Kremer

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

BULLETIN 1694

October 6, 1966

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ITEM

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

BULLETIN 1694 October 6, 1966

COURT DECISIONS - McNALLY v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

STATE OF NEW JERSEY
DIVISION OF ALCOHOLIC
BEVERAGE CONTROL,

Plaintiff-Respondent,

vs.

BERNARD McNALLY,

Defendant-Appellant.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-413-65

91 N.J.Super. 513

Argued June 20, 1966--Decided June 29, 1966

Before Judges Gaulkin, Labrecque and Brown.

On Appeal from Final Order of Division of Alcoholic Beverage Control of the State of New Jersey.

Mr. John J. Flynn argued the cause for the Defendant-Appellant (Mr. Thomas E. Durkin, Jr., attorney).

Mr. Max Spinrad, Deputy Attorney General, argued the cause for the Plaintiff-Respondent (Mr. Arthur J. Sills, Attorney General of New Jersey, attorney).

PER CURIAM.

McNally, a truck driver employed by P. Ballentine and Sons (Ballentine), pleaded guilty to an indictment charging him with bookmaking contrary to N. J. S. 2A:112-3. On October 21, 1965 he was placed on probation for three years and fined $1,000. On December 1 the Division of Alcoholic Beverage Control (ABC) wrote him that it had learned of his conviction and that "To make necessary determination with respect to your eligibility to be employed in the alcoholic beverage industry, it is requested that you appear at this office for the purpose of discussing this matter * * * ."

McNally came to the ABC office, where he was interviewed. The record does not reveal what transpired at this interview. However, McNally makes no claim that the interview was inadequate or unfair. He expressly disavows any desire for another hearing.

We must therefore assume that at that interview he told the ABC everything that he wished to say as to the facts which led to his conviction and in mitigation of his offense.

After this interview, ABC wrote Ballentine as follows:

> "This is to advise that Mr. Bernard McNally, 1407 Washington Avenue, Pompton Lakes, has today appeared at this office in response to our letter of December 1, 1965.
>
> Mr. McNally stated that in November 1965 he was convicted in the Essex County Court for bookmaking (horses), as a result thereof received a suspended sentence, fined $1,000, and placed on probation for three years. Mr. McNally further stated that he is presently employed by you as a truck driver.
>
> In the opinion of the Director, the aforesaid conviction involves moral turpitude. Persons convicted of any crime involving moral turpitude are disqualified from not only holding a liquor license but also from being employed by or connected in any business capacity whatsoever with any New Jersey licensee. R.S. 33:1-25, 26. * * * [S]uch persons may not be employed nor their services utilized in any way on licensed premises or in furtherance of a licensed business, regardless of whether or not they in fact handle alcoholic beverages or whether or not their services are utilized regularly, casually or only part-time. * * *
>
> * * *. You are therefore directed, if you have not already done so, to discontinue forthwith your employment in any way of McNally so long as he remains disqualified. You should bear in mind that your failure to abide by this directive is cause for suspension or revocation of your license."

ABC sent a copy of this letter to McNally, who then appealed to this Court. R. R. 4:88-8. Cf. Severini v. State, etc., Div. of Alcoh. Bev. Cont., 82 N. J. Super. 1 (App. Div. 1964), but see Kravis v. Hock, 136 N. J. L. 161 (E. & A. 1947).

His appeal is based upon the proposition, quoting from State Bd. of Med. Examiners v. Weiner, 68 N. J. Super. 468 (App. Div. 1961), that in order to permit a license revocation because of such a conviction "it must be found that moral turpitude is of the essence of the crime for which conviction has been obtained necessarily ascertainable from the legal constituents of the crime and without inquiring into the facts and circumstances leading up to the conviction." He argues that moral turpitude is not "of the essence of the crime" of bookmaking, i.e., it is conceivable that one might be convicted of bookmaking under circumstances free of moral turpitude, and, therefore, since ABC may not look into the underlying facts, bookmaking must be held not to be a crime involving moral turpitude. We disagree.

At least since 1934 it has been the policy of ABC to look at the underlying facts. In that year, when Newark inquired whether adultery was a crime involving moral turpitude,

Commissioner Burnett answered (ABC Bulletin 45, Item No. 18):

> "Turpitude is a conclusion based on or an inference derived from the facts of a given case. In every case of adultery it is a breach of plighted troth and a personal sin, but we cannot jump from that to the general conclusion that every commission signifies shameful wickedness or constitutes, per se, depravity. Everything depends on the facts.
>
> * * *
>
> The duty to hear the facts and make the decision in the first instance is upon the issuing authority."

In 1937, the licensee involved sought a transfer. It was challenged before the ABC, which held that under the facts and circumstances of the case the crime (adultery) was not one involving moral turpitude. (Bulletin 160, Item 10). The challenger sought a writ of certiorari, which Justice Parker denied in an unreported opinion. See Bulletin 163, Item 10 (1937).

In Case No. 246, Bulletin 293, Item 10 (1939) the Commissioner held "A conviction for commercialized gambling may or may not constitute conviction of a crime involving moral turpitude, depending upon the circumstances of the particular case."

Conflicting rules prevail in other jurisdictions as to whether the underlying facts are to be considered. See Annotations, 52 A.L.R. 2d 1314 (1959) and 95 L. ed. 899 (1951); Lowe v. Herrick, 170 Kan. 34, 223 P. 2d 745 (1950); Repouille v. United States, 165 F. 2d 152 (2d Cir. 1947); Lorenz v. Board of Med. Examiners, 46 Cal. 2d 684, 298 P. 2d 537 (1956). In State Bd. of Med. Examiners v. Weiner, supra, we specifically refrained from deciding that it was improper for an administrative agency to look to the facts, even though the statute involved in Weiner lent itself to a narrower construction that the one at bar. Moreover, in the discussion in Weiner we said "we cannot altogether accept appellant's notion that manslaughter * * * can under no circumstances involve moral turpitude," and "in a wide range of crimes, including manslaughter, the fact of moral turpitude may not necessarily be ascertainable from either the indictment or the conviction, but may have to be sought in the details of the manner in which the particular defendant perpetrated the offense," (p. 488). See also Lowe v. Herrick, supra; Weinstein v. v. Division of Alcoholic Beverage Control, 70 N.J. Super. 164, 169 (App. Div. 1961); City of Newark v. Department of Civil Service, 68 N. J. Super. 416 (App. Div. 1961). In Severini v. State, supra, it was pointed out that "Severini requested a hearing before the Division as to his eligibility for employment. A hearing was had and Severini appeared and testified in his own behalf," even though the conviction was for "criminally concealing and withholding stolen and wrongfully acquired property." See also City of Newark v. Department of Civil Service, supra, which involved a conviction for evasion of income taxes.

In Weiner we did not need to decide whether or not the underlying facts might be considered because neither the conviction of manslaughter nor the underlying facts which led to that conviction demonstrated moral turpitude. Conversely, in Weinstein, supra, both the conviction and the underlying facts bespoke moral turpitude. In the case at bar we must do so, and we hold that, in so far as licenses under Title 33 are involved the ABC may, and

when the convicted individual requests it must, look at the underlying facts to determine whether there existed moral turpitude, unless the crime is of such a nature that moral turpitude or its absence must be conclusively presumed.

McNally contends that an administrative agency should not and therefore may not be entrusted with the task of determining whether a particular crime involves moral turpitude. On the contrary, when dealing with licensing, it seems to us that the agency entrusted with the granting and supervision of licenses should be permitted to decide, in the first instance, whether a crime involved disqualifying moral turpitude. After all, what may be disqualifying moral turpitude in one occupation--for example, an attorney--may not necessarily be so with reference to another--for example, a liquor salesman. Cf. Weiner, supra, pp. 477-478 as to attorneys; Kravis v. Hock, 135 N. J. L. 257, 262 (Sup. Ct. 1947), rev'd on other grounds, 136 N. J. L. 161 (E. & A. 1947). On the other hand we cannot agree with ABC's contention that all bookmaking necessarily involves moral turpitude.

There being no criticism or challenge of the hearing given McNally by the ABC on December 1, and no further hearing being requested, we must assume that what the ABC then learned was sufficient to justify the Director's action. It is therefore affirmed.

2. COURT DECISIONS - ANTON'S WINES & LIQUORS, INC. and JACKSON ENTERPRISES, INC. v. LORDI, DIRECTOR etc. - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-363-65
A-373-65

ANTON'S WINES & LIQUORS, INC.,

and

JACKSON ENTERPRISES, INC.,

Appellants,

v.

JOSEPH P. LORDI, Director of the Division of Alcoholic Beverage Control,

Respondent.

Argued May 31, 1966 -- Decided June 15, 1966.

Before Judges Gaulkin, Labrecque and Brown.

On appeal from the Division of Alcoholic Beverage Control.

Messrs. Sam Weiss and Louis R. Cerefice argued the cause for appellant Anton's Wines & Liquors, Inc. Mr. Herman W. Steinberg argued the cause for appellant Jackson Enterprises, Inc.

Mr. Max Spinrad, Deputy Attorney General, argued the cause for respondent (Mr. Arthur J. Sills, Attorney General of New Jersey, attorney).

PER CURIAM.

Appeal from Director's decision in Re Anton's Wines & Liquors, Inc. and Re Jackson Enterprises, Inc., Bulletin 1655, Item 1. Director affirmed. Opinion not approved for publication by the Court committee on opinions. Mandate stayed pending filing of petition for certification to Supreme Court.

3. APPELLATE DECISIONS - BRASS CASTLE TAVERN v. WASHINGTON TOWNSHIP (WARREN COUNTY).

BRASS CASTLE TAVERN, Appellant, v. TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WASHINGTON (WARREN COUNTY), Respondent.	)	ON APPEAL CONCLUSIONS AND ORDER

Schenck, Price, Smith & King, Esqs., by Harold A. Price, Esq., Attorneys for Appellant.
Wilbur M. Rush, Esq., by Robert L. Schumann, Esq., Attorney for Respondent.
Mills, Doyle & Muir, Esqs., by Charles T. Hock, Esq., and Paul Aaroe, Esq., attorneys for Objectors Kenneth Fox and Raymond Di Risio.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the action of respondent Township Committee (hereinafter respondent) whereby by unanimous vote of its members it denied appellant's application for a person-to-person and place-to-place transfer of Plenary Retail Consumption License C-6 from Myron T. Weaver, t/a Weaver's Tavern, to appellant and from premises located at Route No. 69 (south) to premises to be constructed in accordance with plans and specifications on the north side of Route No. 24, east of Brass Castle Road, Washington Township (Warren County).

Appellant in its petition of appeal alleges that the action of respondent was erroneous and should be reversed for the following reasons:

"(a) the findings are contrary to the weight of the evidence.

(b) There was no evidence submitted at the hearing to justify the actions of the Township Committee in denying said transfer.

(c) The denial of the transfer by the Township Committee was arbitrary, capricious and an abuse of its discretion.

(d) The reasons assigned by the Township Committee, as well as those added after the hearing by Exhibit A aforesaid, included one specifically mentioned by one of the Township Committeemen that 'there were enough sources for liquor in the town at the present time,' and that he thought that the Township did not need 'any more', whereas the application presented by the appellant was for a transfer of an existing license from person to person and from place to place."

Respondent's answer denies the aforesaid allegations contained in the petition of appeal and, among other things, contends that the respondent did not abuse its discretion in denying the application for the transfer of the license in question.

The parties agreed to submit the matter herein upon the stenographic transcript of the proceedings held before respondent, pursuant to Rule 8 of State Regulation No. 15.

Sarah Drugach testified that she is the secretary of the appellant corporation and that, if the appellant obtained the transfer of the liquor license to the site in question, "we intend to conduct a tavern with the privilege of selling package goods. That is part of the privilege of this license, and we intend to maintain it as it is." In response to divers questions by the two attorneys appearing on behalf of the objectors, it was apparent from Mrs. Drugach's testimony that the details of the proposed type of operation under the license sought for the liquor establishment had not been fully determined.

Robert C. Grimm (a traffic engineer) testified that on February 23, 1966, he made a study of the volume of traffic on Route No. 24 between 8:00 a.m. and 6:00 p.m.; that during that ten-hour period a total of 4,459 motor vehicles traveling in both directions used the highway, and that the peak hourly flow of cars was between 5:00 and 6:00 p.m. when 275 cars traveled east and 354 cars traveled west on the road. Mr. Grimm stated that there are two fifty-foot driveways leading from Route No. 24 to the off-street parking facilitie in front of the proposed licensed premises, "and the visibility in both directions is excellent for ingress and egress with adequate room for two passing vehicles in each of the driveways." Mr. Grimm stated that he was of the opinion that, if a tavern was constructed adjacent to the supermarket already situated there, this would not cause any traffic congestion or disturb the traffic flow in the general area.

Kenneth Fox testified that he is the proprietor of a liquor package store located in an adjacent borough, which licensed premises is about a mile-and-a-half from the proposed site. In furtherance of his objections he initiated circulation of petitions objecting to the transfer of the license, which petitions were signed by about three hundred persons residents of the municipality wherein the license is presently issued and outstanding.

The burden of establishing that the action of respondent was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulation No. 15. No one has a right to the issuance or transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N.J.L. 586; Biscamp v. Teaneck, 5 N.J. Super. 172 (App.Div. 1949).

Whether or not a license should be transferred to a particular section of a municipality rests in the sound discretion of the local issuing authority in the first instance. Hudson Bergen County Retail Liquor Stores Ass'n v. North Bergen et al., Bulletin 997, Item 2. Each municipal issuing authority has wide discretion with reference to a transfer of a liquor license which, of course, is subject to review by the Director in the event of abuse of its authority. Passarella v. Atlantic City et al., 1 N. J. Super. 313. However, its action will not be disturbed in the absence of a clear abuse of discretion. Blanck v. Magnolia, 38 N.J. 484.

The Director's function on appeals of the kind now under consideration is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Larijon, Inc. v. Atlantic City, Bulletin 1306, Item 1.

In Fanwood v. Rocco, 59 N.J. Super. 306, 323 (App.Div. 1960), aff'd 33 N.J. 404 (1960), Judge Gaulkin, among other things, stated (at p. 323):

> "The Director may not compel a municipality to transfer licensed premises to an area in which the municipality does not want them, because there more people would be able to buy liquor more easily. Such 'convenience' may in a proper case be a reason for a municipality's granting a transfer but it is rarely, if ever, a valid basis upon which the Director may compel the municipality to do so."

Moreover, it was stated in said case (Fanwood v. Rocco, supra) that "No person is entitled to [the transfer of a license] as a matter of law" and "If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial."

After careful review of the testimony, the exhibits and the arguments advanced in memoranda submitted by the attorneys for the respective parties and objectors herein, I find sufficient evidence to support respondent's findings. I further find that, under the circumstances appearing herein, the respondent's action was neither arbitrary, capricious, unreasonable nor an abuse of discretion.

I conclude that appellant has failed to sustain the necessary burden to establish that respondent's action was erroneous. Rule 6 of State Regulation No. 15. Therefore it is recommended that an order be entered affirming respondent's action and dismissing the appeal herein.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, exceptions to the Hearer's report and argument in support thereof were filed by the attorney for appellant. Answer to the exceptions with supportive argument was thereupon filed by the attorney for respondent.

In its exceptions, appellant takes issue with the Hearer's report in the following language: "Our challenge to the Hearer's Report is founded on the fact that no specific disposition of the objections raised by us on appeal was made by the Hearer and that

in essence he ignored the proofs which fully supported those objections."

There is some merit to the challenge with respect to the general nature of the Hearer's report, although it must be pointed out that the Hearer stated that he had carefully reviewed the entire testimony, the exhibits and the arguments advanced in memoranda submitted by the attorneys for the respective parties and that he found sufficient evidence to support respondent's findings.

It would be appropriate, however, to emphasize one of the bases upon which respondent grounded its unanimous determination to deny the said transfer. The Chairman of respondent Township Committee stated as a reason for his vote, which reason was adopted by respondent Committee in its ultimate decision, as follows: "My own objections would be the Shop-Rite area and the clientele as being mostly women and children and having a retail or a consumption license there I don't feel would be proper." Appellant argues that this announced reason reflected a personal viewpoint of the speaker.

It is useless to assert that argument, since that viewpoint was obviously unchallenged or excepted to by any other member of the Committee, which thereupon voted as it did to deny the transfer. By its action, respondent adopted the rationale of its Chairman, as well as the other reasons advanced by the other members of the Committee.

If no other reason were advanced, it would seem to me that this stated ground would be sufficiently persuasive to sustain respondent's action. Respondent may well have decided that the license transfer to another part of this municipality at a shopping center was not in the best interests of the said municipality. It has consistently been held by this Division and the courts that a transfer of a liquor license is not an inherent or automatic right. The issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Andrew C. Kless Enterprises Inc. v. East Orange, Bulletin 1588, Item 2.

In Biscamp and Hess v. Teaneck, 5 N.J.Super. 172 (App. Div. 1949), the issuing authority was upheld in denying the transfer of a liquor license because it was of the opinion that no need existed for a liquor outlet in that location of the community.

In Fanwood v. Rocco, 59 N.J.Super. 306, 321 (App. Div. 1960), aff'd 33 N.J. 404 (1960), Judge Gaulkin stated:

> "The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24) and place-to-place transfers thereof '[O]n application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to said premises.' N.J.S.A. 33:1-26."

As was stated in Ward v. Scott, 16 N.J. 16, 23 (1954):

> "Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications...

> And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v United States, 231 U.S. 474, 480, 34 S.Ct. 148, 151, 58 L.Ed. 319,324 (1913)."

The court stated in Fanwood, supra, at p. 320: "No person is entitled to either [transfer of a license or issuance of an original license] as a matter of law" and "If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial."

In the instant case, the proposed transfer would be to a one-story masonry addition to an existing structure occupied by Shop-Rite as a supermarket. The evidence appears to support the fact that this addition will become an integral part of the Shop-Rite premises with an inter-connecting sidewalk and canopy. Appellant intends to operate a tavern and package liquor store at these premises. An examination of the plot plan indicates that people entering and leaving Shop-Rite will be compelled to pass in close proximity to the tavern entrance and will have an unobstructed view of the tavern through the glass doors and surrounding glass area.

It may well be that respondent not only bottomed its determination to deny the said transfer to this particular area for the above-stated reason, but was additionally influenced by the fact that women and children who patronize the Shop-Rite supermarket would be required to pass in such close proximity to this tavern that there might be some deleterious effect by such contact. The same underlying philosophy was expressed by Judge Conford in No. Central Counties Retail Liquor, etc. v. Edison tp. et als, 68 N. J. Super 351, at p. 361. While the facts in that case are not exactly the same, the same principles, it seems to me would apply in the present case, for, as further stated in Fanwood, 59 N.J.Super. at p. 320:

> "The primary purpose of the act is to promote temperance (R.S. 33:1-3) and 'to be remedial of abuses inherent in liquor traffic and shall be liberally construed' to effect those purposes. R.S. 33:1-73; Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs. of City of Hoboken, supra. Because these are the purposes there is a sharp and fundamental distinction between the power of the Director when a license is denied by the municipality and when one is granted, because refusing a license cannot lead to intemperance or to any of the other evils the act is intended to prevent."

Other reasons advanced by respondent need not be examined at length because, as stated hereinabove, the reason heretofore expressed would be sufficient to warrant affirmance of respondent's action. However, there is sufficient factual support of respondent's contention that a traffic hazard might be created by the said transfer; that this particular area is presently sufficiently serviced by other plenary retail consumption licenses and such transfer would not be in the best interests nor serve the needs of the community; and, finally, that strong local sentiment in objection to the said transfer was influential in the ultimate determination to deny the same.

In order for appellant to succeed in the instant appeal, it is incumbent upon it to show an abuse of discretion on the part of respondent in denying the application for transfer. To meet this burden, appellant must show manifest error and indeed that such finding was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Ass'n. v. Hoboken, 135 N.J.L. 502; Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J.Super. 598.

There is nothing in the evidence to suggest that the members of respondent Committee were improperly motivated. In the absence thereof, a determination based upon proper and bona fide use of their discretion must be supported. Blanck v. Magnolia, 38 N.J. 484.

I have considered each of the exceptions filed by appellant and find that they do not present sufficient reason in law or fact to reverse the recommendations of the Hearer.

After careful consideration of the entire record herein, including the transcript of the testimony below, the exhibits, the arguments of counsel, the Hearer's report, the exceptions and argument thereto, and the answers to the said exceptions, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 8th day of August, 1966,

ORDERED that the action of respondent Township Committee be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI,
DIRECTOR

4. APPELLATE DECISIONS - J.P.B., INC. v. WALL.

J.P.B., Inc., t/a Jim Byrne's Sea Girt Inn,

Appellant,

v.

Township Committee of the Township of Wall,

Respondent.

On Appeal

O R D E R

John D. Wooley, Esq., Attorney for Appellant
William C. Nowels, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellant appeals from denial by respondent on June 22, 1966 of its application for renewal for the 1966-67 licensing year of its plenary retail consumption license for premises at Route 71, opposite Beacon Blvd., Wall Township.

Prior to the hearing of the appeal, respondent's attorney advised me by letter of July 29, 1966 that respondent had no objection to the entry of an order reversing its denial of renewal of the application for license. No reason appearing to the contrary,

It is, on this 8th day of August 1966,

ORDERED that the action of respondent be and the same is hereby reversed. It is further

ORDERED that respondent grant the application for license for the licensing year 1966-67.

JOSEPH P. LORDI,
DIRECTOR

5. APPELLATE DECISIONS - CHATHAMS v. CLIFTON.

Ruthie K. Chathams, t/a Ruthie's Tavern,

Appellant,

v.

Municipal Board of Alcoholic Beverage Control of the City of Clifton,

Respondent.

On Appeal

O R D E R

Saltzman, Swartz & Rosenberg, Esqs., by Robert P. Swartz, Esq., Attorneys for Appellant
Arthur J. Sullivan, Jr., Esq., by Victor Shorr, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellant appeals from denial by respondent on June 29, 1966 of appellant's application for renewal for the licensing year 1966-67 of her plenary retail consumption license for premises 12 Highland Avenue, Clifton.

Upon filing of the appeal an order was entered extending the term of the 1965-66 license pending the determination of the appeal.

Prior to the hearing of the appeal appellant's attorneys advised me by telegram dated August 3 that the appeal was withdrawn. No reason appearing to the contrary,

It is, on this 8th day of August 1966,

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

ORDERED that the order extending the 1965-66 license be and the same is hereby vacated, effective immediately.

JOSEPH P. LORDI,
DIRECTOR

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

In the Matter of Disciplinary Proceedings against	)	
John Pfeiffer and John Howard t/a Glass Bar Inn 51 Wheeler Avenue Carteret, N. J.	)	CONCLUSIONS and
Holders of Plenary Retail Consumption License C-19, issued by the Borough Council of the Borough of Carteret	)	ORDER

Joseph F. Deegan, Jr., Esq., Attorney for Licensees.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on June 3, 1966, they 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 Adams, Bulletin 1672, Item 6.

Accordingly, it is, on this 1st day of August, 1966,

ORDERED that Plenary Retail Consumption License C-19, issued by the Borough Council of the Borough of Carteret to John Pfeiffer and John Howard, t/a Glass Bar Inn, for premises 51 Wheeler Avenue, Carteret, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, August 8, 1966, and terminating at 2:00 a.m. Thursday, August 18, 1966.

JOSEPH P. LORDI
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - HOSTESS ACTIVITY - SALE TO MINORS - FOUL LANGUAGE - UNQUALIFIED EMPLOYEE - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA - DATE OF SUSPENSION NOT FIXED BECAUSE LICENSE NOT RENEWED.

In the Matter of Disciplinary Proceedings against Post and Rail, Inc., 132 Hudson St., Hoboken, N. J., Holder of Plenary Retail Consumption License C-137, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.	CONCLUSIONS and ORDER

Thomas P. Calligy, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on April 1 and 15, 1966, it permitted female entertainers to accept drinks at the expense of male patrons, in violation of Rule 22 of State Regulation No. 20, and on April 15, 1966, it (2) sold drinks of beer to two minors, ages 17 and 18, in violation of Rule 1 of State Regulation No. 20, (3) permitted foul, filthy and obscene language by a bartender on the licensed premises, in violation of Rule 5 of State Regulation No. 20, and (4) employed a 17-year-old non-resident as a musician on the licensed premises, in violation of Rule 1 of State Regulation No. 13.

Absent prior record, the license would normally be suspended on the first charge for twenty days (Re Rivelli, Bulletin 1677, Item 4, on the second charge for twenty days (Re The Strike Out, Inc., Bulletin 1670, Item 6), on the third charge for ten days (Re Zukas, Bulletin 1675, Item 3), and on the fourth charge for ten days (Re Giaquinto, Bulletin 1605, Item 3; Re The Three Musketeer's, Inc., Bulletin 1676, Item 6), or a total of sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. However, since the licensee has permitted its 1965-66 license to expire on June 30, 1966, without renewal granted for 1966-67 or application for such renewal filed by July 30, 1966 (cf. R.S. 33:1-12.13), no effective dates for such suspension may now be fixed.

Accordingly, it is, on this 9th day of August, 1966,

ORDERED that Plenary Retail Consumption License C-137, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Post and Rail, Inc., for premises 132 Hudson Street, Hoboken, be and the same is hereby suspended for fifty-five (55) days, the effective dates of such suspension to be fixed pursuant to State Regulation No. 15, Rules 1 and 2, if and when the licensee again obtains a license.

JOSEPH P. LORDI,
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - FOUL LANGUAGE - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 40 DAYS - NO REMISSION FOR PLEA ENTERED ON HEARING DATE.

In the Matter of Disciplinary Proceedings against Bruno Hardcastle, Inc. 138 Park Ave. Hoboken, New Jersey Holder of Plenary Retail Consumption License C-25, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken	CONCLUSIONS and ORDER

Licensee, by Edward Freer, Secretary-Treasurer, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On the date fixed for hearing, licensee pleaded non vult to a charge as follows:

> "On Friday night June 3, into early Saturday morning June 4, 1966, you, through Edward Freer, an officer, director and shareholder in your corporation, allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises, viz., the use of such language by said Edward Freer, directed to, at, about and concerning two Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey while on your premises in performance of their official duties; in violation of Rule 5 of State Regulation No. 20."

Reports of investigation disclose that the mentioned language was not only foul and filthy but included threats of bodily harm to the agents.

Licensee has a previous chargeable record of suspensions of license (1) by the municipal issuing authority for five days effective October 18, 1964, and (2) for five days effective August 4, 1965, both for sale during prohibited hours, and (3) by the Director for thirty-five days effective February 3, 1966, for sale to minors and false statement in the license application. Re Bruno Hardcastle, Inc., Bulletin 1663, Item 9.

The license will be suspended for twenty-five days (cf. Re Long, Bulletin 1666, Item 2), to which will be added fifteen days by reason of the record of three suspensions of license for dissimilar violation occurring within the past five years (Re Hala Corporation, Bulletin 1525, Item 4), or a total of forty days, without remission for the plea untimely entered on the hearing date (Re Gatefern, Inc., Bulletin 1679, Item 5).

Accordingly, it is, on this 10th day of August, 1966,

ORDERED that Plenary Retail Consumption License C-25,

issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Bruno Hardcastle, Inc. for premises 138 Park Avenue, Hoboken, be and the same is hereby suspended for forty (40) days, commencing at 2:00 a.m. Wednesday, August 17, 1966, and terminating at 2:00 a.m. Monday, September 26, 1966.

JOSEPH P. LORDI,
DIRECTOR

9. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto. Susp. #291 In the Matter of a Petition to Lift the Automatic Suspension of Plenary Retail Distribution License D-5, issued by the Township Committee of the Township of Rochelle Park to Acfal, Inc. t/a B. & B. Liquors 428 Rochelle Avenue Rochelle Park, N. J.	On Petition O R D E R

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on August 3, 1966, Philip Accardi, vice-president of the licensee-petitioner, was fined $50 and $5 costs in the Rochelle Park Municipal Court after pleading guilty to a charge of sale of alcoholic beverages to a minor on July 26, 1966, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioner's license for the balance of its term, R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that disciplinary proceedings are in contemplation but have not yet been instituted by the municipal issuing authority against the licensee because of said sale of alcoholic beverages to the minor. In fairness to petitioner, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Elmo, Bulletin 1685, Item 5.

Accordingly, it is, on this 16th day of August, 1966,

ORDERED that the aforesaid automatic suspension of license D-5 be stayed pending the entry of a further order herein.

JOSEPH P. LORDI,
DIRECTOR

10. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto. Susp. #290 In the Matter of a Petition to Lift the Automatic Suspension of Plenary Retail Distribution License D-6, issued by the Common Council of the City of South Amboy to Michael Dudik 3rd and Elizabeth V. Dudik, t/a Main Liquor Store 533 Main Street South Amboy, N. J.	On Petition O R D E R

George G. Kress, Esq., Attorney for Petitioners.

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on July 12, 1966, Michael Dudik 3rd, one of the licensees-petitioners, was fined $100 and $10 costs in the South Amboy Municipal Court after pleading guilty to a charge of sale of alcoholic beverages to a minor on May 13, 1966, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioners' license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that disciplinary proceedings are in contemplation but have not yet been instituted by the municipal issuing authority against the licensee because of said sale of alcoholic beverages tothe minor. In fairness to petitioners, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Elmo, Bulletin 1685, Item 5.

Accordingly, it is, on this 12th day of August, 1966,

ORDERED that the aforesaid automatic suspension of license D-6 be stayed pending the entry of a further order herein.

JOSEPH P. LORDI
DIRECTOR

11. STATE LICENSES - NEW APPLICATION FILED.

Jacobson Beverages Inc.
628 Higgins Avenue
Brielle, N. J.

Application filed October 4, 1966 for place-to-place transfer of State Beverage Distributor's License SBD-38 from 365 Bergen Avenue, Lakewood, New Jersey, and application filed for additional warehouse license for premises 365 Bergen Avenue, Lakewood, New Jersey

Joseph P. Lordi
Director