

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

BULLETIN 1319

JANUARY 26, 1960

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7. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 William F. Boothby
 t/a Bill Boothby's Liquor Store
 7801 Atlantic Avenue
 Margate City
 PO Atlantic City, N. J.,
 Holder of Plenary Retail Distribution License D-3, issued by the Board of Commissioners of the City of Margate City.

CONCLUSIONS and ORDER

Defendant-licensee, Pro se
 David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he sold numerous items of 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.

An ABC agent investigating defendant's licensed business examined the sales and delivery slips and found that fifty-one slips showed sales between March 3 and July 23, 1959, of alcoholic beverages at prices less than the prices listed in the Minimum Consumer Resale Price List then in effect. Defendant in a signed, sworn statement stated that occasionally he sold case-lots at 10% discount and that no discount was allowed on bottle sales. An examination of the slips seized by the agent indicates that 80% of them show bottle sales at discounts of 10% to 15%.

Defendant has no prior adjudicated record. Considering the number of bottles of alcoholic beverages sold at less than the minimum resale price then in effect, I shall suspend defendant's license for twenty days. Re Town Hall Delicatessen, Inc., Bulletin 1187, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

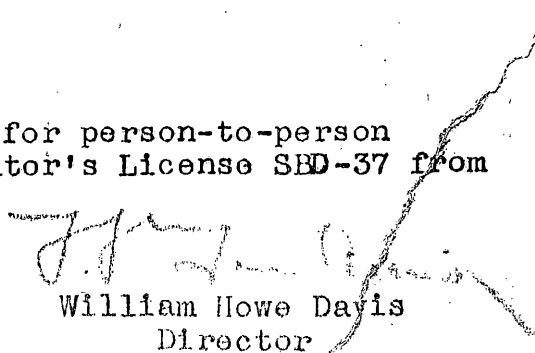
Accordingly, it is, on this 16th day of November, 1959,

ORDERED that plenary retail distribution license D-3 issued by the Board of Commissioners of the City of Margate City to William F. Boothby, t/a Bill Boothby's Liquor Store, for premises 7801 Atlantic Avenue, Margate City, be and the same is hereby suspended for fifteen (15) days, commencing at 9 a.m. Monday, November 30, 1959, and terminating at 9 a.m. Tuesday, December 15, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

8. STATE LICENSES - NEW APPLICATION FILED.

Thomas Fornataro, Inc,
 11 Nixon Street
 Buena Borough, PO Landisville, N. J.
 Application filed January 20, 1960 for person-to-person transfer of State Beverage Distributor's License SBD-37 from Thomas Fornataro.



William Howe Davis
Director

6.

ACTIVITY REPORT FOR DECEMBER 1959

ARRESTS:

| | | |
|----------------------------------|----|----|
| Total number of persons arrested | | 47 |
| Licenses and employees | 20 | |
| Bootleggers | 26 | |
| ABC agent impersonator | 1 | |

SEIZURES:

| | | |
|---|--|--------|
| Motor vehicles - cars | | 4 |
| Stills - 50 gallons or under | | 1 |
| Distilled alcoholic beverages - gallons | | 148.57 |
| Wine - gallons | | 124.44 |
| Brewed malt alcoholic beverages - gallons | | 19.50 |

RETAIL LICENSEES:

| | | |
|--|----|-------------------------------|
| Premises inspected | | 679 |
| Premises where alcoholic beverages were gauged | | 518 |
| Bottles gauged | | 8,480 |
| Premises where violations were found | | 36 |
| Violations found | | 45 |
| Unqualified employees | 14 | Other mercantile business - 4 |
| Application copy not available | 14 | Disposal permit necessary - 3 |
| Reg. #38 sign not posted | 7 | Other violations - 3 |

STATE LICENSEES:

| | | |
|-----------------------------------|--|----|
| Premises inspected | | 25 |
| License applications investigated | | 8 |

COMPLAINTS:

| | | |
|---------------------------------------|--|-----|
| Complaints assigned for investigation | | 416 |
| Investigations completed | | 401 |
| Investigations pending | | 190 |

LABORATORY:

| | | |
|--|--|-----|
| Analyses made | | 390 |
| Refills from licensed premises - bottles | | 46 |
| Bottles from unlicensed premises | | 25 |

IDENTIFICATION:

| | | |
|---|--|-----|
| Criminal fingerprint identifications made | | 26 |
| Persons fingerprinted for non-criminal purposes | | 183 |
| Identification contacts made with other enforcement agencies | | 143 |
| Motor vehicle identifications via N. J. State Police teletype | | 3 |

DISCIPLINARY PROCEEDINGS:

| | | |
|--|----|---|
| Cases transmitted to municipalities | | 13 |
| Violations involved | | 13 |
| Sale to minors | 5 | |
| Sale during prohibited hours | 5 | |
| Service to women at the bar (local reg.) | 1 | |
| Sale to non-members by club | 1 | |
| Permitting brawl on premises | 1 | |
| Cases instituted at Division | | 26 |
| Violations involved | | 40 |
| Sale to minors | 6 | Sale outside scope of license - 1 |
| Sale during prohibited hours | 6 | Service to women at the bar (local reg.) - 1 |
| Possessing liquor not truly labeled | 4 | Solicitor employed by retailer - 1 |
| Permitting immoral activity on premises | 4 | Permitting lottery activity (foot-ball pool) on premises - 1 |
| Sale to intoxicated persons | 3 | Permitting gambling (cards) on prem. - 1 |
| Possessing contraceptives on premises | 2 | Conducting business as a nuisance - 1 |
| Unqualified employees | 2 | Acts of violence on premises - 1 |
| Fraud and front | 3 | Hindering investigation - 1 |
| Failure to close premises during prohibited hours | 2 | |
| Cases brought by municipalities on own initiative and reported to Division | | 23 |
| Violations involved | | 29 |
| Sale to minors | 17 | Permitting immoral activity on prem. - 1 |
| Permitting bookmaking on premises | 4 | Employee working while intoxicated - 1 |
| Permitting lottery activity on premises | 1 | Sale to non-members by club - 1 |
| Hindering investigation | 1 | Allowing minor unaccompanied by parent in barroom (local reg) - 1 |
| Permitting brawl on premises | 1 | |
| Unqualified employee | 1 | |

HEARINGS HELD AT DIVISION:

| | | |
|-------------------------------|----|---------------------|
| Total number of hearings held | | 38 |
| Appeals | 4 | Seizures - 2 |
| Disciplinary proceedings | 26 | Tax revocations - 1 |
| Eligibility | 5 | |

STATE LICENSES AND PERMITS ISSUED:

| | | |
|---------------------|-----|-----------------------------|
| Total number issued | | 1,117 |
| Licenses | 2 | Wine permits - 48 |
| Solicitors' permits | 52 | Miscellaneous permits - 215 |
| Employment | 178 | Transit insignia - 197 |
| Disposal | 94 | Transit certificates - 21 |
| Social affair | 310 | |

WILLIAM HOWE DAVIS
DIRECTOR

Dated: January 6, 1960

7-Up on appellants' premises. Salvatore --- testified that he was 20 years old on May 9, 1959, and that on the evening of said date he purchased and consumed the contents of two or three glasses of beer on appellants' premises.

"Appellants do not allege that the minors were not in their premises on the evening in question. In fact, William Ranieri (their head bartender) testified that he and another bartender were working on that evening; that the three minors were in the premises; that he did not see Fred drinking anything and that he refused to serve him any alcoholic beverages because he thought that he had had enough to drink. Ranieri also denied that he served any alcoholic beverages on the evening in question to Daniel --- or Salvatore ---. The appellants then introduced into evidence two cards -- one of which was allegedly signed by Daniel --- and the other allegedly signed by Salvatore ---. Each of these cards contains, among other things, the printed statement that 'the undersigned hereby represents that he (she) is over twenty-one years of age.' Apparently these cards were introduced to satisfy the requirement of R.S. 33:1-77(a). However, I am satisfied that the signatures appearing on these cards are not genuine. Each of the two minors denied that he had signed the card. Ranieri admits he did not see them sign and no other evidence on this issue was presented by appellants. On the question of guilt, it is immaterial whether these minors exhibited false identification cards to any of appellants' agents on this evening or on previous week-ends, because it is clear that appellants have not established a defense under the provisions of R.S. 33:1-77.

"After considering all the evidence and the oral argument at the conclusion of the hearing herein, I am satisfied that the three young men told the truth and that appellants have failed to sustain the burden of proof in establishing that the action of respondent was erroneous. Rule 6 of State Regulation No. 15. The premises are now closed for the season. It is recommended that an order be entered affirming the action of respondent and providing therein that a subsequent order will be entered vacating the stay granted herein and fixing the effective dates for the five-day suspension after appellants resume operation for the 1960 season."

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

After carefully considering the evidence and the oral argument made at the hearing, I concur in the conclusions of the Hearer and adopt them as my conclusions herein. It appears from the transcript of the evidence that the licensed premises are now closed and, hence, no effective penalty can be imposed at the present time.

Accordingly, it is, on this 10th day of December 1959,

ORDERED that the action of respondent be and the same is hereby affirmed. The effective dates for the five-day suspension will be fixed by a further order which I shall enter after I am satisfied that the premises have re-opened for the 1960 season.

WILLIAM HOWE DAVIS
DIRECTOR

recommend that no order requiring respondent to transfer said license should be entered herein. Maliken v. Neptune City, Bulletin 915, Item 2."

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

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

Accordingly, it is, on this 9th day of December, 1959,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark be and the same is hereby reversed on the record presented.

WILLIAM HOWE DAVIS
DIRECTOR

5. APPELLATE DECISIONS - MC CLAIN AND MC CANN v. SOMERS POINT.

RICHARD K. MC CLAIN AND RUTH M.)
MC CANN, t/a BAY SHORE CAFE,)
Appellants,)
v.)
COMMON COUNCIL OF THE CITY OF)
SOMERS POINT,)
Respondent.)

ON APPEAL
CONCLUSIONS
AND ORDER

Thomas W. Rauffenbart, Esq., Attorney for Appellants.
Elias G. Naame, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from respondent's action whereby it suspended appellants' license C-13 for five days, effective at 9 a.m. August 26, 1959. The suspension was imposed after respondent heard testimony in disciplinary proceedings as a result of which it found appellants guilty of a charge alleging that on May 9, 1959, and during the early morning hours of May 10, 1959, they permitted the sale of alcoholic beverages to minors and permitted said minors to consume such beverages on their licensed premises, in violation of Rule 1 of State Regulation No. 20. Appellants' premises are located at 998 Bay Avenue, Somers Point.

"Upon the filing of the appeal an order was entered by the Director on August 25, 1959, staying respondent's order of suspension until the entry of a further order herein. R.S. 33:1-31,

"At the hearing held herein Fred --- testified that he was 19 years of age on May 9, 1959, and that on the evening of said date he ordered and drank about fifteen glasses of beer on appellants' premises before he was removed by the police because he engaged in a fight which occurred on the premises. He denied that he ever signed a written representation that he was 21 years of age or over. Daniel --- testified that he was 20 years of age on May 9, 1959, and that on the evening of said date he ordered and consumed one drink of gin and

for use as a church; and that the proposed new premises, within the same area and at most 360 feet from the present premises, will have ample parking facilities, and the location of the license there will not result in any undue concentration of licenses.

"The argument of the attorney on behalf of ten objectors, two of whom appear to be tavern owners located on Jones Street, is that presently there is a tavern at 49 Jones Street and another at 61 Jones Street (both on the opposite side from the proposed location) and another tavern would bring in undesirable people and lower the status of surrounding property. The letters referred to are from the South West Branch, Y.M.C.A. at 52 Jones Street, the Urban League of Essex County at 58 Jones Street, and from an attorney representing the owner of 75-79 Jones Street, at which address a package store is located. The Y.M.C.A. opposes transfer because there are two taverns and a package store on the opposite side of Jones Street; that the two social agencies attract teenage children, and hence there would be danger to the general moral structure of the area. The Urban League urges similar grounds. On behalf of the owner of 75 Jones Street, it is urged that there would be an undue concentration of licenses, which would affect real estate values in the neighborhood. The petition sets forth similar objections.

"At the appeal hearing, the testimony of the president of the corporate-licensee set forth substantially the same reasons urged by his attorney before the respondent, and, additionally, he testified that two of the persons who signed the petition have withdrawn therefrom, allegedly because they intended merely to accommodate the tavern owners on Jones Street. A real estate broker testified that the Beacon Street area is mixed business and residential, with a few warehouses, a church, and another tavern located there, and that the Jones Street area is a commercial district, primarily business and stores, a wide street with parking available on both sides.

"As hereinbefore stated, no reason was given by respondent for rejecting the application for transfer and no specific reason for respondent's action is set forth in its answer filed herein. It is not the proper function on appeal to speculate on what basis the respondent acted. It may be noted that if the denial of transfer is based upon undue concentration of licenses in the area, it would run counter to the principle that transfer from one location to another in the same area does not constitute undue concentration of licenses. On the other hand, if denied because of the objection of the two social agencies, such denial could possibly rest on firm ground if more fully developed.

"Accordingly, it is my opinion that respondent's denial of the transfer was arbitrary and unreasonable, and, I therefore recommend that its action be reversed. Harrison Wine & Liquor Co., Inc. v. Harrison, Bulletin 1308, Item I.

"It appears that the 1958-59 license has expired and was renewed for the Beacon Street premises for the 1959-60 licensing period, and that appellant has not presented application for transfer of the renewed license to the respondent Board. Hence, the decision herein is merely advisory in the event of the filing of a similar transfer application by the appellant herein. Both parties are, of course, free in any future application to offer testimony in addition to that already offered in these proceedings either with respect to the present issues or such additional issues as may be raised.

"While the action of respondent is reversed, nevertheless, since the license, which is the subject of this appeal, has expired, I

4. APPELLATE DECISIONS - SPRING MANOR, INC. v. NEWARK.

| | | |
|---|---|-------------|
| SPRING MANOR, INC., A CORPORATION OF THE STATE OF NEW JERSEY, |) | |
| |) | |
| Appellant, |) | ON APPEAL |
| |) | CONCLUSIONS |
| v. |) | AND ORDER |
| |) | |
| MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, |) | |
| |) | |
| Respondent. |) | |

Morton M. Poznak, Esq., by Thomas E. Weinstock, Esq.,
Attorney for Appellant.

Vincent P. Torppey, Esq., by James E. Abrams, Esq.
Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent on June 9, 1959 whereby it denied an application for a place-to-place transfer of appellant's plenary retail consumption license for the 1958-1959 licensing year from premises 57-59 Beacon Street to 70-74 Jones Street, Newark. These streets run parallel to each other, one block apart.

"The petition of appeal sets forth that the respondent erred in denying the transfer. The answer of respondent consists of the denial of such allegation.

"At the hearing herein, the transcript of the proceedings held by respondent was presented in evidence pursuant to Rule 8 of State Regulation No. 15. Additional evidence and various documents were presented as exhibits by the respective parties.

"The resolution of the respondent denying the transfer, and its answer on appeal, do not set forth any reason for such denial. The grounds upon which an administrative agency acts must be clearly disclosed and adequately sustained. In Re Plainfield-Union Water Co., 57 N. J. Super. 158, at page 174 (Superior Court, Appellate Division Sept. 1959). In appeals from actions by local issuing authorities relating to issuance or denials of liquor licenses, it has repeatedly been indicated that, in all fairness, a local issuing authority should state the reason for its decision, but that such failure is not fatal where the reasons are set forth in respondent's answer or fully developed at the appeal hearing. Rokay Wines and Liquors, Inc. v. Passaic, Bulletin 1198, Item 1. In the instant case, neither of the exceptions to the general rule is present.

"The transcript of the hearing before respondent discloses that two persons voiced objection to the transfer; that various letters and a petition of objection were made part of the record, and that arguments were presented by an attorney for appellant and an attorney for objectors.

"The grounds advanced therein for grant of the transfer are that due to lack of sufficient parking facilities, the conduct of the licensed business at its present location is unprofitable; that such premises are specially adaptable for and subject to a contract of sale

as customers. The president of the corporate licensee asserts that he did not consider the undesirability of permitting persons with criminal records to continue to frequent the premises because what he had in mind was that he was doing business with the mother and thought it was natural for her sons to be interested in the transaction.

"The suspension imposed by a municipal issuing authority in a disciplinary proceeding rests in the first instance within its sound discretion, and the power of the Director to reduce or modify such suspension will be sparingly exercised and only with the greatest caution. Dzieman v. Paterson, Bulletin 233, Item 10.

"In the light of this principle, and despite the severity of the suspension imposed, the circumstances presented do not, in my opinion, furnish a basis for reversal or even modification on the appeal. The plea for modification should be made, if at all, to respondent, which may grant relief in the event that the members thereof determine that such action is advisable. Harrison Wine and Liquor Co. v. Harrison, Bulletin 1296, Item 2.

"I recommend, therefore, that an order be entered affirming respondent's action and dismissing the appeal."

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. For clarity of the record, it should be noted that the operation of the penalty was not stayed pending appeal and, hence, the license has been under suspension since August 31, 1959.

Accordingly, it is, on this 9th day of December 1959,

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

WILLIAM HOWE DAVIS
DIRECTOR

"disqualified from holding a liquor license, from having an interest in any business conducted thereunder and from being employed by any licensee in this State...." pursuant to an Order of the Director of the Division of Alcoholic Beverage Control dated April 23, 1959....'

"Appellant, in its petition of appeal, alleges that the suspension of 120 days is excessive, confiscatory, oppressive and tantamount to a denial of appellant's rights.

"Respondent, in its answer, sets forth in substance that such penalty was a proper exercise of its sound discretion, in view of the number and type of violations, the prior admitted warning by the police authorities, the non vult plea, and the evidence presented.

"At the hearing herein, the transcript of the proceedings held by respondent was presented in evidence pursuant to Rule 8 of State Regulation No. 15. Additional evidence and various exhibits were presented by the respective parties.

"At the outset of the appeal hearing, counsel for appellant urged that the record below disclosed that appellant, who was not represented by counsel there, requested an adjournment for the purpose of obtaining counsel, and when it appeared likely that its request would be denied, entered its plea of non vult to the charges, and withdrew its application for adjournment of the hearing. These circumstances are not properly a factor on this appeal.

"The entry of the plea of non vult forecloses any attempt by the appellant to reopen and relitigate in this appeal the factual issue as to the commission of the violations charged. State v. Mull, 30 N. J. 231 (Supreme Court 1959); Grippio v. Hoboken, Bulletin 999, Item 2. Its appeal must be confined to the matter of the penalty imposed.

"It may be noted, nevertheless, that the record discloses that respondent gave full and careful consideration to appellant's request for adjournment, and, in the course of the proceedings, specifically informed the appellant that the possible extent of the penalty, if a plea of non vult was entered, might be 35 to 50 days on each of the three separate charges.

"Upon the entry of the confessional plea, the respondent nevertheless developed at the hearing, by witnesses presented on its behalf, the facts forming the basis of the charges. Detailed briefly, the facts are: that in the early part of October 1958, an application to transfer its license to another person was presented to respondent for approval; that the police authorities were instructed to make an investigation thereon; that in the course of such investigation, it developed that James Barrasso and Biaggio Barrasso, each with criminal records, sons of the proposed purchaser of the licensed business, were frequenting the licensed premises, and that James, and perhaps Biaggio, were employed there. According to the president of the corporate-licensee, this situation was called to his attention by police officers in the latter part of 1958, or in the early part of 1959, and the criminal records of Biaggio and James were read to him. Nevertheless, James and Biaggio were thereafter permitted to frequent the premises up to at least May 27, 1959. An ABC agent was at the premises on three occasions in the latter part of May 1959. On the first two occasions, James and Biaggio were present and on the last occasion James was present. On each occasion, James and Biaggio conducted themselves in a manner which indicated that they were interested in the conduct of the licensed premises, rather than merely

operating interest, or both, of another who is unsuitable, the application can with reason be denied.

On the record presented herein, I conclude that the refusal of the respondent Board to grant transfer was a reasonable exercise of its discretion.

Accordingly, it is, on this 9th day of December 1959,

ORDERED that the action of the Board of Commissioners of the Town of Irvington be and the same is hereby affirmed on the record presented.

WILLIAM HOWE DAVIS
DIRECTOR

3. APPELLATE DECISIONS - GOLDEN PHEASANT v. IRVINGTON.

| | | |
|------------------------------------|---|-------------|
| GOLDEN PHEASANT, A Corporation, |) | |
| t/a GOLDEN PHEASANT, |) | |
| |) | |
| Appellant, |) | ON APPEAL |
| |) | CONCLUSIONS |
| v. |) | AND ORDER |
| |) | |
| BOARD OF COMMISSIONERS OF THE TOWN |) | |
| OF IRVINGTON, |) | |
| |) | |
| Respondent. |) | |

Hodes & Hodes, Esqs., by Irving L. Hodes, Esq., Attorneys for Appellant.

Salvatore Muscato, Esq., by Herman W. Kurtz, 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 August 17, 1959 it suspended appellant's license for premises located at 765-7 Springfield Avenue, Irvington, for a period of 120 days, effective August 31, 1959, after the licensee's plea of non vult to the following charges:

- 'a) That it did during the period beginning November 15, 1958 and extended until and including May 31, 1959, allow, permit and suffer in or upon the licensed premises certain notorious criminals, gangsters and other persons of ill repute, in violation of State Regulation No. 20, Rule 4 of the Division of Alcoholic Beverage Control of the State of New Jersey;
- 'b) That it did on May 22, May 23, May 24 and May 27, 1959 employ and had connected with it in a business capacity, one James Barrasso, a person who had been convicted of a crime involving moral turpitude, in violation of State Regulation No. 13, Rule 1, of the Division of Alcoholic Beverage Control of the State of New Jersey;
- 'c) That it did on May 22, May 23, May 24 and May 27, 1959 employ and had connected with it in a business capacity one James Barrasso, a person who had been

"I recommend that the matter be remanded to the Board of Commissioners for its consideration in the event that a new application for transfer of said license is filed for the current licensing term, with instruction to grant or deny such application in the exercise of its reasonable discretion and in accordance with the opinion herein. Additional evidence on all issues may, of course, be submitted and considered by respondent Board."

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

I have carefully considered and reviewed the evidence herein and the report of the Hearer.

For clarity of the record, it should be noted that the respondent corporate licensee is neither a necessary nor proper party to this appeal. Livingston Land Corp. v. Livingston, et als., Bulletin 1136, Item 3.

The Hearer correctly states that since the transfer sought is for a license the term of which has expired, the opinions expressed herein merely serve to guide the respondent Board if, as and when a similar transfer application is filed by appellant. In such event, the Board will have full scope to develop all pertinent factors and exercise its reasonable discretion in considering the application, bearing in mind the opinions expressed herein. However, the recommendation to remand is an inappropriate term because, in the absence of a current application to transfer, such Board has nothing to act upon.

I differ with the Hearer's opinion that if the facts developed at the appeal hearing remain unchanged and unchallenged, the respondent Board would not be justified in refusing to grant the transfer. The transfer of a liquor license is not a right inherent in the licensee, but is, rather, a privilege which the issuing authority may grant or deny in the exercise of reasonable discretion. Rokay Wines & Liquors, Inc. v. Passaic, Bulletin 1198, Item 1. In a conflict between private interests and the interests of the community at large, the latter must prevail. DeCarlo v. Cliffside Park, Bulletin 1144, Item 3.

With these considerations in mind, the background of the applicant discloses that appellant and her sons, James and Biaggio, from the inception of the contract to purchase the establishment, displayed a managerial interest therein even before appellant was legally entitled to participate in such business. Indeed, James obtained from me, by suppression of pertinent facts, an order removing his disqualification, and thus permit his employment at the premises, which order was later revoked by me when additional facts were disclosed. James and Biaggio persisted in frequenting the premises in question to such an extent that the license in the hands of the Golden Pheasant, Inc. was suspended for 120 days by the local Board for permitting known criminals upon the premises (and affirmed by me in appeal by an order contemporaneous herewith). It is therefore reasonable to suppose that James and Biaggio may attempt, in some manner, to participate in the operation of the licensed business, despite any condition to bar them from the premises, imposed upon a grant of the application.

The hesitancy to hold a person responsible solely on the principle of guilt by association is modified by the co-existent principle stated in Wilks v. Liquor Control Commission, 122 Conn. 443, 190 A. 262, 263 (Sup. Ct. Err. 1937) cited in Florence Meth. Church v. Township Committee, Florence Township, 38 N.J. Super. 85, that where an applicant, though himself a suitable person, will be rendered an unsuitable permittee through either the domination, or the exclusive

on her home. From this fund she paid a deposit of \$3,000 on the contract. The successive withdrawals and substitution of other applications, culminating in the application filed by her on February 19, 1959 in her individual name, essentially represented the original transaction, and her money is still retained as such deposit. She intends to operate the licensed business with the aid of her son Chester, and has no intention of permitting James or Biaggio to participate therein.

"This evidence, not controverted, and not developed by the local issuing authority, strongly indicates that the police report on the subject is contrary to the facts. The denial of the transfer appears to be based on guilt by association -- that the mother is chargeable with whatever criminal misconduct of which her sons James and Biaggio may be guilty, even if they are adult and have their own families, sources of income and residences.

"The respondent Board is, of course, to be commended for the zeal it displays in demanding a high standard of conduct in licensed premises. Proper liquor control dictates that an issuing authority should be free, within the confines of sound discretion, to determine the fitness of a person to hold a license. Neiden Bar & Grill, Inc. et. al. v. Newark, et. al., Bulletin 1088, Item 1.

"In the instant case, the attitude expressed by the respondent Board seems to carry this principle too far, especially since it has effective means to bar undesirable persons from frequenting licensed premises, either by disciplinary proceedings against the licensee, or to condition the license upon the licensee's acceptance of the directive to exclude James, Biaggio and Chester Barrasso from the premises. This special condition, which was incorporated in the resolution of respondent Board adopted July 23, 1959 renewing such license for the 1959-60 licensing year, was approved ex parte by the Director's letter of July 10, 1959. In the event the transfer of such license is applied for and granted by such respondent Board subject to a similar special condition, no opinion is expressed herein with regard to the merits thereof.

"It may be a pertinent comment that while James Barrasso and Biaggio Barrasso have an extensive record of arrests, each has only one conviction in 1950 for armed robbery. Chester, when 19 years of age, was convicted of disorderly conduct arising out of an assault and battery. As it was said, it was natural for appellant's sons to display interest in their mother's proposed venture, in which Chester was to take an active part. In any event, it is mere speculation that the establishment, if transferred to appellant, would become a 'hang-out' for criminals or other undesirable persons.

"Despite the facts newly developed at the appeal hearing concerning appellant's background, which impeached the accuracy of the police report on that score, the Director of Public Safety testified that this made no difference, and he would again vote to deny the transfer if called upon to do so. I am of the opinion that such action would not be justified if the facts hereinbefore set forth remain unchanged and unchallenged.

"It is to be noted that in a pending appeal entitled Golden Pheasant v. Irvington I have recommended dismissal of an appeal from the suspension of the renewed license for 120 days by reason of the presence of James and Biaggio on the premises. It seems only fair that the appellant, a widow, should be afforded an opportunity to salvage her deposit and earn a livelihood in the liquor industry, a privilege which she would swiftly forfeit if found unworthy.

March 6, 1959

To : J. Elmer Hausmann, Director Public Safety
From: John E. Evans, Chief of Police
Subj: Golden Pheasant Tavern

Sir:

It is respectfully requested that plenary retail consumption license be denied Philomena (Phyllis) Barrasso.

This license is currently held by Michael Capezzeria and is located at 765 Springfield Avenue in Irvington.

This applicant has had no experience in the tavern business and it is firmly believed she is a 'front' for her sons, two of whom have had many encounters with the law and have served prison terms. They have been convicted of robbery, numerous counts, etc.

One son, Biaggio, was recently convicted of a Savings and Loan hold up and is appealing a fifteen year sentence. He is in this tavern daily and appears to have taken over already.

Unquestionably, persons of ill repute will frequent this place and it will be used as a hangout. Newspaper clipping attached bears proof that Biaggio used a Newark tavern for himself and cohorts in commission of his last stickup.

His brother James, who recently had a disqualification lifted, is tending bar at this tavern presently. (We are protesting the disqualification action to the ABC). The criminal record of James is replete with stickups, burglaries, etc.

Another brother Chester has been convicted of assault and battery and fighting. He is also tending bar at this place.

A likely trio to conduct a tavern.

Respectfully submitted,

(signed)
John E. Evans
Chief of Police.'

"At the appeal hearing appellant testified as follows:

She is 52 years of age and a widow since 1957; has resided for the past 16 years in Bloomfield, and that presently her sons Chester, Joseph and Donald, 23, 20 and 9 years of age respectively, reside with her. She is experienced in the operation of a tavern in that for the past 32 years she helped her father and mother during the summer months, either week ends or longer, in the operation of their tavern located at Lake Hopatcong, working there behind the bar and as a waitress, and assisting in placing orders for merchandise and some accounting work. She has also operated a pizza restaurant for about six years. She has never been arrested for or convicted of any crime.

"On September 22, 1958 her son Chester, on her behalf, entered into an agreement to purchase the licensed business here involved for \$10,000. She had borrowed \$5,000 on the security of a second mortgage

2. APPELLATE DECISIONS - BARRASSO v. IRVINGTON ET AL.

PHYLISS BARRASSO)

1319

Appellant)

v.)

ON APPEAL
CONCLUSIONS
AND ORDER

1319

BOARD OF COMMISSIONERS OF THE)

TOWN OF IRVINGTON, AND GOLDEN)

PHEASANT, a corporation, t/a)

GOLDEN PHEASANT LOUNGE,)

1319

Respondents.

Samuel D. Bozza, Esq., Attorney for Appellant.

Salvatore Muscato, Esq., by Herman W. Kurtz, Esq., Attorney for

Respondent Board of Commissioners.

BY THE DIRECTOR:

The Hearer has submitted the following Report herein:

"This is an appeal from the action of respondent Board on April 14, 1959 whereby it denied an application to transfer to appellant a plenary retail consumption license which had been issued to Golden Pheasant, a corporation, for premises 765-767 Springfield Avenue, Irvington, for the 1958-59 licensing year.

"Such license has expired, and the corporate licensee has renewed its license for the 1959-60 licensing period. Hence, the opinions expressed herein are merely advisory in the event of the filing of a similar transfer application by the appellant herein.

"The petition of appeal sets forth that the transfer was denied solely on the ground that the Chief of Police did not recommend granting approval of the transfer. The respondent Board's answer denies that this was the only reason for its action, admits that appellant has a clear record, but denies that she is qualified in every respect to own, maintain and conduct licensed premises, because she had never owned, operated or conducted any premises for the sale or distribution of alcoholic beverages; further, because two of the sons of appellant have criminal records, and if they and their friends and acquaintances should congregate upon said licensed premises, the premises would become a "hangout" for known criminals and persons of ill repute, and thus violate the Rules of the Division of Alcoholic Beverage Control.

"On April 14, 1959 at the meeting upon which the respondent Board acted upon the application, no testimony was taken, although appellant was present. One of the members of such Board, the Director of Public Safety, testified at the appeal hearing that the denial of the transfer was based entirely upon a police report, and oral reports from members of the Detective Bureau, corroborative of the written report; further, that the fact that appellant had a clear record was not called to his attention in the report.

"The written report, in evidence, reads:

in numerous municipalities in this State. There is nothing in the record herein to indicate that appellant is ineligible to hold a license.

"In Kleinberg v. Harrison, Bulletin 984, Item 2, the Director said:

'It is well established that there is no inherent right to a renewal of a license. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup.Ct. 1946). However, it is equally well established that an application for renewal of a license may not be denied capriciously or merely to reduce the number of licenses. Such denial must be based on reasonable grounds or it will be reversed. Costa v. Red Bank, Bulletin 133, Item 5; McGuire v. Paulsboro, Bulletin 392, Item 10.'

"After considering the evidence, exhibits and briefs filed herein, I recommend that an order be entered reversing the action of respondent and directing respondent to grant to appellant a renewal of License D-13 for premises being erected at North side Route 46, below Rock Hill Road and VanHouten Avenue, subject to the express condition that the premises as described in the plans and specifications prepared and submitted by the applicant and found acceptable by the issuing authority shall first be completed."

Pursuant to the provisions of Rule 14 of State Regulation No. 15, exceptions to the Hearer's Report and written argument thereto were filed by the attorneys for both objectors. Written answering argument to said exceptions was filed by the attorneys for appellant.

After carefully considering the evidence and exhibits herein, the briefs filed with the Hearer, the exceptions to the Hearer's Report and the written arguments thereto, I concur in the conclusions of the Hearer and adopt them as my conclusions herein. If, eventually, the Appellate Division of the Superior Court reverses the action of respondent whereby it transferred the 1958-59 license to appellant, the renewed license will be cancelled by a subsequent order, because the right of renewal rests upon the existence of a valid license. Greenspan v. Division of Alcoholic Beverage Control et al., 23 N.J. Super. 567 (App. Div. 1952). Hence, it is unnecessary to provide in the order entered herein that the renewal shall be subject to the outcome of the proceedings pending in the Appellate Division.

Accordingly, it is, on this 8th day of December, 1959,

ORDERED that the action of respondent be and the same is hereby reversed, and respondent is directed to issue to appellant a renewal of plenary retail distribution license D-13 for premises being erected at North Side Route 46, below Rock Hill Road and VanHouten Avenue, Clifton, subject to the express condition that the premises as described in the plans and specifications prepared and submitted by the appellant and found acceptable by the issuing authority shall first be completed.

WILLIAM HOWE DAVIS
DIRECTOR

failed to file such an application within sixty days after the expiration of the license (on June 30, 1959), it could not obtain a renewal of License D-13. See R.S. 33:1-12.16 and .18.

"At its meeting held on June 22, 1959, respondent heard arguments presented by the attorney for Field Liquors, Inc., and the attorney for appellant herein. After a lengthy discussion respondent adopted a motion that 'any action be postponed until a full application is submitted (Ordinance #2866 - fingerprinting).' Commissioners Stufko and McEvoy voted in favor of the motion and Commissioner Blackman voted against the motion.

"At its meeting held on July 20, 1959, Commissioner Stufko made a lengthy statement, the pertinent portions of which were that no 'compliance with Ordinance #2866 has been achieved' and that 'the owners of more than 99% of the applicant corporation have not even been identified.' Respondent then adopted a motion 'that the application be rejected.' Commissioners Stufko and McEvoy voted in favor of the motion, and Commissioner Blackman voted against the motion.

"Appellant is a New Jersey corporation. In its application for renewal (as in its original application for transfer), appellant disclosed that The Great Atlantic & Pacific Tea Company of America (a Maryland corporation) is the owner of 100% of its common stock and 99% of its preferred stock, and also set forth a complete list of all of the officers and directors of appellant corporation. Fingerprints were taken of all the officers and directors of appellant corporation, and a favorable report as to each of said persons was submitted to the City Clerk by the Chief of Police on May 7, 1959. All the directors of the New Jersey corporation are directors of the Maryland corporation. The allegation that there was no compliance with Ordinance #2866 is based upon the admitted fact that fingerprints of seven other persons, who are directors or officers of the Maryland corporation but not directors or officers of the New Jersey corporation, have not been submitted. Section 3 of Ordinance #2866 provides:

- '3. In the event that the applicant or licensee referred to in Section 1 hereof is a corporation, then each and every officer and Director of the said corporation shall, for the purposes of this ordinance, be considered an applicant or licensee ***. Shareholders having more than a 5% interest in the corporation, for the purposes of this ordinance, shall be considered as officers.'

A corporation cannot be fingerprinted. Under the circumstances, I conclude that appellant herein has complied with the provisions of Ordinance #2866.

"There is no provision in the Alcoholic Beverage Law or the Rules and Regulations of this Division which requires that, if the shares of an applicant corporation are owned by another corporation, the names of the officers, directors or stockholders of the latter corporation must be disclosed in the application for a license. If a case should arise wherein there was evidence or reason to believe that the corporate structures were set up for the purpose of perpetrating a fraud, it would be the duty of an issuing authority to investigate the facts. Re McNair, Bulletin 368, Item 14. However, in this case there is no evidence of fraud. The stock of the Maryland corporation is listed on the New York Stock Exchange. It has over 35,000 stockholders. Its stockholders are constantly changing. Its seven additional directors are executives of other large corporations. Moreover, the New Jersey corporation presently holds retail licenses

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

BULLETIN 1319

JANUARY 26, 1960

1. APPELLATE DECISIONS - THE GREAT ATLANTIC & PACIFIC TEA COMPANY
v. CLIFTON.

THE GREAT ATLANTIC & PACIFIC TEA)
COMPANY, a corporation,)

Appellant,)

v.)

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
CLIFTON,)

Respondent.)

ON APPEAL
CONCLUSIONS
AND ORDER

Heller & Laiks, Esqs., by Murray A. Laiks, Esq., Attorneys for
Appellant.

Manfred Triebel, Esq., Attorney for Respondent.

Koribanics & Koribanics, Esqs., by Steven Koribanics, Esq.,
Attorneys for Field Liquors, Inc., an objector to renewal
of license.

Mervyn R. Montgomery, Esq., Attorney for Stanley Zwier, an
objector to renewal of license.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent on July 20,
1959, whereby it denied appellant's application for the renewal of
License D-13 for premises being erected at North side Route 46,
below Rock Hill Road and VanHouten Avenue, Clifton.

"The circumstances surrounding the transfer of License D-13 to
appellant are fully set forth in Bertelli et al. v. Clifton et al.
and Zwier v. Clifton et al., which were decided by the Director on
March 30, 1959, and reported in Bulletin 1275, Item 1. Those cases
were appealed to the Superior Court, Appellate Division, and said
appeals are pending on the date of this report.

"When the transfer of License D-13 was granted to appellant,
Commissioners Blackman and Rubin voted in favor thereof and Com-
missioner Stufko voted in opposition thereto. Thereafter Commissioner
McEvoy became a member of the Board in place of Commissioner Rubin.

"From the stipulations of fact entered into at the hearing held
herein, it appears that:

'On June 10, 1959, the within Appellant filed an
application and paid \$250.00, the requisite fee
for a renewal of its license, in order to preserve
the subject matter of the appeal pending before
the Appellate Division of the Superior Court of
New Jersey.'

"It may be observed that, under the provisions of R.S. 33:1-12.14,
no new licenses may be issued in Clifton and that, if appellant had