

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

BULLETIN 1178

JULY 30, 1957.

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - AUERBACH v. NEWARK AND GOLDSTEIN AND GIANETTA.
2. DISCIPLINARY PROCEEDINGS (Wharton)-SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
3. DISCIPLINARY PROCEEDINGS (Madison Township) - SALE AT LESS THEN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST OF MALT ALCOHOLIC BEVERAGES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Vernon Township) - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT RECORDINGS) - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Newark) - LEWDNESS AND IMMORAL ACTIVITIES (SOLICITATION FOR PROSTITUTION) - CONDUCTING BUSINESS AS NUISANCE - LICENSE SUSPENDED FOR 180 DAYS.
6. DISCIPLINARY PROCEEDINGS (Hackensack) - SALES TO MINORS - TRANSPORTING ALCOHOLIC BEVERAGES WITHOUT BONA FIDE INVOICE OR MANIFEST - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Lodi) - SALES TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.
8. DISCIPLINARY PROCEEDINGS (Atlantic City) - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON RESUMPTION OF BUSINESS.

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

BULLETIN 1178

JULY 30, 1957.

1. APPELLATE DECISIONS - AUERBACH v. NEWARK AND GOLDSTEIN
AND GIANETTA.

AARON AUERBACH, t/a PACIFIC WINE)
& LIQUORS,)
Appellant,) ON APPEAL
v.) CONCLUSIONS AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE)
CONTROL OF THE CITY OF NEWARK; MORRIS)
GOLDSTEIN AND ARMAND J. GIANETTA AND)
ALFRED E. GIANETTA,)
Respondents.)

Saul C. Schutzman, Esq., Attorney for Appellant.
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney for
Respondent-Municipality.
Joseph A. D'Alessio, Esq., Attorney for Respondent Morris Goldstein.

BY THE DIRECTOR:

The Hearer has filed the following Report herein.

"This is an appeal from the action of respondent Board on January 22, 1957 whereby it granted an application to transfer a plenary retail distribution license for the 1956-57 licensing year from Armand J. Gianetta and Alfred E. Gianetta to Morris Goldstein and from 295 Market Street to 73 Hermon Street, Newark.

"The only reasons set forth in the petition of appeal to support the contention that the action of respondent Board was erroneous which need to be considered herein are:

'(D) That there was no showing of public need or necessity for the transfer of the license to 73 Herman Street especially in view of the testimony of the number of outlets presently existing in the immediate vicinity.

'(E) That the Newark Board of Alcoholic Beverage Control had previously determined that a transfer at a location 75 feet further from the school than the premises at 73 Herman Street would not be approved upon the grounds that the same would be in too close proximity of said school and that the granting of the application recited herein was a reasonable (sic) exercise of their discretionary powers in the light of the prior decision.'

"The stenographic transcript of the proceedings before the respondent Board on January 15, 1957 was submitted as part of the record of the case (Rule 8 of State Regulation No. 15). Additional testimony and exhibits were introduced at the hearing held herein.

"The transfer is not for premises within the same area, and the licensee is not compelled to vacate the original premises

by circumstances beyond his control, termed a 'hardship case', hence, the instant transfer is not governed by the principles applicable to such cases.

"The question in this case is whether on the evidence presented, the only reasonable conclusion is that there is no public need or necessity for an additional license at the proposed location.

"It should be noted at the outset that 'in the City of Newark there is scarcely a section without a large number of licensed premises', Gruber v. Newark, Bulletin 1071, Item 1. On the same subject, Mayor Carlin recently advised the Director in Re Walkiewicz, Bulletin 1125, Item 6, 'there are more than sufficient outlets for sale at retail of alcoholic beverages in the City'. Licenses are not to be perpetuated merely because they have, for one reason or another, outlived their usefulness at the original location.

"That is not to say that the privilege of transfer of a retail license in the City of Newark is an empty phrase; but that new locations where a public need for a liquor outlet exists are few and far between. It is well established that there is no inherent right to transfer a license to other premises. Roach v. Butler, Bulletin 1154, Item 6.

"Specifically considering the licensed premises available to provide for the liquor requirements of the public located in the area, the proposed licensed premises are bordered by South Street on the south, and Tichenor Street and then Pennington Street to the north. A tavern is located at 149 South Street, being the southerly corner of South Street and Hermon Street. There is another tavern at 123 South Street, to the west. There is a licensed premises at 162 South Street to the east. To the north, there is a tavern at 100 Tichenor Street, west of Hermon Street. There is a tavern at 50 Hermon Street, corner of Pennington Street. In all, there are five taverns within a short distance of 73 Hermon Street. There are many more as you move further away in any direction. There is a school on the corner of South and Hermon Streets, the nearest entrance to which is slightly over 200 feet from a proposed new doorway to be installed in the building to be licensed.

"That the only acceptable conclusion is that there is no need for an additional license in the area has previously been officially expressed by licensing authorities.

"In January 1954 an application was made for the transfer of a license of the type which is here involved, from another area to 135 Tichenor Street, located on the same block as the presently proposed premises, and at the corner of Tichenor Street and Hermon Street. An appeal from such denial was filed with the Director who affirmed the action of the local Board. Mikulicz v. Newark, Bulletin 1024, Item 1. In such decision the Director describes the area as of mixed residential and business character; notes that there is a public housing project about two blocks distant and a school about 225 feet distant from the proposed premises; that there are five plenary retail consumption licenses in the immediate area; notes that some of the witnesses testified that the neighborhood is 'not very good' and 'getting worse'; that objectors considered the appellant's premises too near a school and there were enough liquor outlets in the neighborhood. At the hearing on that appeal the then Chairman of respondent Board testified that he voted to deny the transfer because there were a considerable number of objections; because there were a considerable number of liquor outlets in the area; because there was a school nearby, and because it was a changing

neighborhood. Another member of the Board testified to like effect.

"Whether there was public need for an additional liquor license in the area again came up for consideration in January 1957, in connection with an application for transfer of a state beverage distributors license to premises 177-181 South Street about a block from 73 Hermon Street. This application was under the law made directly to the Director. Among the objectors, the Attorney for the City of Newark stated that his objection was based on the contention that there are sufficient outlets for the distribution of beer in that particular area. The Director denied such application, and inter alia stated that the evidence also satisfied him that there are an ample number of licensed premises nearby, and there appears to be no need or necessity of establishing another liquor outlet in that section of Newark. Re Walkiewicz, Bulletin 1154, Item 4.

"The evidence presented in the instant appeal is that there has been no change for the better since 1954, either in increase of residents in the area or improvement in business establishments. The transfer of the license was objected to by various licensees and residents of the area on grounds similar to like objections to the two other applications above referred to.

"In my opinion the above recited facts demonstrate that the local and State issuing authorities have consistently held that presently there is no need or necessity for another liquor license in the area in question.

"The general rule is that the Director's function on appeal is not to substitute his opinion for that of the issuing authority but to determine if proper cause exists for its opinion. The Grand Union Company v. West Orange, Bulletin 1155, Item 3. In the instant case, I consider that the evidence does not furnish the respondent Board with any basis for its opinion.

"The present members of respondent Board did not hold office at the time the transfer of the license in the Mikulicz case was denied. It is not meant to suggest that there is to be any departure from the general rule that no governing body may tie the hands of its successor in matters involving the exercise of discretion (Enno et als. v. Howell Township and Hyman, Bulletin 1120, Item 6), but where, as here, there is no room for latitude of opinion, it is arbitrary and unreasonable for members of the successor issuing authority to arrive at a conclusion contrary to that logically arising from the evidence.

"The situation presented is somewhat similar to the circumstances appearing in Parent Teachers Assn. et als. v. Paterson and Hutchins, Bulletin 1022, Item 4, wherein four prior applications for transfer of a license to the same premises were denied, and the fifth application, without any material change in the facts, granted by a vote of two new members of the Board, was reversed by the Director on the ground that no real public need for a license at the new premises had been established.

"I, therefore, recommend that the action of respondent Board in granting the transfer of the license in question be reversed."

Written exceptions to the Hearer's Report, pursuant to Rule 14 of State Regulation No. 15, together with written argument in substantiation thereof, were filed with me by the attorneys for respondents. Written answering argument to the arguments advanced by respondents' attorneys were filed by the attorney for the appellant. The attorneys restated their contentions in oral arguments before me.

I have carefully considered the entire record in the case, including the transcripts of testimony, the Hearer's Report

and the exceptions and written and oral arguments of counsel.

I shall sustain the exceptions filed by the attorneys for respondents. Although the Hearer has correctly referred to the principles which govern my decision in the case, I do not agree that the previous official opinions (referred to in the Hearer's Report) expressed by licensing authorities that there is no need for an additional license in the area are of such conclusive nature as to foreclose or preclude the present successor Board from exercising its independent discretionary authority to determine whether it is advisable to locate a "D" license in the area where presently there are five "C" licenses.

The Hearer relied upon the denial in 1954 of transfer of a "D" license to the area by a previous Board and thereafter affirmed upon appeal, and my denial in 1957 of an application for a State Beverage Distributor's license in the same area, in both of which instances there was expressed the opinion that there was no need or necessity for an additional license in the area. The force of the latter decision is dissipated because, subsequent to or contemporaneous with the filing of the Hearer's Report, I reversed such decision, and granted the application for the State Beverage Distributor's license. Hence, the only previous pertinent decision is the one instance of denial in 1954. This is not an overwhelming or repeated official attitude on the subject sufficient to deprive the successor Board of its authority to formulate its own conclusion whether or not to grant the transfer.

Therefore, under the general rule expressed in The Grand Union Company v. West Orange (cited by the Hearer), my function is not to substitute my opinion for that of the issuing authority, but to determine if proper cause exists for its opinion. Having found herein that such cause does exist, the action of the previous issuing authority cannot control the present Board and, hence, the action of such Board will be affirmed on that score.

The petition of appeal sets forth three additional grounds for reversal, and some evidence thereon was presented at the appeal hearing. Although these grounds were not discussed or referred to at the oral argument by counsel for either the appellant or the respondents, nevertheless, I shall consider the merits of these grounds, to wit:

- "(A) The notice of application appearing in the Newark Star Ledger on December 12, 1956 did not conform with state regulations in that no mention was made of any plans and specifications of any proposed change of the premises at 73 Herman Street.
- "(B) That the premises at 73 Herman Street as existing at the time of the application, was within 200 feet of a school.
- "(C) That the appellant failed to post notices as required by the state regulations ((sic.) within the time so required in the windows of premises at 73 Herman Street."

As to (A) and (B): It appears that there was and is a building erected on the proposed location of the license; that a blueprint was filed with the application for transfer of the license; that such blueprint disclosed that the transferee intended to erect an interior partition and provide for a new exterior entrance door; that a survey presented in evidence

discloses that the distance from the nearest entrance to the school to the proposed entrance to the liquor store will be 231.25 feet.

Rule 1 of State Regulation No. 2 provides in part that if the application is for a building not yet constructed, plans and specifications of the proposed building shall accompany the application, and the pertinent provision of Rule 2 of such regulation sets forth that in such event when the notice of application is published in a newspaper, it shall include the phrase "Plans and specifications of building to be constructed may be examined at the office of the Municipal Clerk."

The installation of an entrance door and the erection of an interior partition in an existing building does not come within the purview of this regulation. Hence, the contention set forth in ground (A) has no merit. It is merely incumbent upon the municipality to indicate, preferably in its resolution, that such license will not be endorsed for transfer until the alterations have been fully completed. Novelty Bar, Inc. v. Newark et al., Bulletin 418, Item 9. When the entrance door is installed, it will be located more than 200 feet from the entrance to the nearest school and, hence, ground (B) has no merit.

As to (C): The pertinent provision of the local ordinance (Sec. 3.27) reads "Every applicant for a transfer from place to place, shall place or caused to be placed, at least five days prior to newspaper publication of second notice of application, in or about the premises sought to be licensed, in full view of the street, a sign which shall be worded the same as the newspaper notice. . . Such sign shall be so maintained until the granting or denial of the application by the local issuing authority. . ."

The notices of application for transfer of the license in the instant case were published on December 12, and December 19, 1956.

A licensee, who testified on behalf of the appellant concerning such notice stated, "Well, I did notice two or three days later, sir. After I saw the notice, yes, about two or three days later. Q - when you saw what notice? A - In the newspaper". Appellant testified that on or about December 12th he observed the notice of application for the transfer in the newspaper but did not observe any sign posted in the window until either the 15th or 16th of December, "It was a Monday." December 15th was a Saturday, December 16th was a Sunday, and December 17th was a Monday.

The respondent transferee testified that he posted the sign in the window of 73 Hermon Street on December 13th and it remained there until some time after January 22nd, the date upon which application for transfer was granted by the local issuing authority. A witness who testified on behalf of the respondent transferee stated that he observed the sign in the window on or about December 13th and observed it there on five or six subsequent weekly visits which he made to the premises. The vague statements presented by the appellant do not overcome or serve to contravert this testimony. I do not find any merit to this ground.

Hence, on full consideration of all of the issues presented, I shall affirm the action of the respondent Board in granting the transfer in question.

Accordingly, it is, on this 7th day of June 1957,

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

2. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Orlando Vinci & Joseph Rich)
t/a Mill's Tavern)
392 N. Main Street)
Wharton, New Jersey)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-9, issued by the Borough Council of the Borough of Wharton.)

Orlando Vinci and Joseph Rich, Defendant-Licensees, Pro Se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"On April 22, 1957, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., John T. ---, age 18; in violation of Rule 1 of State Regulation No. 20."

Acting on information received from the Chief of Police of Wharton, ABC agents obtained a sworn written statement dated April 24, 1957 from John T. --- (age 18) wherein he sets forth that on Monday evening, April 22, 1957, he entered the defendants' licensed premises; that he bought three six-can packs of Schaefer beer at \$1.10 per pack from Joseph Rich, one of the licensees, acting as bartender; that on previous visits to the premises Joseph Rich had sold him beer to take out and that at none of these visits did anyone question him about his age.

The file also discloses that on April 24th, aforesaid, John T. --- directed ABC agents to the licensed premises and identified Joseph Rich, aforesaid, as the person who sold him the beer in question. Rich admitted aforesaid violation and also stated he had sold packaged goods to John T. on two or three other instances and that John T. had at one time displayed a military I.D. card showing him to be an adult.

Defendants have no prior adjudicated record. I shall suspend their license for fifteen days. Re One Twenty-Eight, Inc., Bulletin 1165, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 29th day of May 1957,

ORDERED that Plenary Retail Consumption License C-9,

issued by the Borough Council of the Borough of Wharton to Orlando Vinci & Joseph Rich, t/a Mill's Tavern, 392 N. Main Street, Wharton, be and the same is hereby suspended for ten (10) days, commencing at 1 a.m., June 10, 1957, and terminating at 1 a.m., June 20, 1957.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST OF MALT ALCOHOLIC BEVERAGES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Food Fair Stores of New Jersey, Inc.)
t/a Food Fair Stores of New Jersey)
Ernstson Road & Route #9)
Madison Township)
PO RD 1, Old Bridge, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Limited Distribution License DL-1, issued by the Township Committee of the Township of Madison.)

Stein, Stein & Engel, Esqs., by Melvin J. Wallerstein, Esq.,
Attorneys for Defendant-Licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it sold alcoholic beverages at less than the price listed in the Minimum Consumer Resale Price List then in effect in violation of Rule 5 of State Regulation No. 30.

The file herein discloses that on April 18, 1957, two ABC agents visited defendant's licensed premises and one of them purchased a pack of six 12-ounce cans of Schlitz beer for \$1.25. The minimum consumer resale price then in effect was \$1.29. After the sale was consummated, the agents identified themselves to the manager of the licensed premises and informed him of the aforesaid violation.

Defendant has no prior adjudicated record. The attorney for the defendant alleges that the sale was the result of an error by a clerk who had mistakenly reduced the aforesaid price of \$1.29 to \$1.25 to conform with the minimum consumer resale price in effect in New York for the same merchandise. I shall suspend defendant's license for the minimum period of ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Safeway Stores, Inc., Bulletin 1157, Item 9.

Accordingly, it is, on this 29th day of May 1957,

ORDERED that Limited Distribution License DL-1, issued by the Township Committee of the Township of Madison to Food Fair Stores of New Jersey, Inc., t/a Food Fair Stores of New Jersey, for premises Ernstson Road & Route #9, Madison Township, be and the same is hereby suspended for a period of five (5) days, commencing at 9 a.m., June 10, 1957, and terminating at 9 a.m., June 15, 1957.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT RECORDINGS) - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

June & Joseph Brochik
t/a McAfee Hotel
Main Street
Vernon Township
PO McAfee, New Jersey

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Vernon.

June and Joseph Brochik, Defendant-Licensees, Pro Se.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to charges alleging that on April 17, 1957, they allowed, permitted and suffered on their licensed premises the playing of recordings of two songs, the titles and words of which had lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning, in violation of Rule 5 of State Regulation No. 20, and on April 25, 1957, possessed on their licensed premises these and two other similar songs, in violation of Rule 17 of State Regulation No. 20.

On April 17, 1957, two ABC agents were at defendants' licensed premises and during their visit the bartender deposited a coin in a juke box and selected a record, the lyrics of which had a suggestive connotation and were of a double-entendre nature. On April 25, 1957 this record and another record with lyrics of a similar nature were seized at the licensed premises by ABC agents.

Defendants, by way of mitigation, set forth the claim that the vending company has exclusive control over the juke box and the licensees, therefore, assumed that proper records were placed therein. As I have previously determined in the case of Re Carbone, Bulletin 1156, Item 7, such reasons have no merit.

Defendants have no prior adjudicated record. I shall suspend defendants' license for a period of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re Carbone, supra.

Accordingly, it is, on this 3d day of June 1957,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Vernon to June & Joseph Brochik, t/a McAfee Hotel, Main Street, Vernon Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 3 a.m., June 10, 1957, and terminating at 3 a.m., June 20, 1957.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (SOLICITATION FOR PROSTITUTION) - CONDUCTING BUSINESS AS NUISANCE - LICENSE SUSPENDED FOR 180 DAYS.

In the Matter of Disciplinary Proceedings against)

Cecelia Pagoda)
 264 Ferry Street)
 Newark 5, N. J.)

CONCLUSIONS AND ORDERS

Holder of Plenary Retail Consumption License C-272, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

 Rosenberg & Kesselman, Esqs., by Phillip Kesselman, Esq., Attorneys for Defendant-licensee.
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein.

"Defendant pleaded not guilty to the following charges:

'1. On October 12, 19 and 20, 1956 you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution and the making of arrangements for illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20.

'2. On October 6, 12, 19 and 20, 1956 you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered unescorted females frequenting your licensed premises to make overtures to male patrons for illicit sexual intercourse and to solicit male patrons to purchase numerous drinks of alcoholic beverages for consumption by them and others; allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises; allowed, permitted and suffered the sale and service to and the consumption of alcoholic beverages by persons actually or apparently intoxicated in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.'

"On October 6, 1956, two ABC agents (hereinafter referred to as Agents D and S, respectively) visited defendant's licensed premises. Agent D testified that he and his fellow-agent entered the premises at 10:15 p.m. and proceeded to the far end of the bar; that a male referred to as Leo was tending bar; that there were four males and three females seated at the bar -- one of the females being called Vickie and another Sally (the latter being the defendant-licensee); that, within a short time after the agents were seated at the bar, Vickie came over to them and inquired whether they were 'Bob and Vern from Verona' and, when they stated they were not the persons about whom she

inquired, Vickie returned to the seat at the bar which she had previously occupied and resumed drinking with two male companions; that some time thereafter one of the men who had been in the company of Vickie went over to where defendant was seated and, taking her by the hand, proceeded to a small dance area between the jukebox and the bar and engaged in a dance called the 'fish'; that defendant 'placed her hands about the male's neck and he placed his hands on her lower back just above her buttocks and pressed her lower portion of her body very close to him and, at times while they were dancing, placed his leg between her thighs and the two moved the lower portions of their bodies back and forth in a manner that appeared to me to simulate sexual intercourse'; that defendant remarked to her dancing partner, 'Are you trying to get a cheap feel?'; that several of the patrons laughed and made remarks among themselves; that Leo (the bartender) obtained a balloon from under the bar and, as he began to inflate it by placing the neck of the balloon to his mouth, Vickie and defendant addressed double entendre remarks to him; that, when Vickie informed a patron that a certain person wished to speak to him on the telephone, he made an indecent remark about that person; that the agents left the premises at midnight but, during their stay in the premises, observed Vickie drinking with various men at the latter's expense.

"Agent D testified that again, at 9:30 p.m. October 12, 1956, he and Agent S visited defendant's premises; that, as they entered, he observed a man striking a woman who was seated at the bar and was attempting to pull her from the stool; that the woman's speech was incoherent, her hair and clothing disheveled, and she appeared to be intoxicated; that Leo and the defendant were behind the bar watching the affray; that the woman directed filthy and indecent remarks toward the man and the latter inquired of the defendant why the woman was permitted to remain in the premises; that the defendant, in response thereto, called him an indecent name; that the man then went to the telephone and, while he was gone, several of the male patrons used filthy language concerning the fracas and indicated their intention of assaulting the man; that Vickie sat with the agents and the defendant kept serving drinks to her and took the price of the respective drinks from the agents' money which was on the bar; that, despite the fact that Vickie appeared to be intoxicated, the defendant continued to serve drinks of alcoholic beverages to her; that Vickie continuously used vile language in her conversation with the agents; that, at one time during the latter part of the evening, the defendant remarked facetiously to Vickie, 'Watch your language, there's men present'; that thereafter Vickie continued to use filthy language; that, as defendant stood in front of Vickie and the agents, Vickie asked him (Agent D) for a dollar and instructed him to hand it to her under the bar; that he asked Vickie the price she would charge to engage in sexual intercourse and she replied, 'I won't set a price. Whatever you want to give me'; that the defendant and a man called Jerry danced together on several occasions during which they performed indecent gestures and movements. The agents left the premises a short time after Vickie had said, 'Well, I will be in here next Friday, Saturday and Sunday nights. I'll show you a good time.'

"Agent D testified that at 8:50 p.m. on October 19, 1956, he and Agent S again entered defendant's licensed premises and that Agents M and G remained in the immediate vicinity thereof; that, as they were being served, Vickie joined them and said, 'Buy me a drink' and, as the defendant served the agents, Vickie told her to 'Take care of my glass too'; that the defendant served her a highball and took eighty cents of the agent's money which was on the bar; that several women and men patrons, while engaged in conversation with their respective companions, used loud, foul and

filthy language; that defendant also used indecent language from time to time; that the agents spoke to Vickie about engaging in sexual intercourse with them and asked where they would go, to which Vickie replied, 'To my house. My kids are away for the weekend'; the agents then discussed the price she charged to engage in illicit sexual intercourse and she said, 'Well, you bought me a few drinks and when we first leave here I want to get something to eat. Then after that whatever you want to give me, as long as it's over two dollars'; that, as Vickie went to the ladies room, he (Agent D) said to the defendant, 'We are going up to Vickie's place. She doesn't live with her old man, does she?', to which defendant answered in the negative; that the agent then informed defendant that they did not wish to be caught by her husband and defendant shrugged her shoulders and said, 'No; that's all right'; that the agents each handed Vickie five-dollar bills (the serial numbers of which had been previously recorded); that Vickie retained the bills in her hand for a time and then called to the defendant and asked her for her pocketbook which was on the back bar; that, when defendant gave it to her, she placed the bills in the pocketbook and handed it to the defendant, saying, 'Take care of this for me until I get back' and added, 'If my old man comes in, tell him to go to hell'; that he (Agent D) then said to the defendant, 'Tell him to go anywhere but don't let him come and disturb us', at which remark defendant laughed; that at midnight, as he, Agent S and Vickie were preparing to leave, Agent G came into the premises and took a seat at the bar; that Vickie said to the defendant, 'We are going out. We are going to get some Chinese food. We'll bring some back to you later', to which the defendant replied, 'Try and make it before three a.m.'; that, as they were leaving, Vickie tripped and, as she did, he (Agent D) said to the defendant, 'Look at this. It's going to cost me five dollars for this'; that the defendant made no reply and, when the agent repeated the statement in a loud voice, defendant laughed; that, as the three proceeded down the street, Agent M and a local municipal detective halted them and all proceeded to the licensed premises where the detective asked defendant for Vickie's pocketbook; that defendant at first stated she did not know its whereabouts, when the agent (Agent D) told her it was on the back bar; that, when defendant handed it to the detective, he opened the pocketbook and took out the two five-dollar bills which had been given Vickie by Agents D and S, respectively.

"Agent S, who had accompanied Agent D on all occasions, was called as a witness and it was stipulated by the attorneys in this matter that, if he testified, his testimony would corroborate that of Agent D.

"Agent G testified that at midnight October 19, 1956, he entered defendant's licensed premises and observed Vickie hand the defendant her handbag and that defendant placed it on the back bar; that, as Vickie was leaving with Agents D and S, she tripped and, after Agent D caught hold of her arm, he said to defendant, 'To think it's going to cost me five dollars for this' and, when he repeated the said statement more loudly, the defendant just smiled.

"Defendant testified that she remembered Agents D and S being in the licensed premises on two occasions and that, when Vickie introduced one of the agents to her, she stated he was her brother-in-law; that, because of the fact that she believed one of the agents to be Vickie's brother-in-law, she 'took it for granted' that he would pay for the drinks consumed by her; that, although foul language might have been used by persons in the premises, she did not hear it because, if she did hear such language, she would try to stop it; that, when she talked to women and foul language is used, she says, 'Come on, girls, now stop, there are men present' and, when men use foul language, she says 'Stop it fellows, there are

girls present'; that she recalled the incident in the premises when a husband was abusing his wife and that she suggested that the woman remain because she feared the man would assault her; that the dance which she engaged in from time to time was not improper; that she did not hear Vickie discuss anything with the agents about engaging in sexual intercourse with them; that Vickie told her that she and the agents were going to a Chinese restaurant to get some lobsters and that, when she and the agents left the premises, one of the agents shouted, 'What is this going to cost me? \$5?', and that she answered, 'No, it's only going to cost you \$2 for the lobsters.'

"Vickie testified that the only night she remembered seeing the agents was on October 19, 1956, and that they came over to where she was sitting; that she introduced Agent S to the defendant as her brother-in-law and had several drinks with and at the expense of the agents; that she never conversed with the agents 'about sex or anything' but only talked to them about her husband and children; that she did not remember accepting any money from the agents; that she remembered telling the defendant that she was going to a Chinese restaurant and would bring back some lobsters for her; that she did not recall using any foul language on that evening.

"The attorney for defendant has submitted a memorandum wherein he contends that defendant 'at no time had any knowledge that any solicitation or arrangements for illicit sexual intercourse had been made.' Although the evidence does not establish that the defendant actually procured Vickie to engage in sexual intercourse with the agents, it is apparent from the testimony of the agents that she was aware of the fact that arrangements had been made by the agents and Vickie to engage in illicit sexual intercourse. This is especially borne out by the testimony of the agents that, when Vickie went to the ladies room just prior to leaving the premises with the agents, Agent D told defendant that they were going with Vickie to her apartment and asked defendant whether Vickie lived with her husband. The defendant informed them that she did not live with her husband and, when the agent indicated that he and his fellow-agent did not wish to be caught by Vickie's husband, the defendant shrugged her shoulder and said, 'No, that's all right.'

"Without commenting specifically on all the testimony of the agents (which I believe to be true), I am satisfied that the defendant's establishment has been operated by her in such an unsavory manner as to be offensive to common decency.

"The purpose of Rule 5 of State Regulation No. 20 is to prevent licensed premises from becoming a source of crime and immorality. Hence, a licensee may not allow, permit or suffer lewdness or immoral activities upon her licensed premises. Nor may she allow, permit or suffer the licensed premises to be conducted in such a manner as to constitute a nuisance. No distinction should be drawn between a licensee who violates the law and one who negligently refuses to take affirmative action to prevent the violation of the law. Williams v. Newark, Bulletin 571, Item 5.

"I recommend that defendant be found guilty of the charges preferred herein.

"Were it established that the defendant had actually procured Vickie to engage in sexual intercourse with the agents, outright revocation of the license might well be warranted. Re Merjack Corporation, Bulletin 998, Item 1, and cases cited therein. However, in the absence of such concrete proof and in

view of all the facts and circumstances, including the matter urged by way of mitigation (defendant's attorney in his memorandum filed herein concedes that 'although there is some proof, sufficient to justify criticism of the licensee', her inexperience as a licensee merits leniency), and the fact that defendant has no prior adjudicated record of violations, I recommend that the defendant's license be suspended for a period of one hundred eighty days. Re Kurtz, Bulletin 1085, Item 1; Re 204 Mulberry Street Corp., Bulletin 1095, Item 5."

No exceptions were taken to the Hearer's Report within the time limited by Rule 6 of State Regulation No. 16. After carefully considering the facts and circumstances herein, I concur in and adopt the findings and recommended conclusions of the Hearer. Hence, I find defendant guilty of the charges preferred herein and shall suspend her license for a period of one hundred eighty days.

Accordingly, it is, on this 3rd day of June 1957,

ORDERED that Plenary Retail Consumption License C-272, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Cecelia Pagoda, 264 Ferry Street, Newark, be and the same is hereby suspended for the balance of its term, effective 2 a.m., June 12, 1957; and it is further

ORDERED that, if any license be issued to this licensee or to any other person for the premises in question for the 1957-58 licensing year, such license shall be under suspension until 2 a.m., December 9, 1957.

WILLIAM HOWE DAVIS
DIRECTOR

- 6. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - TRANSPORTING ALCOHOLIC BEVERAGES WITHOUT BONA FIDE INVOICE OR MANIFEST - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Francesca Iannello
t/a Hackensack Long Bar
169 Hudson Street
Hackensack, New Jersey

)
)
) CONCLUSIONS
AND ORDER
)

Holder of Plenary Retail Consumption License C-16, issued by the City Council of the City of Hackensack.

Carmino J. Parisi, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that (1) she sold, served and delivered alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20 and (2) she transported and delivered alcoholic beverages in her licensed vehicle without the driver thereof having in his possession a bona fide invoice or manifest therefor, in violation of Rule 3 of State Regulation No. 17.

The file herein discloses that on Saturday night,

March 30, 1957, defendant's bartender received a 'phone call from an unknown male who ordered a case of beer to be delivered to a specified address. The bartender made up the order and placed with it a delivery slip on which he had written the address and price of the merchandise. Later, a part time employee of defendant delivered the case of beer to the address listed and when admitted by a young man, age 17, placed the case of beer on the floor, showed the delivery slip and collected \$5 in payment, including a tip. When questioned by ABC agents, the deliveryman told them that he didn't know it was a violation to deliver alcoholic beverages to a minor under such circumstances. The agents obtained from the licensed premises the invoice which lacks some of the information required by Rule 3 of State Regulation No. 17.

Defendant has a prior adjudicated record. When she held a license in partnership with another individual for the same premises it was twice suspended by the local issuing authority, as follows: Three days, effective March 30, 1954, for permitting a brawl and five days, effective May 30, 1954, for sale to intoxicated persons, permitting a brawl, allowing persons to work while intoxicated and hindering an investigation. Effective July 31, 1956, the license herein was suspended for fifty days by the Director for sale to minors. Re Iannello, Bulletin 1127, Item 1. This is not a case involving sale to a minor on the licensed premises. Considering the facts and circumstances herein, I shall suspend defendant's license for a period of twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 3d day of June 1957,

ORDERED that Plenary Retail Consumption License C-16, issued by the City Council of the City of Hackensack to Francesca Iannello, t/a Hackensack Long Bar, 169 Hudson Street, Hackensack, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2 a.m., June 11, 1957, and terminating at the expiration of the license at midnight June 30, 1957.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Oliveri's, A Corp.)
Route #46 & Kimig Avenue)
Lodi, New Jersey)

CONCLUSIONS
AND ORDERS

Holder of Plenary Retail Consumption License C-1, issued by the Mayor and Council of the Borough of Lodi.)

Leo J. Berg, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On March 23, 1957, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly,

to persons under the age of twenty-one (21) years, viz., Elaine ---, age 17, Lenore ---, age 18, Pat ---, age 18, Anthony ---, age 19, and Ralph ---, age 20, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

ABC agents entered defendant's licensed premises on March 23, 1957 at about 9:45 p.m. John Oliveri and his wife Jean Oliveri, sole stockholders and officers of the corporate-licensee were present. Three bartenders and a waitress were on duty. At about 10:45 p.m. three couples, youthful in appearance, entered the premises. They took seats in a booth adjacent to one in which John Oliveri was seated. He called to the waitress and at her direction the couples moved to a better lighted booth. The waitress took orders from the group for three Scotch and water and three Rye and soda drinks, obtained such drinks from one of the bartenders, served the drinks to the group and accepted payment therefor. After the couples commenced to drink these beverages the agents approached them and ascertained that five of the group were minors, namely, Elaine --- (age 17), Lenore --- (age 18), Pat --- (age 18), Anthony --- (age 19) and Ralph --- (age 20).

The agents obtained a signed sworn statement from the waitress wherein she acknowledged the above mentioned sale and service of alcoholic beverages to the minors and included in such statement the details that she first noticed the group when called by John Oliveri to go and see what they wanted and ascertain whether they wanted to sit at a table and that she did not question any of them as to age or ask them for any identification because she thought they were over twenty-one.

Defendant has a prior adjudicated record. Effective May 13, 1954, its license was suspended for fifteen days by the Director for an "hours" violation, Re Oliveri's, A Corp., Bulletin 1017, Item 7. Effective April 2, 1956, its license was suspended for twenty-five days by the Director for sale to minors, Re Oliveri's, A Corp., Bulletin 1084, Item 7 and Bulletin 1108, Item 10. (Previous records against corporate licensees wherein John Oliveri and Jean Oliveri had substantial interests, involving dissimilar violations, will be disregarded because such violations occurred over five years ago.) In view of the fact that one of the minors was only seventeen years of age, and considering the number of minors involved and the previous similar and dissimilar record, I shall suspend defendant's license for forty-five days. Cf. Re Landolfi, Bulletin 1165, Item 2; Re Tu-Dor Tavern, Inc., Bulletin 1163, Item 2. Five days will be remitted for the plea entered herein leaving a net suspension of forty days.

Accordingly, it is, on this 10th day of June 1957,

ORDERED that Plenary Retail Consumption License C-1, issued by the Mayor and Council of the Borough of Lodi to Oliveri's, A Corp., Route #46 & Kimig Avenue, Lodi, be and the same is hereby suspended for the balance of its term, commencing at 3 a.m., June 17, 1957; and it is further

ORDERED that if any license be issued to this licensee or to any other person for the premises in question for the 1957-58 licensing year, such license shall be under suspension until 3 a.m., July 27, 1957.

WILLIAM HOWE DAVIS
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON RESUMPTION OF BUSINESS.

In the Matter of Disciplinary Proceedings against)

William Vasslides)
18 South Tennessee Avenue)
Atlantic City, New Jersey)

Holder of Plenary Retail Consumption License C-184 (for the 1955-56 licensing year), issued by the Board of Commissioners of the City of Atlantic City; renewed as License C-57 (for the 1956-57 licensing year) and thereafter transferred to)

ON PETITION ORDER

The Fabulous Golden Gate Motel, Inc.)
t/a Golden Gate Motel)
2800 Absecon Boulevard)
Atlantic City, New Jersey)

Thomas W. Rauffenbart, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

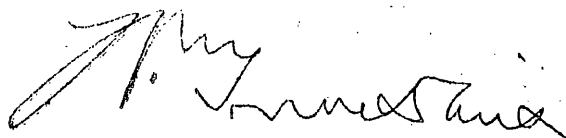
On February 21, 1956, I suspended the license then held by William Vasslides for a period of five days but, because no one was operating under the license at that time, said order provided that the effective dates for the suspension would be fixed by further order herein. See Bulletin 1104, Item 3.

It appears from the records of this Division that William Vasslides obtained a renewal of the license for the 1956-57 licensing year and that said license is No. C-57.

It further appears from the petition herein that on June 6, 1957, the Board of Commissioners of Atlantic City transferred said license to The Fabulous Golden Gate Motel, Inc., t/a Golden Gate Motel, 2800 Absecon Boulevard, Atlantic City, subject to the five-day suspension previously imposed herein. A check of the premises discloses that the transferee is now conducting alcoholic beverage activity at its licensed premises.

Accordingly, it is, on this 10th day of June, 1957,

ORDERED that the five-day suspension heretofore imposed herein shall commence at 7 a.m. June 17, 1957, and terminate at 7 a.m. June 22, 1957.



William Howe Davis
Director.