

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

BULLETIN 1914

July 1, 1970

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1. APPELLATE DECISIONS - RALLO'S BAR, INC. v. WEST ORANGE.

Rallo's Bar, Inc.,)
Appellant,)
v.) On Appeal
Board of Alcoholic Beverage)
Control of the Town of West) CONCLUSIONS AND ORDER
Orange,)
Respondent.)

- - - - -
Hannock, Weisman, Stern & Besser, Esqs., by Irwin I. Kimmelman,
Esq., Attorneys for Appellant
Harry A. Margolis, Esq., Attorney for Respondent
Farley & Rush, Esqs., by Thomas R. Farley, Esq., Attorneys for
Objectors The Crest, and Emile J. Karam
Harry P. Durkin, Esq., Attorney for Objector Frank O'Hara, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the respondent Board of Alcoholic Beverage Control of the Town of West Orange (hereinafter Board) which by resolution dated September 9, 1969 denied appellant's application for renewal of its plenary retail consumption license for the current licensing period for premises 3 Beasley Street, West Orange.

The stated reason of the Board was the following:

"That in light of the Decision of the New Jersey Superior Court, Appellate Division decision, 102 N.J.Super. 291 (App. Div. 1968) renewal would be denied."

Appellant alleges that the action of the Board was erroneous for the following reasons:

- (a) The license continued to be held in the name of Rallo's Bar, Inc. notwithstanding the above cited Appellate Division decision because "No administrative implementation of the court action which invalidated the transfer of said license from Green's Hotel Inc., at 103 Pleasant Valley Way, West Orange to the Appellant, Rallo's Bar Inc., at 3 Beasley Street, West Orange, has ever been applied for;"
- (b) Rule 14 of State Regulation No. 6 is inapplicable to this situation since the Board had theretofore approved transfer for the year 1968-69 and has authority to renew said license.

- (c) The renewal requested by appellant would be conditioned upon the fact that it would remain inoperative until it could be transferred to other premises or "may be lawfully used at the appellant's premises without violation of the court decision..."

No answer was filed on behalf of the Board although the attorney for the Board appeared at the hearing herein. Attorneys representing two neighboring owners of licensed premises who appeared at the hearing before the Board also appeared and participated in this appeal hearing.

This is an appeal de novo and was based upon an oral stipulation of facts as authorized by Rules 6 and 8 of State Regulation No. 15.

The following facts were stipulated: In 1966 Green's Hotel, Inc. (a New Jersey corporation) was the holder of plenary retail consumption license C-57 issued by the Board. The said license was transferred, with approval of the Board, to Rallo's Bar, Inc. (appellant herein) after a hearing at which objections were made based upon the fact that there were other licenses in the area within five hundred feet of the proposed new location at 3 Beasley Street in violation of a local ordinance.

An appeal from the grant of this transfer was taken to this Division which reversed the said grant for the reason that said transfer did not meet the distance requirements of the local ordinance. However, the order further provided that the reversal shall be "without prejudice to the filing of a new application based upon such facts as will meet the distance requirements of the applicable ordinance." Karam et al. v. West Orange and Rallo's Bar, Inc., Bulletin 1662, Item 3.

Thereupon appellant reconstructed the entrance to the Beasley Street side of the premises and did some other construction work and, upon new application filed, the Board again approved a person-to-person and place-to-place transfer. Again the objectors took an appeal to this Division from the said person-to-person and place-to-place transfer which affirmed the Board's action and dismissed the appeal. Karam v. West Orange and Rallo's Bar, Inc. et al.; Frank O'Hara Inc. v. West Orange and Rallo's Bar, Inc. et al., Bulletin 1739, Item 1.

The objectors then filed an appeal with the Appellate Division of the Superior Court which reversed the determination of the Director, holding that there were other licenses within five hundred feet of the proposed location notwithstanding the reconstructed entrance. Karam, et al. v. Alcoholic Bev. Control, et al., 102 N.J. Super. 291 (App. Div. 1968). A petition for certification was filed with the New Jersey Supreme Court, which denied certification.

The stipulation further sets forth that Green's Hotel, Inc., which had initially sold its license to Rallo's Bar, Inc., took back the capital stock of the appellant as security for the unpaid purchase price of the license. Rallo's Bar, Inc., following the Appellate Division's opinion, defaulted and, therefore, the stockholders of Green's Hotel (Green's Hotel having gone into formal liquidation and dissolution at that point) succeeded to the stock of Rallo's Bar, Inc. (it is now the holder of the stock of the corporate appellant).

On June 30, 1969, the new owners, in the name of appellant, filed the subject application for renewal, accompanied by a statement that the appellant would not operate the license at that location until such time as it would be legally permitted to do so or until such time as the license was transferred to a proper location. After a hearing, at which the same objectors appeared, the Board denied the application for renewal, and the appeal herein followed. It should be noted that the original proposed transfer site was 650 Eagle Rock Avenue and, as a result of the original reversal by the Director as set forth hereinabove, the present site at 3 Beasley Street, at the side of the said premises, was reconstructed as the main entrance.

Appellant argues that, since the Board originally granted the application for a person-to-person and place-to-place transfer to Rallo's Bar, Inc. and Rallo's Bar, Inc. operated under the said designation at the said premises until the end of the last licensing period, the application should be renewed in the name of Rallo's Bar, Inc. It maintains that, since the license is presently in the possession of the Board and the privileges of that license are not being presently exercised by the appellant, it should be given opportunity within a reasonable period of time to find another suitable location within the municipality to which the said license could be transferred. Appellant asserts that the license is a valuable asset and should not be forfeited because the transfer was invalidated by the Appellate Division. It emphasizes that, since the license is in the possession of the Board, the rights of the objectors are not being, nor would they be, jeopardized by such action. Finally, appellant reasons that the Board has the authority to preserve the license until a suitable transfer is made; that its refusal to renew was arbitrary and unreasonable because its determination was based on an erroneous interpretation of the effect of the Appellate Division decision.

The attorneys for the objectors, on the other hand, contend that, since the Appellate Division invalidated the transfer to the present site, "there can be no life given to that particular license." They argue that the transfer was "malum per se." It was bad in its inception...nothing can bring that particular license to life." They further maintain that the reason the Board repeatedly renewed the license was that the Board did not have a "binding decision." Now that the Appellate Division has decided the matter, the Board had no alternative but to deny renewal. Finally they assert that, since their clients have spent a considerable amount of time and money in extended litigation, a renewal at this time, even upon the special conditions suggested by the appellant, would "work irreparable injury" upon their client.

Upon consideration and evaluation of the facts and circumstances and the applicable law herein, I make the following findings:

1. The application was properly made in the name of Rallo's Bar, Inc. Thus, regardless of who owns the stock in the corporate appellant, the fact is that the license was transferred in that name by the Board.
2. The transfer of this license was made voluntarily by the Board and there is no suggestion that there was any collusion between the appellant and members of the Board. Therefore, until

that transfer has been set aside, appellant was lawfully entitled to operate thereunder.

3. If appellant was lawfully permitted to operate under the said license, renewal of the said license was perfectly valid and lawful.

4. I find that the decision of the Appellate Division hereinabove cited, which determined that the said transfer was invalid, was not self-operating but required administrative implementation and as of this date no such order has been entered herein.

5. In any event, invalidating the license did not ipso facto destroy the life of the license. The court did not say that the license was improvidently issued; it merely stated that the transfer of the license to the subject location was in violation of a local ordinance. Since the Board had transferred the license to that location, fundamental fairness would require that the appellant be given an opportunity within a reasonable time to find another suitable location within which to operate.

I disagree with the argument of the attorneys for the objectors that the transfer was malum per se. I am indeed persuaded that, under the facts and circumstances herein, bearing in mind that this was not a case involving the revocation or cancellation of a license, the Board in the proper exercise of its discretion and in the absence of any meritorious objection should have renewed the said license subject to the special condition indicated hereinabove. Such condition would require that the license not actually be issued and become effective unless and until it shall be lawfully transferred to other suitable premises in the municipality. Accordingly, the licensee would not exercise the privileges of the license at the present location. Thus, the end result of the court's determination would be effectuated.

6. My reading of the court's opinion convinces me that the court did not intend to destroy or cancel the license but merely ruled on transfer to the subject premises. It has been well established that an owner of a liquor license or privilege acquires through its investment therein an interest which is entitled to some measure of protection in connection with a renewal or transfer. Cf. Lakewood Tp. v. Brandt, 38 N.J.Super. 462.

This Division was heretofore confronted with a similar situation within the same legal context. In Florence Methodist Church et al. v. Florence Twp. and Christy, Bulletin 1095, Item 9, the background for the then Director's ruling may be briefly summarized: Mrs. Christy made application to the Township Committee of Florence for a transfer to herself of a plenary retail consumption license and also for a place-to-place transfer of the license. The Committee granted her application by a six-to-five vote. An appeal was taken to this Division which reversed the Committee. Florence Methodist Church et al. v. Florence Twp. and Christy, Bulletin 1074, Item 2. The then Director based his decision upon a finding that Mrs. Christy was acting as a "front" for her husband who, under N.J.S.A. 33:1-25, 33:1-31.2, was disqualified to hold a license; he had been convicted of larceny, possession of lottery tickets, maintaining a gambling house, atrocious assault and battery and false swearing. The Director also found that this woman was totally inexperienced in this business and that the money for the purchase of the business was derived solely from her husband. On appeal to the Appellate Division of the

Superior Court the said court affirmed the order of the Director. Florence Methodist Church v. Florence Township, 38 N.J.Super. 85. While those proceedings were pending in the Appellate Division, Mrs. Christy obtained a renewal of her license for the 1955-56 licensing year. Following the determination by the Appellate Division, the Director ordered respondents to show cause why the renewed license should not be cancelled and set aside pursuant to the provisions of Rule 13 of State Regulation No. 15, reading:

"When appeal is taken in any matter, any transfer or extension or renewal of any license involved therein shall be subject to the ultimate outcome of such appeal, unless otherwise ordered by the Director for proper cause."

On the return of the order to show cause the Director gave Mrs. Christy three months within which to apply for a transfer of the said license to a qualified person for other premises, "in which event said license shall be in full force and operation as soon as the transfer is endorsed on the face of the license certificate." The Florence Methodist Church et als. v. Florence and Christy, Bulletin 1095, Item 9.

It is quite apparent that the equities in the matter sub judice are more favorable to the appellant than to the applicant in The Florence Methodist Church case. See also New Town Tavern, Inc. v. Pennsauken, Bulletin 1098, Item 2; Friedland v. Newark, Bulletin 1402, Item 1; Farrell v. Englewood, Bulletin 1489, Item 2.

7. It should be underscored that this matter involves an application for a renewal and not the revocation or cancellation of a license. There is nothing in the record adversely reflective of the character of the officers of Rallo's Bar, Inc. or their fitness to operate under the license.

The action of the Board will not be reversed by the Director unless he finds that it was clearly against the logic and effect of the presented facts. Cf. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502, 511 (1947). Since this matter was presented on stipulation of facts, the crucial and dispositive issue is whether the Board, in refusing to renew this license based upon its stated opinion that it was precluded from doing so by reason of the aforementioned Appellate Division decision, acted reasonably.

8. I find that it did not act in accordance with the logic and effect of the presented facts, and its discretion must be subordinated to the applicable legal principles. Cf. Fanwood v. Rocco, 59 N.J.Super. 306, 315 (App. Div. 1960), aff'd 33 N.J. 404 (1960); Essex County etc. Stores Assn. v. Newark, 64 N.J.Super. 314, 320 (App. Div. 1960).

The cynical insinuation that action favorable to the appellant herein would be solely motivated by sympathy lacks a comprehension of the philosophy and spirit of the Alcoholic Beverage Law.

Since fairness is the touchstone of the administrative process, it appears to me reasonable and in the public interest to afford appellant a fair opportunity to apply for a transfer of its license to suitable premises.

It is therefore recommended that an order be entered reversing the action of the Board and directing it to grant an application for transfer upon the following conditions:

- (a) that appellant may make application for transfer of its license to other suitable premises in the municipality;
- (b) that within three months from the date of the Director's order herein the Board may, in its discretion, grant said application;
- (c) that, upon the grant of appellant's application, the said license, now in the custody of the Board, shall be in full force and effect as soon as the transfer is endorsed on the face of the license certificate;
- (d) if the said transfer is not granted within the above stated period of time or any extension of time thereof granted by the Board or this Division, the said license shall be cancelled. Florence Methodist Church v. Florence and Christy, supra; also Bulletins 1107, Item 7, and 1111, Item 3.

Conclusions and Order

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

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the argument of counsel in summation and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 6th day of May 1970,

ORDERED that the action of the respondent Board be and the same is hereby reversed, and it is further

ORDERED that the Board is hereby directed to grant appellant's application for transfer of its license upon the following conditions:

- (a) That the appellant may file an application for transfer of its license to other suitable premises in the municipality;
- (b) That within three months from the date of the order herein the Board may in its discretion grant said application;
- (c) That upon the grant of appellant's application the said license, now in the custody of the Board, shall be in full force and effect as soon as the said transfer is endorsed on the face of the license certificate;
- (d) If the application for said transfer is not approved within the above stated period of time, or any

(d) Appellant was denied the opportunity at the hearing to establish that T & E Liquors was part of a franchise operation in which Wakefern Food Corporation has an equitable interest and controls T & E Liquors, contrary to R.S. 33:1-12.31.

(e) Because Wakefern Food corporation owns and controls the Shop-Rite brand, there was no compliance with Rule 1 of State Regulation No. 30 relating to private label brands.

The Board, in its answer, admits the jurisdictional allegations of the petition and asserts that it had "proper jurisdiction" to grant the said application. It denies that appellant was denied the right to present testimony and states that, in fact, "no substantial evidence as alleged in Paragraph 3, sub-section (d) of the Petition of Appeal was presented" to the Board. It further denies that it acted in violation of R.S. 33:1-12.31. In a separate defense, the Board sets forth that it acted in the proper exercise of its discretion; that it heard testimony from all interested parties; and after duly considering the testimony, including that of objectors, made its determination within the framework of the Alcoholic Beverage Law and the rules and regulations of this Division.

A separate answer was filed by T & E Liquors which substantially repeats the defenses set forth in the Board's answer and adds the following:

(a) There is no undisclosed interest in T & E Liquors; and T & E Liquors will have "sole and exclusive rights under and over the operations of the liquor license."

(b) Operation of a liquor license with house brands is "a common method permitted in the State of New Jersey."

(c) The Shop-Rite brand of liquor is not owned and controlled by Wakefern Food Corporation.

(d) Private Label brands are "sold extensively in all liquor retailers in the State of New Jersey."

This appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony under oath and cross-examine witnesses.

I

It was frankly admitted by the attorney for T & E Liquors that no plans and specifications were filed with the application for transfer, nor were they inserted with the notice advertising the said application. The requirement that plans for a building to be constructed shall accompany the application, and their filing with the municipal clerk inserted in advertising the notice of application (Rules 2 and 4 of State Regulation No. 6), is to enable the local issuing authority and any other person interested therein to determine if such proposed building will be sufficient and satisfactory. Seidel v. Hightstown, Bulletin 1859, Item 3. Failure to file such plans with the application and to insert notice that they have been filed when advertising the notice of application, in a case where the building is not yet constructed, deprives the local issuing authority of jurisdiction to act upon the application. Birdsall v. Mullica, Bulletin 1320, Item 3; Lang v. Clifton, Bulletin 1367, Item 6; Woodbridge Twp. Liquor Dealers, Inc. and Starrick v. Woodbridge and Chicken Barn, Inc., Bulletin 1315, Item 2.

Therefore, this matter must be remanded to the Board of Commissioners to reconsider the original application if T & E Liquors amends it by filing plans and specifications and re-advertises notice of the application in proper form, or to consider any new application filed by T & E Liquors in substitution thereof. Memorial Presbyterian Church et al. v. Vineland and Lee Taylors, Inc., Bulletin 1346, Item 2. On the new filing, T & E Liquors should amend paragraph 4 of the application to read "T & E Liquors" rather than "Shop-Rite Liquors", as set forth in the Board's resolution approving the said application.

II

Notwithstanding the jurisdictional infirmity herein, I advised the parties to the appeal that a full hearing would be afforded them on the merits so that the remand could be limited to the matter of plans and specifications and any objections which may be raised thereto. This was a two-day hearing and, as stated above, full opportunity was afforded all parties to present testimony. There was no proffer of proof with respect to any absent witnesses.

Lawrence R. Inserra, president of T & E Liquors, Inc., called by appellant, testified that he is the sole beneficial owner of all the stock of the corporate licensee and that Wakefern has no interest, either directly or indirectly, in that corporation. T & E Liquors intends to erect a new and modern liquor store at the proposed site, where it will sell national brands of alcoholic beverages as well as those under the Shop-Rite label. As a stockholder of Wakefern, he had applied to Wakefern for the right to use the name of Shop-Rite Liquors at the proposed new site since "eventually" he would like to trade as "Shop-Rite Liquors." As of the date of this hearing, his application had not been approved.

Alan Frommer, director of corporate development of Wakefern, gave the following account: Wakefern acts as a clearing house for those independent retailers who use the Shop-Rite emblem or "logo." The only service that Wakefern provides is in notifying retailers of price changes established by a distributor when the distributor is unable to communicate with the individual retailers. A retailer applies to Wakefern for the right to use the Shop-Rite label and Wakefern approves or disapproves such applications after examining the suitability of a proposed location and whether the liquor licensee is conducting its business in a proper manner. This is distinguished from the food outlets in which Wakefern has a greater interest.

Although independent liquor distributors in New Jersey sell to retailers liquor containing the Shop-Rite emblem, Wakefern does not participate in any manner in the profits or business decisions of the distributors and retailers. Wakefern does not establish either retail or wholesale prices, does not pay advertising costs of either the retailer or wholesaler, and does not maintain any corporate records relating to liquor supplies. Wakefern is not "in the liquor business", does not sell or handle liquor, nor does it package alcoholic beverages.

Samuel Grad, vice-president and general manager of Stewart Hill Company, a wholesale liquor distributor, testified that his company received oral permission to use the Shop-Rite label on liquor which it distributed but that Wakefern does not and did not instruct or assist that company in the conduct of

its business. At one time the label carried the phrase "Made Exclusively for Shop-Rite" but the word "exclusively" was eliminated from the label several years ago. Although his company is designated to use the Shop-Rite label, "we don't use the brands. All we do, we are designated as suppliers and we proceed to have labels produced and applied to these various brands." He explained that a liquor committee consisting of several stockholders of Wakefern advises Stewart Hill of new price schedules in order to enable his company to set up retail prices, and to file these retail prices.

Eli Barry, president of Joeli Wine Distributors, testified that his company has been distributing various types of liquor under the Shop-Rite label for the past four years. Joeli establishes the wholesale price and, to his knowledge, Wakefern did not, nor does it, participate in the establishment of either wholesale or retail prices.

Herbert Hain, president of National Wine & Liquor Company, stated that his company made an arrangement with Schenley Distillers, Inc. to supply his company with certain types of liquor bearing the Shop-Rite label. Schenley had previously distributed these products. National Wine & Liquor now places orders with Schenley or its subsidiary, Park and Tilford Distilling Company, which fills the orders with the Shop-Rite label on the particular type of liquor supplied. His company has nothing to do with labeling. The Schenley company does not receive any reports from National Wine & Liquor with respect to market conditions or the Shop-Rite products. He had no knowledge as to ownership of the Shop-Rite label. Finally, he stated that all retailers in the Lyndhurst area are able to order liquor bearing the Shop-Rite label.

Anthony LaVerghetta, who is associated with People's Pharmacy, Inc., holder of a plenary retail distribution license in Lyndhurst, testified that until several months prior to the hearing herein, he was unable to purchase Shop-Rite brands of liquor from various wholesalers. However, he is now able to purchase from Perrone Wine & Spirits [a trade name for Joeli Wine Distributors] liquor which bore the Shop-Rite label, although he has not placed it on sale at his establishment.

Howard Jacobs, vice-president of Galsworthy, Inc., a liquor wholesaler, testified that his company has been using the Shop-Rite label for at least five years, during which he was associated with Galsworthy, but he did not know when the Shop-Rite label was first used by Galsworthy. The labels are put on the bottles by the distillers or importers prior to shipment to Shop-Rite stores in New Jersey.

Anthony Scardino, who is associated with Valley Brook Liquors, Inc., holder of a plenary retail distribution license in Lyndhurst, testified that in his opinion, there are adequate liquor outlets in the area in which this license is sought to be transferred. He further testified that he sought to obtain Shop-Rite labeled alcoholic beverages for the past three years but was unable to do so. At the request of members of appellant association, he placed with and obtained an order from National Wine & Liquor for Shop-Rite brands.

From my examination and evaluation of the totality of the record herein, I find that the corporate stock of

T & E Liquors is solely owned by Lawrence Inserra, its president, and that Wakefern has no direct or indirect interest therein. The evidence clearly discloses that Wakefern does not have a liquor department, does not bottle, sell or distribute alcoholic beverages, nor does it establish prices for any liquor bearing the label "Shop-Rite".

I further find that Wakefern acts through a committee of its stockholders, who are independent liquor licensees, as a clearing house for information and assistance to those stockholders of Wakefern who are liquor licensees. While it authorizes the use of the Shop-Rite label by its stockholders and provides advertising and merchandising services, there is not the slightest scintilla of evidence to establish that the Shop-Rite brands of liquor are owned or controlled by Wakefern. Advertising and merchandising services are often provided by distributors of national brands to their customers in New Jersey. I find that a franchise operation under the trade name "Shop-Rite" is not repugnant to R.S. 33:1-12.31.

There has been no evidence to support appellant's contention that Wakefern has or will have a beneficial interest in T & E Liquors' license contrary to Rule 1 of State Regulation No. 30. There is nothing in the evidence to establish that Wakefern can or will control the manner in which T & E Liquors intends to do business if the said application for transfer is granted, other than to provide the services as hereinabove indicated.

In considering the application for transfer, it should be pointed out that the discretion of the municipal issuing authority in matters of this kind is broad and that it has the power to determine, in the first instance, whether or not a license should be transferred. The burden of proving that the issuing authority abused its discretion falls upon the appellant and it must sustain its case by a preponderance of the credible evidence. Gentile v. Manalapan and Clemencich, Bulletin 1514, Item 2; South Jersey Retail Liquor Stores Assn. et als. v. Haddon and Dostar, Inc., Bulletin 1836, Item 1. The Director's function on appeals of this type is not to substitute his personal judgment for that of the issuing authority but, rather, to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. Broadley v. Clinton and Klinger, Bulletin 1245, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1; Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970).

The action of the Board of Commissioners may not be reversed by the Director unless he finds "the action of the board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502, 511 (1947); cf. Fanwood v. Rocco, 59 N.J. Super. 306 (App. Div. 1960); cf. Ward v. Scott, 16 N.J. 16 (1954). The Board took into consideration the needs and interest of the community and clearly felt that it was in the public interest to grant the said application.

In sum, I am in agreement with the Board's finding that there are no substantial adverse reasons to deny the application. This matter should be remanded to the Board in accordance with the views hereinabove expressed. Moreover,

it is clear that the parties were afforded a full opportunity at this plenary de novo hearing to present testimony. Cino v. Driscoll, 130 N.J.L. 535 (1943). The attorney for appellant has indicated that he may want to present additional witnesses on the remand. However, no reasonable explanation was offered for his failure to produce these witnesses at the hearing herein, nor was a proffer of proof made of such proposed testimony, which might have a material effect on the ultimate determination hereof. Accordingly, it is recommended that the substantive issues herein considered and resolved shall be dispositive thereof.

It is further recommended that this matter be remanded to respondent Board for the following limited purposes:

1. To permit T & E Liquors to re-file its application, accompanied by plans and specifications, as provided by Rule 2 of State Regulation No. 6, and re-publish the notice of application in accordance with Rules 4 and 7 of State Regulation No. 6.

2. The hearing on remand shall address itself solely to the matter of compliance by T & E Liquors with procedural requirements of State Regulation No. 6, including its plans and specifications, and any objections raised with reference thereto.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, written exceptions to the Hearer's report, with supportive argument, were filed by the attorney for appellant. No answer to the exceptions was filed by the respondents.

I have carefully analyzed the exceptions and find that they have either been answered in the Hearer's report or are lacking in merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions filed thereto, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein, with the following modification: I will permit T & E Liquors, Inc. either to amend its original application to include the plans of the proposed licensed building and to re-advertise the notice of such application, or to file a new application with said plans and advertise the notice of such application in accordance with Rules 2, 4 and 7 of State Regulation No. 6.

Accordingly, it is, on this 6th day of May 1970,

ORDERED that said matter be and the same is hereby remanded to respondent Board upon the following express conditions and limited purposes:

- (1) To authorize and permit respondent T & E Liquors, Inc. to either amend its original application herein to include plans of the proposed licensed building and to readvertise the notice of said application, or to file a new application with such plans and advertise the

notice of such application, in accordance with Rules 2, 4 and 7 of State Regulation No. 6. The amended or new application should include the correct trade name of T & E Liquors, Inc., and

- (2) The hearing before the Board on remand shall address itself solely to the matter of compliance by T & E Liquors, Inc. with procedural requirements of State Regulation No. 6, including its plans and specifications, and any objections raised with reference thereto.

RICHARD C. McDONOUGH
DIRECTOR

3.

ACTIVITY REPORT FOR MAY 1970

ARRESTS:		
Total number of persons arrested - - - - -		13
Licensees and employees - - - - -	5	
Bootleggers - - - - -	8	
SEIZURES:		
Distilled alcoholic beverages - gallons - - - - -		3.06
Wine - gallons - - - - -		8.187
Brewed malt alcoholic beverages - gallons - - - - -		27.83
RETAIL LICENSEES:		
Premises inspected - - - - -		706
Premises where alcoholic beverages were gauged - - - - -		584
Bottles gauged - - - - -		9,464
Premises where violations were found - - - - -		186
Violations found - - - - -		296
Unqualified employees - - - - -	76	No disposal permit - - - - - 11
No Form E-141-A on premises - - - - -	66	Other mercantile business - - - - - 4
Form E-141-A incomplete - - - - -	40	Prohibited signs - - - - - 2
Application copy not available - - - - -	24	Other violations - - - - - 73
STATE LICENSEES:		
Premises inspected - - - - -		1
License applications investigated - - - - -		11
COMPLAINTS:		
Complaints assigned for investigation - - - - -		461
Investigations completed - - - - -		466
Investigations pending - - - - -		283
LABORATORY:		
Analyses made - - - - -		80
Refills from licensed premises - bottles - - - - -		52
Bottles from unlicensed premises - - - - -		2
IDENTIFICATION:		
Criminal fingerprint identifications made - - - - -		2
Persons fingerprinted for non-criminal purposes - - - - -		544
Identification contacts made with other enforcement agencies - - - - -		369
Motor vehicles identifications via N.J. State Police teletype - - - - -		2
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities - - - - -		4
Violations involved - - - - -		5
Sale during prohibited hours - - - - -	3	Failure to close premises during
Sale to minors - - - - -	1	prohibited hours - - - - - 1
Cases instituted at Division - - - - -		39
Violations involved - - - - -		52
Possessing liquor not truly labeled - - - - -	7	Hindering investigation - - - - - 2
Permitting immoral act. on prem. - - - - -	6	Fail. to keep list of employees
Permitting lottery act. on prem. - - - - -	4	on premises - - - - - 1
Perm. misc. gambling on premises - - - - -	4	Permitting brawl on premises - - - - - 1
Permitting hostesses on premises - - - - -	4	Sale outside scope of license - - - - - 1
Fraud in application - - - - -	4	Perm. slot machines on premises - - - - - 1
Sale during prohibited hours - - - - -	4	Licensee working while intoxicated - - - - - 1
Permitting foul language on prem. - - - - -	2	Sale below filed price - - - - - 1
Sales to minors - - - - -	2	Sale to non-members by club - - - - - 1
Purchase from improper source - - - - -	2	Serving bev. other than ordered - - - - - 1
Sale to intoxicated persons - - - - -	2	Fail. to close prem. dur. proh. hrs. - 1
Cases brought by municipalities on own initiative and reported to Division - - - - -		19
Violations involved - - - - -		19
Sale to minors - - - - -	10	Sale during prohibited hours - - - - - 1
Conducting business as a nuisance - - - - -	5	Permitting brawl on premises - - - - - 1
Sale to intoxicated persons - - - - -	1	Sale outside scope of license - - - - - 1
HEARINGS HELD AT DIVISION:		
Total number of hearings held - - - - -		50
Appeals - - - - -	8	Seizures - - - - - 1
Disciplinary proceedings - - - - -	27	Tax revocations - - - - - 1
Eligibility - - - - -	13	
STATE LICENSES AND PERMITS:		
Total number issued - - - - -		13,800
Licenses - - - - -	6	Wine permits - - - - - 1
Solicitors' permits - - - - -	20	Miscellaneous permits - - - - - 1,274
Employment permits - - - - -	655	Transit insignia - - - - - 9,649
Disposal permits - - - - -	71	Transit certificates - - - - - 1,704
Social affair permits - - - - -	420	
OFFICE OF AMUSEMENT GAMES CONTROL:		
Licenses issued - - - - -	112	
State Fair licenses issued - - - - -	1	
Enforcement files established - - - - -	13	

RICHARD C. McDONOUGH
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: June 8, 1970

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - FAILURE TO DISCLOSE RECORD OF PRIOR LICENSE SUSPENSION - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

The Curio, Inc.)
525 - 5th Street)
Union City, N. J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-27, issued by the Board of Commissioners of the City of Union City.)

Joseph W. Farrell, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on March 20, 1970, it sold drinks of beer to two minors, ages 18 and 20, in violation of Rule 1 of State Regulation No. 20, and (2) in its application for current license failed fully to disclose record of a chargeable prior license suspension, in violation of R.S. 33:1-25.

Although this licensee corporation has no previous record of suspension of license, a license held by Ichi Ban, Inc., for these same premises, in which Robert J. Santomenna was a 98% stockholder and is a 49% stockholder in this licensee corporation, was suspended by the Director for fifty-five days, commencing April 16, 1959 for permitting immoral activity on the premises and sale of alcoholic beverages to a minor (Re Ichi Ban, Inc., Bulletin 1276, Item 3) and by the municipal license issuing authority for twenty-five days, commencing January 18, 1960, for sale of alcoholic beverages to minors, this latter suspension being the subject of the second charge herein.

The prior record of suspension of license for dissimilar violation occurring more than five years ago and for similar violation occurring more than ten years ago disregarded, the license will be suspended on the first charge for fifteen days (Re R. H. & H., Inc., Bulletin 1896, Item 16), and on the second charge for ten days (Re Chip's Bar, Inc., Bulletin 1896, Item.7), or a total of twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days.

Accordingly, it is, on this 4th day of May 1970,

ORDERED that Plenary Retail Consumption License C-27, issued by the Board of Commissioners of the City of Union City to The Curio, Inc., for premises 525 - 5th Street, Union City, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. Tuesday, May 19, 1970, and terminating at 3:00 a.m. Monday, June 8, 1970.

RICHARD C. McDONOUGH
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)

Black Harbor Inn (A Corp.))
t/a Black Harbor Inn)
136 Morris Street)
Jersey City, N. J.)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License C-271, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)
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Licensee, by Emily Lachnicht, President, Pro se.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to charge alleging that, on December 11, 1969, it possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Plain and Fancy Tavern, (A Corp.), Bulletin 1896, Item 14.

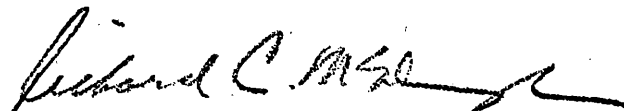
Accordingly, it is, on this 4th day of May 1970,

ORDERED that Plenary Retail Consumption License C-271, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Black Harbor Inn (A Corp.), t/a Black Harbor Inn, for premises 136 Morris Street, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, May 19, 1970, and terminating at 2:00 a.m. Friday, May 29, 1970.

RICHARD C. McDONOUGH
DIRECTOR

6. STATE LICENSES - NEW APPLICATION FILED.

Paul Masson Inc.
t/a Paul Masson Vineyards
330 Jackson Street
San Francisco, California
Application filed June 29, 1970 for wine wholesale license.


Richard C. McDonough
Director