

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

BULLETIN 1215

MARCH 27, 1958.

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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 1215

MARCH 27, 1958.

1. APPELLATE DECISIONS - EVANS COLONY RESTAURANT, INC. v.
FAIR LAWN AND PAPASTATHIS.

EVANS COLONY RESTAURANT, INC.,)

Appellant,)

-vs-)

MAYOR AND COUNCIL OF THE BOROUGH)
OF FAIR LAWN, and EVANGELOS J.)

PAPASTATHIS, t/a FLAMBE RESTAURANT,)

Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
John D. Morrison, Esq., Attorney for Appellant.
Arthur Minuskin, Esq., Attorney for Respondent Mayor and
Council of the Borough of Fair Lawn.
M. Harry Muser, Esq., Attorney for Respondent Evangelos J.
Papastathis.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Appellant herein filed a petition of appeal wherein it alleged that the action of the respondent Mayor and Council was erroneous in approving an application for an issuance of a license to respondent Papastathis for premises 14-22 Plaza Road, Fair Lawn.

"The grounds of appeal in said petition filed by the appellant are:

- '(a) the appellant first requested the license, advertised for its issuance and paid the necessary fees for the issuance of the renewal license and
- (b) the issuance of the same license to another party greatly aggrieved the appellant because it took away from it a valuable piece of property which was owned by it for many years last past thereby denying to the appellant his equity in and to the license and further denying the creditors of the appellant a tangible asset in the corporation which was a major consideration for their advancing to the appellant credit.

"Although the appeal is from the action of the respondent issuing authority with reference to the approval of the Papastathis application, it appears to be the intention of the appellant to take exception to the action of the said respondent Mayor and Council in failing to renew appellant's license. I shall consider not only the propriety of the approval of the application of respondent Papastathis by the respondent Mayor and Council but also the failure by the said respondent Mayor and Council to renew appellant's license.

"It appears that on May 31, 1957 an application for renewal of appellant's license for 14-22 Plaza Road premises was filed with the local issuing authority. The application disclosed one Billee Fisher as a holder of 24 shares of stock

or 40% of that issued and outstanding in the appellant corporation; that she resided in Fulton County, Atlanta, Georgia, and that one David Fisher, a New Jersey resident, was vice-president of the appellant corporation. The Clerk of the Borough of Fair Lawn sent a letter dated June 24, 1957 to the attorney for appellant with reference to the out-of-state residence of Billee Fisher. He also advised that he had received a written communication from the attorney for David Fisher, stating that he (David Fisher) did not wish to join in any application which had been filed by the appellant corporation for the renewal of the license. On June 28, 1957, in response to a request of the attorney for appellant corporation, the Clerk forwarded new application forms to the said attorney and directed that an affidavit be submitted showing the names and addresses of the officers of the corporation, stockholders, the amount of stock owned by each and the amount of stock issued and outstanding. Furthermore, the Clerk suggested that he be notified concerning the transfer or assignment of the stock held by Billee Fisher.

"On or about July 18, 1957 a second application was filed by appellant which disclosed that 22 of the shares of the stock formerly held by Billee Fisher had been transferred to Robert Canfield and that one share each had been transferred to one Helen Canfield and Robert D. Nordling, respectively. Robert Canfield, president of appellant corporation, testified that appellant's restaurant had ceased doing business during the second week in July 1957. He testified that without a liquor license the establishment could not be profitably operated. Although the second application was filed by the appellant corporation on July 18, 1957, the notice thereof had not been published in the newspaper until September 5 and 12, 1957, respectively.

"It further appears from the record that during August 1957 there was a foreclosure of a chattel mortgage on the fixtures and other personal property of appellant corporation and the various assets were purchased by respondent Papastathis. The lease held by the appellant for the premises in question by reason of the terms of the chattel mortgage was included in the sale, and thereafter reverted to respondent Papastathis. The latter, on August 28, 1957, filed an application with the local issuing authority for a plenary retail consumption license for premises 14-22 Plaza Road and on August 29 and September 5, 1957, published a notice of his intention. On September 10, 1957 at a meeting of the respondent Mayor and Council, the application of respondent Papastathis for the liquor license was unanimously approved by the members of the respondent Council.

"There is no dispute that at the time application for the license was filed and subsequently approved by the respondent Mayor and Council, respondent Papastathis had the right to possession of the premises 14-22 Plaza Road, and that appellant had lost all right to possession thereof.

"It appears, however, that the renewal application filed by appellant was never passed upon by the respondent issuing authority.

"It has been held to be axiomatic that no license may be issued for premises of which the applicant has neither possession nor a right to possession. In Procoli v. Trenton, Bulletin 28, Item 6, decided in May 1934, former Commissioner

Burnett dismissed, as moot, an appeal from the denial of a license where the applicant had lost possession of the premises pending the appeal. This case has been consistently followed to date in other decisions rendered since that time. See Montclair Athletic Club v. Montclair, Bulletin 859, Item 1.

"The principle underlying these decisions is that an appellant tribunal will not determine an issue which has become abstract by reason of the inability of the appellant tribunal to grant the appellant any effective relief even were such issue to be decided in favor of the appellant. In Re Braunstein, 105 N. J. Eq. 682, 684 (ch. 1930):

'...to make an order would, therefore, be without effect, and the court will not do a vain thing....

'Numberless cases in other jurisdiction (sic) can be cited to the effect that it is the duty of an Appellant Court to dismiss an appeal and not to proceed to formal judgment if, pending the appeal, an event occurs, without any fault of the defendant, which renders impossible for the court, if it should decide the case in favor of the plaintiff, to grant any effectual relief.'

"The only order insofar as the renewal of the appellant's license is concerned, would be one directing the respondent Mayor and Council to issue the license. See R. S. 33:1-88. In view of the fact that the respondent may not now issue the renewal license because of the appellant's loss of possession of the premises covered by its application, no such order may be entered.

"Although the action of the respondent Mayor and Council in failing to notify the appellant as to the disposition made with reference to the renewal of its license might be open to criticism, there appears to be no valid reason presented herein why the license issued to respondent Papastathis should be disturbed.

"After careful examination of the record and exhibits presented herein, I recommend that an order be entered affirming the action of respondent Mayor and Council whereby it issued a license to respondent Evangelos J. Papastathis, and dismissing the appeal filed by appellant."

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

Having carefully considered the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 27th day of February, 1958,

ORDERED that the action of respondent Mayor and Council of the Borough of Fair Lawn be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - ITALY BLOOMING SOCIETY v. BELLEVILLE.

ITALY BLOOMING SOCIETY OF MUTUAL)
BENEFIT OF BELLEVILLE NEW JERSEY,)

Appellant,)

-vs-)

BOARD OF COMMISSIONERS OF THE)
TOWN OF BELLEVILLE,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
Leonard D. Ronco, Esq., Attorney for Appellant.
Lawrence E. Keenan, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on September 10, 1957 it denied appellant's application for a club license.

"Appellant in its petition of appeal alleges that respondent's action was erroneous in that its reasons did not constitute valid and legal objections to the issuance of the license and that said action was arbitrary and capricious.

"Respondent contends that it denied appellant's application for the following stated reasons: (a) that no application has been made since the existence of appellant's corporation, (b) the granting of a license would constitute unfair competition to taverns in the neighborhood, (c) there are too many club licenses now in existence, (d) appellant has not continuously occupied club quarters for a period of three years in the Town of Belleville.

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

"The evidence produced at the hearing herein shows that appellant was incorporated on June 27, 1917; that it is a benevolent, social and fraternal organization having 132 dues-paying members; that for more than three years immediately prior to filing its application for a club license, it conducted its meetings twice each month in its own exclusive quarters in the basement of a barber shop in the Town of Nutley; that in 1950 it acquired property in the Town of Belleville on which, in 1957, it erected a \$30,000.00 brick club house consisting of a banquet hall on the first floor and a recreation room, kitchen and bar in the basement; that upon completion of the building, it moved from its quarters in Nutley to its new club house; that 40% of its membership reside in Belleville, and that of the nine club licenses issued in the community, respondent issued one during the past year, the others having been issued about eight years ago. No objectors appeared at the hearing herein and it appears from a certified copy of the minutes of respondent's meeting on September 10, 1957 when appellant's application was considered, that the principal objector to the granting of the license was the secretary of the New Jersey Tavern Owners, Inc. Respondent denied appellant's application by a vote of four to one.

"Considering respondent's contentions as set forth in its answer on appeal, there is no merit to allegation (a). As to (b): the object of a club license is not to supply the needs of the neighborhood. The holder of such a license cannot lawfully sell alcoholic beverages to the general public but must confine such sales to bona fide members and their bona fide guests. Ocean County Tavern Association v. Beach Haven et al., Bulletin 954, Item 2. As to (c): a municipality may, by ordinance, prohibit issuance of club licenses. R. S. 33:1-12(5). The evidence herein shows that no ordinance has been adopted in Belleville limiting the number of club licenses to be issued. The late Commissioner Burnett in Re Duell, Bulletin 234, Item 7, said:

'If a club is really bona fide and is not operated for commercial gain, why should one social group of men get the privilege and another be denied? Why should there be any limitation at all in respect to club licenses? If it be said that they are not bona fide organizations or are one-man clubs, and then only in name, or that they do not obey the law, the answer is why not establish that as a fact and then take appropriate measures to weed out the unworthy and disobedient? That's something quite different from refusing to give a worthy group of men who have clubbed together for benevolent, fraternal, social or recreational purposes any chance at all to dispense liquor in their own club house except they pay the full fee as if they were conducting the enterprise for private gain or commercial exploitation.'

As to (d): Rule 3 of State Regulation No. 7 provides that a club shall have been in active operation in the State of New Jersey for at least three years continuously immediately prior to the submission of its application for a license. There is nothing in the rules which requires that appellant operate continuously in the Town of Belleville. However, appellant owned property there for more than seven years and at the time it submitted its application, it occupied the club house built thereon and 40% of its membership reside in said community. It further appears that applicant has been in exclusive possession and use of a club house or club quarters for at least three years continuously immediately prior to submission of its application for a license. Rule 4 of State Regulation No. 7.

"Considering all the facts and circumstances herein, it appears that appellant is fully qualified to be the holder of a club license and that respondent's reasons for denying its application are not meritorious. I recommend, therefore, that respondent's action be reversed and that respondent be directed to issue the license in accordance with the application filed."

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

I agree with the conclusions and recommendation of the Hearer and adopt his conclusions as my conclusions in this appeal. On one point, however, comment is called for. Although the policy espoused by the late Commissioner Burnett in the hereinabove-quoted portion of Re Duell, Bulletin 234, Item 7, was followed for many years by the Department (now Division) and although that policy resulted in reversal, on appeal, of denial of new club license applications in the face of numerical limitation ordinance purporting to prohibit issuance of

4. PRACTICES UNDULY DESIGNED TO INCREASE CONSUMPTION - RETAIL LICENSEE HANDLING "CHRISTMAS CLUB" BANK ACCOUNTS FOR TAVERN PATRONS DISAPPROVED.

March 6, 1958

From reports of a recent investigation it appears that, heretofore, you may have engaged in the practice of handling "Christmas Club" bank accounts for a number of your customers of your tavern.

I thoroughly disapprove any practice of liquor licensees handling the savings of their customers or performing any service with respect thereto, even though for a laudable purpose and ostensibly without charge since such handling and servicing inevitably tend unduly to increase the consumption of alcoholic beverages. Despite absence of any apparent charge for the service there may be those who feel impelled, when making their periodic payments, to spend a "little extra" for alcoholic beverages in order to express their appreciation which expression of appreciation might well swell to a very substantial part of the Christmas Club check at maturity when they are imbued with the "Christmas spirit", thus depriving themselves and their families of the designated purpose of the check and the wherewithal for a "Merry Christmas". Incidentally, acting as a depository for savings funds sounds very much like running a bank which may only be done pursuant to proper statutory authority first obtained. Consequently, it is possible that your activities may have violated the state banking laws.

Accordingly, I hereby specially rule, pursuant to authority vested in me by R. S. 33:1-39, that you forthwith cease and desist from your above described practice of handling and servicing "Christmas Club" bank accounts for your customers.

Violation of this special ruling may be cause for the suspension or revocation of your license.

You must, by return mail, acknowledge receipt of this special ruling and give your pledge of strict future compliance therewith.

Very truly yours,
WILLIAM HOWE DAVIS
Director.

5. ADVERTISING - AWARD OF TROPHIES BY MANUFACTURERS AND WHOLESALEERS TO PARTICIPANTS IN BOWLING TOURNAMENTS PERMISSIBLE WITHIN LIMITS INDICATED HEREIN.

March 10, 1958

Suffern Distributors, Inc.
Mahwah, N. J.

Gentlemen:

You inquire whether you, a limited wholesale licensee, may award an inexpensive trophy, inscribed with your name or with the brand name of the beer distributed by you, to the winning individual or to the winning team competing in bowling matches or tournaments conducted by bowling alleys, some of which are licensed and some of which are unlicensed for the sale of alcoholic beverages.

Initially, licensees were prohibited from furnishing awards to winning contestants in athletic or sport contests or, for that matter, from sponsoring bowling or other athletic teams. Our original position was modified several years ago to permit the sponsoring of bowling or similar teams by licensees with the concomitant furnishing of shirts or uniforms to the teams so sponsored, provided no participants were minors. See Bulletin 824, Item 3. Experience has shown that such modification has not resulted in any abuse of the privileges afforded to the licensees in this connection and no adverse public criticism or liquor control problems have arisen.

Accordingly, it is my view that since licensees may sponsor bowling teams in regular competition and since this privilege has not been abused, I will further modify our position by the experimental grant of clearance for the award of inexpensive trophies (cost not to exceed \$10.00 each) by manufacturers or wholesalers to individuals or teams engaged in scheduled bowling tournaments.

Of course, although the trophy may bear the name of the manufacturer or wholesaler or the brand name of the alcoholic beverage product distributed by such manufacturer or wholesaler, it may not, where furnished by a manufacturer or wholesaler, bear the name of, or have any reference whatsoever to, a retailer's establishment since this would constitute furnishing a prohibited type of free advertising by a manufacturer or wholesaler to a retail licensee. See Rule 1, State Regulation No. 21.

Should the foregoing privilege afforded to licensees result in abuses or create any substantial problem in sound liquor control, I will exercise promptly the right to cancel this privilege.

Very truly yours,
WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against ALBERT E. FORD T/a BERT'S TAVERN 9 & 11 South 3rd Street & 233 Taylor Avenue Camden, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-130, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

Malandra & Tomaselli, Esqs., by Joseph Tomaselli, Esq., Attorneys for Defendant-licensee. William F. Wood, appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he possessed on his licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe the contents thereof, in violation of Rule 27 of State Regulation No. 20.

The file herein discloses that on November 21, 1957 an ABC agent, while testing and gauging the licensee's open bottles of alcoholic beverages, seized one of said bottles because it appeared to have been refilled and submitted the same to the Division's chemist for analysis. The chemist's report shows that, when compared with a sample of the genuine product of the labeled brand, the contents of said bottle labeled "Schenley Reserve Blended Whiskey 86 Proof" are entirely too low in solids.

Defendant has no prior adjudicated record. I shall suspend defendant's license for a period of fifteen days; the minimum suspension for a violation of the kind in question. Re Kipness, Bulletin 1138, Item 8. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 11th day of February, 1958,

ORDERED that Plenary Retail Consumption License C-130, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Albert E. Ford, t/a Bert's Tavern, for premises 9 & 11 South 3rd Street & 233 Taylor Avenue, Camden, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. February 24, 1958, and terminating at 2:00 a.m. March 6, 1958.

WILLIAM HOWE DAVIS Director.

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

In the Matter of Disciplinary Proceedings against)
)
 ANTOINE LeCOMPTE TAYLOR and)
 JOSEPH GIRARD DELERUYELLE) CONCLUSIONS
 T/a HILLCREST) AND ORDER
 59 West Broad Street)
 Bridgeton, N. J.,)

 Holders of Plenary Retail Consumption License C-10, issued by the City Council of the City of Bridgeton.

Joseph Tusso, Esq., Attorney for Defendant-licensees.
 Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that they sold and permitted the sale of alcoholic beverages to a minor in violation of Rule 1 of State Regulation No. 20.

The file discloses that, acting upon information obtained from the Bridgeton State Police Barracks, ABC agents proceeded to the barracks and obtained copies of statements which had been taken by a State Trooper from four minors. The agents then contacted each of the minors who corroborated the information given in the statements, from which it appears that on January 13, 1958, at about 9:00 p.m., Michael ---, 18 years of age, entered defendants' licensed premises and purchased two six-pack containers of bottled beer from Mathew Mangini, the bartender. Michael --- says that the bartender did not question him as to his age. The other three minors remained in a car outside the licensed premises and all of the minors later consumed the beer.

Defendants have no prior record. I shall suspend defendants' license for fifteen days, the minimum penalty for sale to an 18-year-old minor. Re Olshaker, Bulletin 1164, Item 10. Five days will be remitted for the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 13th day of February, 1958,

ORDERED that Plenary Retail Consumption License C-10, issued by the City Council of the City of Bridgeton to Antoine LeCompte Taylor and Joseph Girard Deleruyelle, t/a Hillcrest, for premises 59 West Broad Street, Bridgeton, be and the same is hereby suspended for ten (10) days, commencing at 8:00 a.m. February 24, 1958, and terminating at 8:00 a.m. March 6, 1958.

WILLIAM HOWE DAVIS
 Director.

8. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED
IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED
FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

GEORGE RAPP, INC.)
396-398 - 18th Avenue)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of State Beverage Distri-)
butor's License SED-31, issued by)
the Director of the Division of)
Alcoholic Beverage Control.)

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

BY THE DIRECTOR:

The defendant pleaded non vult to a charge alleging that on January 14, 1958, 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 January 14, 1958, John Kaptor (president of defendant corporate licensee) sold a case (twenty-four 12-ounce cans) of Rheingold Extra Dry Lager Beer to an ABC agent for \$3.75. The minimum consumer listed resale price then in effect was \$4.40. After the sale was consummated, the agent and two other ABC agents who joined him identified themselves to Mr. Kaptor, who admitted the aforesaid illegal sale.

Defendant has no prior adjudicated record. I shall suspend its license for the minimum period of ten days (Re Jersey State Beverage Distributors, Inc., Bulletin 1197, Item 7). Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 17th day of February, 1958,

ORDERED that State Beverage Distributor's License SED-31, issued by the Director of the Division of Alcoholic Beverage Control to George Rapp, Inc., for premises 396-398 - 18th Avenue, Newark, be and the same is hereby suspended for a period of five (5) days, commencing at 7:00 a.m. March 3, 1958, and terminating at 7:00 a.m. March 8, 1958.

WILLIAM HOWE DAVIS
Director.

9. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 BELL BAR, INC.)
 t/a BELL BAR)
 224 Market Street)
 Camden, N. J.,)
 Holder of Plenary Retail Consumption License C-77, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)
 -----)

CONCLUSIONS AND ORDER

Defendant-licensee, by Vincent J. Venezia, Vice-President. David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it sold and permitted the sale during prohibited hours of an alcoholic beverage in its original container for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

The file discloses that on Thursday, November 14, 1957, at about 10:30 p.m., an ABC agent purchased from a bartender in defendant's premises a pint of Calvert Reserve Whiskey for off-premises consumption. This agent left the premises with the bottle of liquor and met two other ABC agents who had remained outside. The three agents returned to the premises, where the bartender admitted the sale.

Defendant has no prior record. I shall suspend its license for fifteen days and remit five days for the plea herein, leaving a net suspension of ten days (Re DePaola, Bulletin 1199, Item 6).

Accordingly, it is, on this 17th day of February, 1958,

ORDERED that Plenary Retail Consumption License C-77, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Bell Bar, Inc., t/a Bell Bar, for premises 224 Market Street, Camden, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. February 24, 1958, and terminating at 2:00 a.m. March 6, 1958.

WILLIAM HOWE DAVIS
Director.

10. STATE BEVERAGE DISTRIBUTOR'S LICENSE - OBJECTIONS TO TRANSFER HELD TO BE WITHOUT MERIT - APPLICATION FOR TRANSFER GRANTED SUBJECT TO CONDITIONS.

In the Matter of Objections to the Transfer of State Beverage Distributor's License No. SBD-154, from

JAMES E. CAMBRIA & PASQUALE A. ALBANESE t/a HEDRICK DISTRIBUTING COMPANY 11 Gypsum Street Kearny, N. J.,

CONCLUSIONS

to

MICHAEL HONCHAR t/a ELLIOTT HOME BEVERAGES 326 Talmadge Avenue Bound Brook, N. J.

Leo J. Berg, Esq., Attorney for Applicant. Samuel Moskowitz, Esq., Attorney for North Central Counties Retail Liquor Stores Assn. and New Jersey Retail Liquor Stores Assn., Objectors. Everest L. Belli, Borough Clerk, Borough of Bound Brook, Pro se.

BY THE DIRECTOR:

Written objections to the granting of this application having been filed, a hearing was duly held thereon.

The objections allege that the area is amply served by existing licensees and that there is no need or necessity for an additional SBD license in that area.

On July 8, 1957, I denied a prior application for the same transfer principally upon the ground that applicant's mother (who held a retail license at the time the prior case was heard) is the owner of the premises to which transfer is sought. Re Honchar, Bulletin 1184, Item 4. However, at the hearing herein applicant testified that subsequent to the prior hearing the retail license held by his mother for premises 208 West Main Street, Bound Brook, was transferred to other individuals and that she no longer has any interest in said business. The applicant also testified that he has continued to conduct his carbonated beverage business and that he now has more than 350 customers.

At the hearing herein it was stipulated that the testimony of John Warner and Michael Pinto given at the prior hearing would be considered herein, and Borough Clerk Belli testified that there has been no change in the attitude of the Mayor and members of Borough Council who continue to believe that there are enough licensed premises in the Borough. The attorney for the objecting Associations stated that there are twenty-one plenary retail consumption licenses and two plenary retail distribution licenses in the Borough.

I am not impressed with the objections of John Warner and Michael Pinto (holders of retail licenses in the Borough) because the SBD type of operation offers little competition to

retail consumption and retail distribution licensees. In Re Walkiewicz, Bulletin 1172, Item 5. I have given consideration to the resolution of the Borough Council, dated December 17, 1956, opposing the transfer of the license in question to any location in the Borough, and the testimony of Mayor Conroy, at the prior hearing, wherein he states that the municipality is amply serviced by retail liquor outlets. The Mayor admitted, however, that he was not familiar with the SBD type of operation as distinguished from the retail (consumption and distribution) type of operation, but registered his objections, nevertheless, to the transfer of the license. It must be remembered that the SBD license is a license entitling the holder to sell unchilled malt alcoholic beverages in original containers in quantities of not less than 144 fluid ounces to consumers and licensed retailers in any part of the state, and that it is issued in the discretion of the Director. However, considerable weight is given by me to the attitude of the local governing body because it is not my intention to foist an additional liquor outlet upon an unwilling municipality. It is my belief that the local governing body is primarily concerned with the establishment of another retail liquor store in the Borough.

The Hearer has filed a Report herein recommending that the application for transfer be granted. After considering all the circumstances, I have decided to grant the application for transfer subject, however, to the condition that no deliveries of alcoholic beverages to consumers shall be made on the licensed premises.

WILLIAM HOWE DAVIS
Director.

Dated: January 29, 1958.

11. AUTOMATIC SUSPENSION - STAYED PENDING FURTHER ORDER IN DISCIPLINARY PROCEEDINGS.

In the Matter of a Petition by)
MICHAEL DEREN)
To Stay the Statutory Automatic)
Suspension of Plenary Retail Con-)
sumption License C-33, issued by)
the Borough Council of the Borough)
of South River to)
MICHAEL DEREN)
t/a MIKE'S TAP ROOM)
109 Whitehead Avenue)
South River, N. J.)

ON PETITION
O R D E R

Louis J. Milano, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

The petition herein discloses that on February 6, 1958, Michael Deren (the licensee) was fined the sum of \$150.00 and costs after he had been found guilty in the Municipal Court of South River of a charge alleging that he sold alcoholic beverages to a minor, in violation of R. S. 33:1-77. Said conviction resulted in the automatic suspension of petitioner's license whether or not, as petitioner indicates, he intends to appeal from said conviction. R. S. 33:1-31.1.

The petition sets forth that up to the present time no charges in disciplinary proceedings have been served upon petitioner by either the local issuing authority or the Director. If eventually the charge in disciplinary proceedings hereinafter instituted is dismissed, a supplemental petition to lift the automatic suspension immediately may be filed with the Director or, if a suspension is imposed in said disciplinary proceedings, a supplemental petition to lift the automatic suspension at the expiration of said suspension may be filed with the Director. In fairness to petitioner, the effect of the automatic suspension should be stayed pending the outcome of the disciplinary proceedings and until the entry of a further order herein. Cf. Re Kuruc, Bulletin 1173, Item 6.

Accordingly, it is, on this 14th day of February, 1958,

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

WILLIAM HOWE DAVIS
Director.

12. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

GERTRUDE M. BLACKWELL
500 Central Avenue
Union City, N. J.,

Holder of Plenary Retail Consumption License C-224, issued by the Board of Commissioners of the City of Union City.

CONCLUSIONS
AND ORDER

Gertrude M. Blackwell, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that she sold, served and delivered alcoholic beverages to three minors and permitted the consumption of such beverages by said minors in and upon her licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that at 11:35 p.m., Friday, January 17, 1958, ABC agents who were in defendant's licensed premises observed the licensee herein serve to Don ---, age 18, a glass of beer and to Charles ---, age 19, and Thomas ---, age 19, each a glass of beer and a "shot" of whiskey, without requiring any written proof of their ages. Charles consumed his whiskey and beer, Thomas consumed his whiskey, and the beers served to Don and Thomas were seized by the agents for evidential purposes. The licensee verbally admitted the sale, service and consumption of the alcoholic beverages but refused to give a signed statement to that effect.

Defendant has a prior adjudicated record. When the license was held in her former name (Gertrude M. Zensy), it

was suspended for five days by the local issuing authority effective March 8, 1948 for sales to minors; again effective January 24, 1954, the license in her present name was suspended for five days by the same authority for a local "hours" violation and again effective July 5, 1955, it was suspended for fifteen days by the same authority for sales to minors. A minimum penalty for a violation such as charged herein is twenty days. Re Swayze, Bulletin 1197, Item 11. However, because of the similar violation which occurred within a ten-year period, the dissimilar violation which occurred within a five-year period, and the similar violation which occurred within a five-year period, twenty days will be added, making a total suspension of forty days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 18th day of February, 1958,

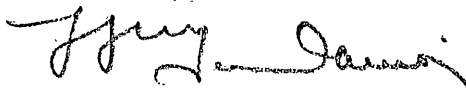
ORDERED that Plenary Retail Consumption License C-224, issued by the Board of Commissioners of the City of Union City to Gertrude M. Blackwell, for premises 500 Central Avenue, Union City, be and the same is hereby suspended for thirty-five (35) days, commencing at 3:00 a.m. March 3, 1958, and terminating at 3:00 a.m. April 7, 1958.

WILLIAM HOWE DAVIS
Director.

13. STATE LICENSES - NEW APPLICATION FILED.

Hub City Distributors, Inc.
835 New York Avenue
Trenton, N. J.

Application filed March 20, 1958 for additional warehouse on Limited Wholesale License WL-75 at Crescent Industrial Center, 7300 Crescent Boulevard, Building No. 8, Pennsauken, N. J.



William Howe Davis
Director.

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