t/a 587 Club )  
587 Ocean Avenue )  
Jersey City, New Jersey )

CONCLUSIONS  
AND ORDER

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

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Warren, Chasan, Leyner & Holland, Esqs., by Raymond Chasan, Esq.,  
Attorneys for Licensee  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control

BY THE ACTING DIRECTOR:

Licensee pleads guilty to a charge alleging that on Sunday, February 2, 1964, it sold a four-fifth quart bottle of whiskey for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Stein, Bulletin 1547, Item 12.

Accordingly, it is, on this 18th day of February, 1964,

ORDERED that Plenary Retail Consumption License C-56, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to 587 Tavern Corp., t/a 587 Club, for premises 587 Ocean Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, February 25, 1964, and terminating at 2:00 a.m. Friday, March 6, 1964.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

9. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

Ann De Vries )  
t/a Harrison House )  
896 Main Avenue )  
Passaic, New Jersey )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-45, issued by the Board of Commissioners of the City of Passaic )  
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Licensee, Pro se  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 1, 1964, she sold a half pint bottle of liqueur for off-premises consumption during hours prohibited by Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days, effective May 20, 1962, for local hours violation and failure to display license certificate.

The prior record considered, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Cf. Re Centinaro, Bulletin 1468, Item 4.

Accordingly, it is, on this 24th day of February, 1964,


ORDERED that Plenary Retail Consumption License C-45, issued by the Board of Commissioners of the City of Passaic to Ann De Vries, t/a Harrison House, for premises 896 Main Avenue, Passaic, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. Monday, March 2, 1964, and terminating at 3:00 a.m. Friday, March 27, 1964.

EMERSON A. TSCHUPP  
ACTING DIRECTOR

10. STATE LICENSES - NEW APPLICATION FILED.

Metropolis Brewery of N.J., Inc.  
t/a Rialto Brewing Company, Banner Brewing Co., Old Bohemian Brewing Co., Gilt Edge Brewing Company, Class A Brewing Co. & Hornell Brewery Co.  
N.E. Corner Lalor & Lamberton Streets  
Trenton, New Jersey

Application filed March 30, 1964 for Limited Wholesale License.

  
Joseph P. Lordi  
Director