

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

BULLETIN 1457

July 9, 1962

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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 1457

July 9, 1962

1. DISCIPLINARY PROCEEDINGS - INDECENT LANGUAGE AND CONDUCT - SALE TO A MINOR - LICENSE SUSPENDED FOR 90 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

MARTY DE PIANO & FRANK A. BIZARRO
322 - 38th Street
Union City, N. J.

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption
 License C-99, issued by the Board of
 Commissioners of the City of Union City.

Licensees, Pro se.

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

BY THE DIRECTOR:

Licenseses plead guilty to charges alleging that on February 28 and March 1, 1962, they (1) permitted indecent language and conduct on the licensed premises, in violation of Rule 5 of State Regulation No. 20, and (2) sold drinks of alcoholic beverages to an 18-year-old minor, in violation of Rule 1 of State Regulation No. 20.

As to the first charge, reports of investigation disclose that patrons, male and female, were permitted to engage in acts of simulated sexual intercourse both normal and perverted; that a male patron engaged in repeated acts of indecent exposure; and that a female patron exposed her undergarment while performing a solo dance; all to the running accompaniment of foul and indecent language, in which language and conduct not only the patrons, but also one of the licensees and the bartender, participated.

Absent prior record, and considering the fact that licensees have been licensed only recently (September, 1961), the license will be suspended on the first charge for a period of seventy-five days (Re Club Rio, a corp., Bulletin 1412, Item 4) and on the second charge for a period of fifteen days (Re Mondello, Bulletin 1426, Item 4), or a total of ninety days, with remission of five days for the plea entered, leaving a net suspension of eighty-five days.

Accordingly, it is, on this 8th day of May, 1962,

ORDERED that Plenary Retail Consumption License C-99, issued by the Board of Commissioners of the City of Union City to Marty De Piano and Frank A. Bizarro for premises 322 - 38th Street, Union City, be and the same is hereby suspended for the balance of its term, commencing at 3:00 a.m. Tuesday, May 15, 1962; and it is further

ORDERED that any renewal of said license shall be and remain under suspension until 3:00 a.m. Wednesday, August 8, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - SACHS v. PATERSON.

HAROLD SACHS, trading as
M & S TAVERN,

Appellant,

v.

BOARD OF ALCOHOLIC BEVERAGE
CONTROL FOR THE CITY OF
PATERSON,

Respondent.

)
)
) ON APPEAL
) CONCLUSIONS
) AND ORDER.
)
)
)

Robert Goodman, Esq., by Sylvan G. Rothenberg, Esq., Attorney
for Appellant.

Theodore D. Rosenberg, Esq., by William J. Rosenberg, Esq.
Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent whereby on October 26, 1961, it suspended appellant's license for fifteen days, effective October 30, 1961, after appellant was adjudged guilty on a charge alleging that on April 28, 1961, he allowed, permitted and suffered a brawl at his licensed premises in violation of Rule 5 of State Regulation No. 20.

"Upon the filing of the appeal an order was entered on October 26, 1961, staying the respondent's order of suspension until further order of the Director. R.S. 33:1-31.

"In his petition of appeal appellant alleges respondent's action was erroneous because its decision was contrary to the weight of the evidence.

"Respondent in its answer denies appellant's allegation.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15.

"Respondent called as its witnesses two local police officers (Albert Sinforosa and Vincent Mendillo). Appellant's witnesses were Harold Sachs (the licensee), Verler McEachin and Walter Green (bartenders of appellant), Louise Spencer and Eldridge Dixon (two patrons of the licensed premises).

"Officer Sinforosa testified that on Friday, April 28, 1961, at about 11:25 p.m., pursuant to a radio call received at 11:20 p.m., he and Officer Mendillo arrived at appellant's licensed premises; that upon entering the premises he observed a fight in progress between five or six patrons, one of whom was a female; that 'they were throwing fists, throwing bottles, pushing each other all around the back part of the tavern;' that there were between fifteen and twenty patrons in the premises;

that Robert Roach was tending bar; that he and Officer Mendillo attempted to stop the fight by separating the participants; that he called upon Roach for assistance; that Roach ignored his request; that one of the fighters pushed Officer Mendillo to the floor and through the juke box and that it took him and Officer Mendillo five to ten minutes to stop the altercation, following which he called for the patrol wagon.

"On cross-examination Officer Sinforosa testified that he and Officer Mendillo entered the premises through its side entrance in the area of which the fight took place; that the bartender on duty had identified himself as Robert Roach; that he did not ask Roach how the fight started or how long it was in progress and that no one was injured.

"Officer Mendillo substantially corroborated the direct testimony of Officer Sinforosa and further testified that he believes the name of the bartender to be William Roach; that neither he nor Officer Sinforosa asked the bartender why he had failed to give them any assistance to quell the fight; that Roach told them he had telephoned the police to 'preserve peace' at the premises; that four patrons (three males and a female) participated in the fight and that some of the patrons stood watching the fight from a distance of about two or three feet.

"Harold Sachs testified that on the night in question Walter Green and Verler McEachin were tending bar at the licensed premises; that Robert Roach was employed by him as a bartender on the day shift (9 a.m. to 5 p.m.) and that Roach was not working on the premises on the night of April 28 aforesaid.

"On cross-examination Sachs testified that on April 28, 1961, he was in the premises until about 7 p.m.; that he observed Roach go off duty at 5 p.m.; that he returned to the premises the next morning at about 12:30, at which time he found Green and McEachin tending bar; that Roach was not in the premises, and that Roach did not testify before the respondent Board.

"Verler McEachin testified that on the night in question he and Green were the only bartenders on duty; that they came on duty at 5 p.m. on April 28, 1961, and worked until 3 the next morning; that Roach was not in the premises after 5 p.m. on April 28 aforesaid; that the premises were crowded and that there were between forty-five and fifty patrons present.

"McEachin further testified that about 11 p.m. on the night in question four males accompanied by a female entered the licensed premises; that they took seats at a table from which he was removing some glasses; that these patrons were acting boisterously; that they appeared to have been drinking; that he refused to serve them; that he had asked them to leave the premises; that they became incensed when he informed them that he was going to call the police; that he telephoned the police station and that 'I asked them to come up, I had a bunch of people raising a lot of Cain in the bar.'

"McEachin further testified that between five to ten minutes after he had made his telephone call the two police officers entered the premises through the side entrance (about ten feet from the table in question); that simultaneously with their arrival the five patrons attempted to leave the premises by the front door (about forty feet from their table); that he tried to prevent their departure in order to identify them to the police officers; that 'right away the girl started pushing

and shoving, one of the men grabbed me, and I think the girl was trying to hit me, I'm not sure', following which the police officers brought order in the premises.

"McEachin further testified that at no time did either of the police officers question him; that immediately after the police officer had taken the five patrons into custody he drove to the police station and that he had lodged a complaint against them.

"On cross-examination McEachin reiterated the pertinent parts of his direct testimony and further testified that in September 1961 he left the appellant's employment; that he is presently employed by the 'Rayco seat covers'; that on the night in question he had requested the five patrons to stop their boisterous actions on five or six occasions; that about three or four minutes after their arrival in the premises he called the police; that immediately after the two police officers entered the premises he grabbed one of the males to prevent his escape and that, prior to the arrival of the police, there was no physical violence in the premises.

"On further cross-examination McEachin testified that, while he was adjusting his clothes in a small room in back of the bar, he observed the police officers in a conversation with Green.

"Walter Green substantially corroborated the direct testimony of McEachin.

"On cross-examination Green testified that, after the police arrived, he observed the aforesaid group of patrons pushing their way towards the front exit; that he observed McEachin move in the same direction; that thereafter, because of the crowded condition of the premises, he was unable to observe what had taken place; that Officer Sinforosa returned to the premises and asked him for the license and that Officer Sinforosa did not ask him to identify himself.

"Louise Spencer testified that between 10 and 10:30 p.m. on April 28, 1961, she entered the licensed premises; that McEachin and Green were tending bar; that she did not see Roach in the premises; that she was sitting at the bar near the front entrance of the premises; that the premises were crowded; that at about 11 p.m. she was attracted to the five patrons by their loud and boisterous behavior; that she observed McEachin standing at the table occupied by the five patrons; that, because of the noise in the premises, she was unable to hear the conversation between the five patrons and McEachin; that, prior to the arrival of the police, she again observed the five patrons arguing with each other and using obscene language; that shortly after the police entered the premises she and other patrons started to leave the same; that she did not observe any physical violence on the premises; and that she did not see any bottles flying.

"On cross-examination Mrs. Spencer reiterated her direct testimony and further testified that she did not appear at the hearing before the local Board.

"Eldridge Dixon testified that he is married and living with his family; that for the past twenty-two years he has been steadily employed (twenty years by one employer); that on April 28, 1961, he visited the licensed premises at 5 p.m. and again at 10 p.m.; that on his first visit he observed Roach in the

premises at about 5 p.m.; that Roach was not in the premises on his second visit (10 to about 11:30 p.m.); that at the time in question Green and McEachin were tending bar; that there were between twenty-five to thirty-five patrons in the premises; that about 11 p.m. he and some friends were playing a game on the bowling machine (located at the front entrance to the premises); that he observed four patrons (three males and a female) enter the premises through the side door and take seats at a table about one or two feet from him; that these patrons were obstreperous and noisy; that he heard McEachin request them to refrain from their unruly conduct; that McEachin refused to serve them any drinks and had asked them to leave the premises; that, after McEachin had called the police, one of the males 'grabbed' the female in an attempt to 'pull' her out of the premises; the other two males 'were wrestling with each other;' that McEachin tried to separate the two males, following which the two police officers arrived.

"Dixon further testified that, because of the commotion, he was unable to detect whether any of the four patrons used their fists and that he did not see any bottles being thrown by any of the patrons.

"On cross-examination Dixon testified that the four patrons were in the premises for about forty-five to fifty minutes before the police arrived; that during their visit they were arguing with one another; that they were not fighting; that the physical contact of the four patrons as described in his direct testimony started about fifteen or twenty minutes before the two police officers came into the premises; that the police restored order 'pretty quick;' that, after the police arrived, McEachin did not come in contact with the four patrons, and that McEachin ran to the front exit of the premises to stop two males from leaving the same.

"This case presents a conflict between the witnesses for the appellant and the witnesses for the respondent. I have carefully examined all the evidence and the exhibits in the case. The officers testified they received a radio police call to proceed to the appellant's licensed premises; that upon arrival they observed a fight in progress; that the participants were using their fists, pushing each other and throwing bottles; that it took them about ten minutes to subdue the altercation and that no one was injured.

"McEachin testified that the five patrons were unruly when they entered the premises; that he recognized that they had been drinking; that he refused to serve them any drinks; that he requested them to leave the premises; that he then called the police; that between five and ten minutes thereafter the police came into the premises; that simultaneously with their arrival the five patrons started to leave the same, in the course of which a general commotion took place in the premises. In response to my question McEachin testified that he summoned the police about three or four minutes after the aforesaid patrons had entered the premises.

"Dixon, on cross-examination, contradicted essential parts of McEachin's testimony.

"I find no reason to disbelieve the officers that they had observed a real fight in progress when they had arrived at the premises and that it took them five to ten minutes to stop the brawl. It is apparent that the fight was going in for a considerable time before the officers came into the premises. I find as a fact that McEachin did not telephone the police for

assistance within three or four minutes after the five patrons came into the premises, and that he and Green failed to take prompt action to avoid the fight. Hence I further find as a fact that on Friday night, April 28, 1961, the appellant allowed, permitted and suffered a brawl in and upon his licensed premises as charged. It is significant to note that Roach neither testified at the hearing below nor at the hearing held herein. Under the circumstances, the appellant has failed to sustain the burden of establishing that the action of the respondent was erroneous (Rule 6 of State Regulation No. 15). I recommend, therefore, that an order be entered affirming respondent's action and dismissing the appeal, and fixing the effective dates for suspension imposed by respondent and stayed pending the entry of the order within."

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulation No. 15.

After carefully considering the evidence in the case, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 7th day of May 1962,

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

ORDERED that the fifteen-day suspension heretofore imposed by respondent, and stayed during the pendency of this appeal, be restored to commence at 3 a.m. Monday, May 14, 1962, and terminating at 3 a.m. Tuesday, May 29, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

3. APPELLATE DECISIONS - ESSEX COUNTY RETAIL LIQUOR STORES ASSOCIATION v. NEWARK and WILLNER'S LIQUORS, CORP.

ESSEX COUNTY RETAIL LIQUOR STORES ASSOCIATION,)

Appellant,)

v.)

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, AND WILLNER'S LIQUORS, CORP. OF N. J., t/a WILLNER'S LIQUORS,)

Respondents.)

ON APPEAL
CONCLUSIONS
AND ORDER

Leonard Brass, Esq., Attorney for Appellant.
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney for Respondent Municipal Board
Samuel W. Lucas, Esq., Attorney for Respondent Willner's Liquors, Corp. of N.J., t/a Willner's Liquors.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board wherein it denied a request for a rehearing with reference to a person-to-person and place-to-place transfer of a plenary retail

consumption license from Spotlight Bar to Willner's Liquors, Corp. of N. J., and from premises 525 Springfield Avenue to premises 543 Springfield Avenue, Newark.

"It appears that the transfer in question was granted on January 11, 1961, by the respondent Board pursuant to an application made therefor. As a result of said determination by the respondent Board appellant herein appealed to the State Director, which appeal was duly heard at this Division, and by order of the State Director dated May 3, 1961, the action of the respondent Board in granting the transfer in question was affirmed and the appeal filed therein was dismissed. Essex County Retail Liquor Stores Association v. Newark and Willner's Liquors, Bulletin 1394, Item 1.

"On September 1, 1961, the instant appeal was filed by the appellant from the action of the respondent Board on August 16, 1961, in denying the rehearing.

"It appears from the record herein that, subsequent to the determination on May 3, 1961, of the Director, the respondent licensee entered into a long-term lease for the premises in question and, in addition thereto, made extensive improvements in the premises for the purpose of carrying on its liquor business.

"Appellant offered in evidence a survey prepared by Casey and Keller, civil engineers and surveyors, on November 30, 1961, disclosing that the premises of the respondent licensee are within 1,000 feet of another plenary retail consumption licensed premises, in violation of Ordinance Section 3.29.

"The question to be resolved in this proceeding is whether the respondent Board erred in refusing to grant a rehearing in the matter.

"It has been ruled and held that, when an issuing authority reaches a final determination on an application for license or transfer thereof, it then has no jurisdiction to reconsider its action at a subsequent meeting (Re Hendrickson, Bulletin 47, Item 10; Plager v. Atlantic City et al., Bulletin 80, Item 11, and bulletins and court decisions cited therein). The alleged violation of the section of the ordinance herein cited by appellant was neither advanced by said appellant at the hearing before the Municipal Board nor at the appeal hearing at this Division. See Essex County Retail Liquor Stores Association v. Newark and Willner's Liquors, supra. It is apparent in the instant matter that appellant's untimely appeal questioning the impropriety of respondent Board's action in refusing to grant a rehearing when final adjudication had already been made in the case cannot be sustained.

"In Re Board of Commissioners of West New York, Bulletin 166, Item 9, the late Commissioner Burnett, in an opinion prepared by then Chief Deputy Commissioner and Counsel Nathan L. Jacobs, stated that an error in the issuance of a license '*** should be corrected upon direct appeal in the manner and within the limitations expressly provided by the Legislature and not collaterally. Licensees who have received their licenses in good faith and have operated their businesses pursuant thereto should not be subjected to the possibility of an attack, after the statutory time for appeal has elapsed, on the propriety of the original procedure resulting in the issuance of the license.' Cf. Atlantic County Licensed Beverage Association et al. v. Hamilton et al., Bulletin 879, Item 5;

Balzer v. Pennsauken et al., Bulletin 1064, Item 2; Union County Retail Liquor Stores Assn. v. Elizabeth et al., Bulletin 1154, Item 1.

"In Haba Realty Corp. v. Long Branch et al., Bulletin 1033, Item 1, the Director posed a query: 'Even assuming there had been lack of jurisdiction and legal impropriety in the granting of the 1952-1953 transfer, would the license properly and fairly be cancellable, under all the circumstances, at this late date?'

"After careful consideration of the record herein, I find that appellant has collaterally attacked the action of the respondent Board in granting the transfer of the license in question and, therefore, the decision of respondent Board to deny the rehearing in this case was entirely proper. Hence I recommend that said action be affirmed, and that the appeal herein be dismissed."

Pursuant to Rule 14 of State Regulation No. 15, the attorney for appellant filed exceptions to the Hearer's Report and written argument thereto.

After carefully considering the entire record herein, including the transcripts of the testimony, exhibits, the Hearer's Report and the written exception and arguments with respect thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 2nd day of May 1962,

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

WILLIAM HOWE DAVIS
DIRECTOR

4. APPELLATE DECISIONS - DE VRIES v. PASSAIC AND DI PERI AND RUSSO.

ANN DE VRIES,

Appellant,

v.

BOARD OF COMMISSIONERS OF THE
CITY OF PASSAIC, AND CARMINA
DI PERI AND GIACOMO RUSSO,

Respondents.

ON APPEAL
CONCLUSIONS
AND ORDER

Abraham Feltman, Esq., Attorney for Appellant.

Martin Klughaupt, Esq., Attorney for Respondent Board of
Commissioners.

Joseph M. Keegan, Esq., Attorney for Respondents Di Peri and Russo.

BY THE DIRECTOR:

The Hearer has filed the following Supplemental Report
herein:

"Appellant appealed from the action of respondent Board which, on November 15, 1960, granted an application for a place-to-place transfer (from 211 Monroe Street to 888 Main Avenue, Passaic) of Plenary Retail Consumption License C-51 held by respondents Di Peri and Russo. The principal ground alleged by appellant is that the transfer was in violation of Section 3.14 of Chapter 3 of the Revised Ordinances of the City of Passaic, designated as the 'footage rule', which prohibits a place-to-place transfer of a plenary retail consumption license to premises within 250 feet of similarly licensed premises.

"Since the evidence adduced at the hearing was insufficient for a determination as to whether or not the transfer was in accordance with the aforesaid 'footage rule', the Director entered an order remanding the case to respondent Board to ascertain and to advise him as to the distance between premises 888 Main Avenue, for which the license application of Di Peri and Russo was granted, and the premises of the Guarantee Wine & Liquor, Inc., located at 897 Main Avenue. (DeVries v. Passaic, Bulletin 1394, Item 2.)

"Respondent Board advised that the distance between premises 888 and 897 Main Avenue is 194.80 feet. Thereafter, a supplemental hearing was scheduled at which the attorneys for the respective parties and respondents Di Peri and Russo attended. It became evident from the statements of the attorneys, substantiated by an exhibit received in evidence, that pending the original hearing, respondent Board, on April 11, 1961, amended and supplemented the aforesaid ordinance as follows:

'Section One. The said ordinance, erroneously designated therein as Section 3.14 of the Revised Ordinances of the City of Passaic is hereby designated to be Section 3.4-1 thereof and all references in said ordinance to "Section 3.14" are amended to "Section 3.4-1".

'Section Two. Section One of said ordinance is hereby supplemented and amended by adding thereto, the following paragraph:

"The distance limitations herein contained shall not be applicable to the transfer of any retail plenary consumption license for, and conditioned upon, continued use and operation by the licensee or transferee, of a restaurant as defined in Revised Statutes 33:1-1(t). Any resolution adopted by the local issuing authority granting such transfer shall recite the conditions set forth in this paragraph."

"Section Three. All ordinances and parts of ordinances inconsistent herewith be and the same are hereby repealed and this ordinance shall take effect ten (10) days from the time of its final passage."

"The adoption of the supplemental ordinance has removed from consideration the issue of non compliance with the distance limitation of the previously enacted ordinance."

"Appellant, however, contends that the issue should be decided on the status of the ordinance as of November 15, 1960 when the application of DiPeri and Russo was granted. However, the law in this state is well-established that the status of the municipal ordinance prevailing at the time the appellate authority renders its decision is controlling, rather than the status of the ordinance at the time the municipal authority rendered its determination. Roselle v. Wright, 37 N.J. Super 507; Socony-Vacuum Oil Co., Inc. v. Mount Holly Township, 135 N.J.L. 112; Cf. Maguire v. Atlantic City and Lanin Corporation, Bulletin 1152, Item 2.

"The records of the Division disclose that on June 27, 1961 respondent Board unanimously adopted the following resolution:

"Be it Resolved that a resolution of November 15, 1960 is hereby amended to provide the transfer of 1960-61 license C-51 from Carmine C. Di Peri and Giacomo Russo from premises at 211 Monroe Street to premises located at 888 Main Avenue is authorized to be made effective immediately for the sole purpose of permitting lawful grant of application for 1961-62 renewal thereof.

"Whereas Carmine C. Di Peri and Giacomo Russo have made application to the Board of Commissioners for 1961-1962 renewal of Plenary Retail Consumption License #C-51 for premises located at 888 Main Avenue.

"Be it Resolved that the application for the 1961-1962 renewal of license C-51 is granted subject to Special Condition: that the licensee shall use said license only in the operation by the licensee of a restaurant, as defined in R.S. 33:1-1(t) and subject further to the outcome of an appeal now pending before the State Director of Division of Alcoholic Beverage Control."

"At the supplemental hearing, respondents Di Peri and Russo testified that they had purchased and committed themselves to purchase considerable equipment for the operation of a restaurant at premises 888 Main Avenue. Because their testimony was insufficient to establish that they were operating a bona fide restaurant, the attorneys for the parties hereto consented to have the licensed business investigated by agents of the Division.

"The documentary evidence procured by the agents, including a sketch of the floor plan of the premises, photographs of its exterior, records indicating sales of alcoholic beverages, invoices and tax reports, together with the agents' reports and a signed, sworn statement by Di Peri were submitted in due course and are made part of the record herein.

"It appears from the records kept by the licensees Di Peri and Russo that the total amount of sales on the premises from July to October 1961 was \$4,990.43, but there is nothing to indicate the amount derived from the sale of liquor and that derived from the sale of food. Di Peri, in his statement, says that the sales for liquor and foods were about equal. However, the reports show that the supply of food on hand at the time of the agents' investigation was negligible and that there were 52 open bottles of assorted liquors and wines on the back bar and numerous bottles of beer in the refrigerator.

"R.S. 33:1-1 (t) defines a restaurant as 'an establishment regularly and principally used for the purpose of providing meals to the public, having an adequate kitchen and dining room equipped for the preparing, cooking and serving of food for its customers and in which no other business, except such as is incidental to such establishment, is conducted' (emphasis supplied).

"Considering the facts and circumstances herein, and the legal principles applicable thereto, I find that respondent Board's action was not erroneous because of the reason set forth in appellant's petition of appeal, and I further find that the evidence adduced herein is insufficient to warrant a determination that respondents Di Peri and Russo are now operating a bona fide restaurant in accordance with the statute.

"I recommend, therefore, that an order be entered dismissing the appeal and that disciplinary proceedings be instituted by the Director to determine whether the license held by Di Peri and Russo should be suspended or revoked for failure to comply with the special condition imposed on the license by the issuing authority."

Written exceptions to the Hearer's Report and written argument to substantiate the exceptions were filed with me by appellant's attorney within the time limited by Rule 14 of State Regulation No. 15.

The argument advanced by appellant is that Section One referred to in Section Two of the amended and supplemental ordinance adopted on April 11, 1961 (as set forth in the Hearer's Report) was amended by Paragraph One of the ordinance adopted on November 28, 1961 which deletes Section One of the prior amended ordinance. He contends that since he concedes that the established law of the State, referred to by the Hearer, is controlling, the determination herein should be in conformity with the last amended ordinance. However, Paragraph Two of that ordinance provides that the amendment "shall in no way effect any applications for transfer filed prior to the adoption hereof". It is apparent, therefore, that the application for, and transfer of, the license to respondents Di Peri and Russo at their present location, long before the last amended ordinance was adopted, disposes of appellant's contention.

I have carefully considered the entire record in this case, including the transcripts of the proceedings, the exhibits, the Hearer's Report and the written exceptions and argument with respect thereto, and have concluded that no oral argument is requisite.

I cannot agree with the Hearer's recommendation that disciplinary proceedings should be instituted against respondents Di Peri and Russo. From the facts and circumstances appearing herein, it is my conclusion that unless Di Peri and Russo, at some time prior to the expiration date of their license, comply with the condition imposed thereon, respondent Board of Commissioners shall refuse to renew said license at their present location. If, however, the renewal is granted in contravention of the aforesaid, it shall be deemed to be for the sole purpose of enabling the licensees to apply for transfer of their license to other premises which are not violative of the basic distance ordinance.

Excepting the aforesaid modification, I approve and adopt the Hearer's Report.

Accordingly, it is, on this 9th day of May, 1962,

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

ORDERED that respondent Board of Commissioners act in accordance with my conclusions hereinabove set forth.

WILLIAM HOWE DAVIS
DIRECTOR

5. STATE LICENSES - OBJECTIONS TO TRANSFER OF STATE BEVERAGE DISTRIBUTOR'S LICENSE - TRANSFER APPROVED.

In the Matter of Objections to the
Transfer of State Beverage
Distributor's License SBD-97 from

SANFORD KALB
t/a KALB BEVERAGE COMPANY
R.D. NO. 4
U.S. Highway No. 9
Howell Township, N. J.

to

SANFORD KALB
t/a KALB BEVERAGE COMPANY
R.D. NO. 3
U.S. Highway No. 9
Farmingdale,
Howell Township, N. J.

CONCLUSIONS

Sanford Kalb, Applicant, Pro se.
Jesse Boyette, Pro se, Objector, and appearing for Freehold Suburban Tavern Owners' Association.
J. Arthur Fell, Pro se, Objector, appearing for the Monmouth County Retail Liquor Stores Association.

BY THE DIRECTOR:

On April 2, 1962, Sanford Kalb, t/a Kalb Beverage Company, filed an application for a transfer of his State Beverage Distributor's License from premises R.D. No. 4, U.S. Highway No. 9, Howell Township, P.O. 30, to R.D. No. 3, U. S. Highway No. 9, P.O. Farmingdale, Howell Township, New Jersey. Written objections to the granting of the application for said transfer were filed, and a hearing was duly set thereon.

The objectors set forth the reasons for their objection as follows:

- (1) the area, in which the transfer has been requested, is adequately serviced with existing licenses; and
- (2) there is no public need or necessity for this transfer.

At the hearing herein, the applicant testified that he desires to have this application for transfer granted because he does not have adequate facilities for his operations at his present location.

Upon approval of this license transfer, Kalb intends to purchase a one-story cinder block building, fifty feet by sixty feet, at a total purchase price of \$30,000. This building will contain an office and showroom. He states that the present facilities are insufficient for his purposes; that in the winter he has considerable hardship because there is an inadequate heating system, and the beer often freezes.

Kalb also stated that the new location is not near any existing schools or churches; the nearest church at present is more than a mile away. The new location would be three miles from the nearest type of license in Howell Township in one direction, and approximately seven or eight-tenths of a mile from any licensed premises in the other direction. Investigation report discloses that the new premises is about one mile from the present premises.

The applicant further testified that plans and specifications on file, and a map introduced in evidence, reflect the fact that he intends to move from a residential section of this township to a business section. Also introduced into evidence was a copy of a letter sent to him by the Clerk of the Township of Howell which contains the following paragraph:

"You are hereby advised that this governing body has taken official action favoring the application based on the fact that the license will be moved from a residential to a highway business zone."

Jesse Boyette, an objector, testified that he is appearing on behalf of the Freehold Suburban Tavern Owners' Association, which objects to this transfer because there are four C licenses, two warm-beer licenses and one package store within an area of five miles, and there are about four of them within an area of approximately one mile. He also stated that there is a church which will be constructed "within a short distance of this area".

He further objected on the ground that this area is sufficiently covered with licenses so far as population is concerned and that the applicant will operate a retail salesroom as part of his general operation.

J. Arthur Fell voiced an objection in his capacity as executive director of the Monmouth County Retail Liquor Stores Association. He echoed the sentiment of the previous witness and added that the operation of a salesroom as part of the applicant's business would create an additional traffic hazard in the area. He also felt that this business would create additional competition to the existing licensees. He admitted that the

present license is located in a residential area of the town and is now being moved to a highway business section; and that this was apparently the desire of the Township authority when they endorsed the applicant's intended action.

After considering all of the testimony, I am persuaded that the objections to the approval of this application for the issuance of the license herein have not been adequately proved; that they are of insufficient weight to warrant denial of the application; and that a sufficient need exists for the granting of said application. The fact is that there are no schools or churches in the immediate vicinity and, according to the testimony, the nearest existing church is more than a mile away.

The applicant is permitted to sell only warm beer and states that this is sold in case lots only. The proposed new premises will be a considerable distance away from any existing licensed premises, and there is no convincing evidence that the proposed new premises, fairly close to the present premises, will increase competition by reason of said transfer.

State Beverage Distributor licensees may deliver throughout the State and as a rule do not conduct any on-premises retail business of any substance. Re Lutz, Bulletin 1312, Item 6. One of the objectors admitted that this license will offer as much competition to licenses in Asbury Park and Freehold as it will to any existing licenses in Howell Township.

It is significant that the governing body of the Township of Howell has taken official action favoring the within application.

After considering all the evidence, it is my considered judgment that the objections are without merit.

Accordingly, the pending application is approved, and the appropriate endorsement on the license certificate may be made upon completion of the new premises in accordance with the plans and specifications herein filed. Re Walkiewicz, Bulletin 1172, Item 5.

WILLIAM HOWE DAVIS
DIRECTOR

6. 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

STEPHEN SZCZEPANIK
t/a "GREEN GABLES"
Prospect Plains-Applegarth Road
Monroe Township (Middlesex Co.)
PO Cranbury, N. J.

)
)
) CONCLUSIONS
) AND ORDER
)
)

Holder of Plenary Retail Consumption
License C-2, issued by the Township
Committee of the Township of Monroe.

Licensee, Pro se.

Dora P. Rothschild, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on
Sunday, February 18, 1962, he sold a pint of whiskey and a
quart of wine 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 Tom and
Jerry's, Inc., Bulletin 1445, Item 7.

Accordingly, it is, on this 14th day of May, 1962,

ORDERED that Plenary Retail Consumption License C-2,
issued by the Township Committee of the Township of Monroe,
County of Middlesex, to Stephen Szczepanik, t/a "Green Gables",
for premises Prospect Plains-Applegarth Road, Monroe Township,
be and the same is hereby suspended for ten (10) days,
commencing at 3:00 a.m. Monday, May 21, 1962, and terminating
at 3:00 a.m. Thursday, May 31, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - ORDER IMPOSING DEFERRED SUSPENSION.

In the Matter of Disciplinary
Proceedings against)

TONY MART, INC.)
t/a TONY MART)
939 Bay Avenue)
Somers Point, N. J.)

ORDER

Holder of Plenary Retail Consumption)
License C-9, issued by the Common)
Council of the City of Somers Point.)

Robert H. Davisson, Esq., Attorney for licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

On January 24, 1962, I entered an order in the above matter deferring the license suspension of thirty-five days because it appeared that the licensed business was conducted only on a limited basis. Bulletin 1437, Item 4.

I am now satisfied that the suspension should be imposed.

Accordingly, it is, on this 14th day of May, 1962,

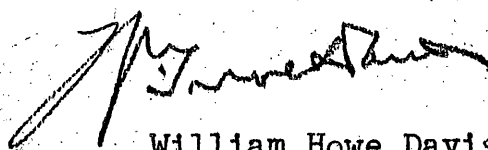
ORDERED that Plenary Retail Consumption License C-9, issued by the Common Council of the City of Somers Point to Tony Mart, Inc., t/a Tony Mart, for premises 939 Bay Avenue, Somers Point, be and the same is hereby suspended for thirty-five (35) days, commencing at 3:00 a.m. Monday, May 21, 1962, and terminating at 3:00 a.m. Monday, June 25, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

8. STATE LICENSES - NEW APPLICATION FILED.

John A. Worts
t/a Rutters Beer & Soda Dist. Co.
463 Victoria Terrace
Ridgefield, New Jersey

Application filed July 6, 1962 for place-to-place transfer of State Beverage Distributor's License SBD-91 from 423 Central Boulevard, Fort Lee, N. J.



William Howe Davis
Director