

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

Mr. Gossweiler

BULLETIN 1288

August 3, 1959

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August 3, 1959

1. APPELLATE DECISIONS - GOLD SPRING FISH AND SUPPLY COMPANY v.
TOWNSHIP OF LOWER.

COLD SPRING FISH AND SUPPLY)
COMPANY, t/a LOBSTER HOUSE)
& BAR,)

Appellant,)

v.)

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF LOWER,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

James S. Cafiero, Esq., Attorney for Appellant.
Charles W. Sandman, Jr., Esq., and William J. Peters, Esq.,
Attorneys for Respondent.
James A. O'Neill, Esq., Attorney for James E. McGonigle.
Edward A. Costigan, Esq., Attorney for Lower Township Beverage
Association, an Objector.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on January 14, 1959, it unanimously denied an application to transfer License C-14 from James E. McGonigle to appellant and from McGonigle's premises on Wilson Drive to appellant's premises at Fishermen's Wharf, Cape May Harbor, Lower Township.

"The petition of appeal alleges that the action of respondent was erroneous because (a) applicant was denied a fair and impartial hearing provided for in the Rules and Regulations promulgated by the Division of Alcoholic Beverage Control, (b) the denial of the application by the issuing authority was arbitrary and capricious, (c) the issuing authority was biased and prejudiced in its thinking in that its decision was prompted by the desire to satisfy the personal wants of one licensee.

"From the evidence herein it appears that for approximately four years last past appellant has operated a restaurant at Fishermen's Wharf, Schellenger's Landing Road, Cape May Harbor. In fact, the restaurant has been in existence for more than twenty years, having been operated by other persons before appellant assumed control. The restaurant is only one of the activities being carried on by appellant at the wharf which it has owned for about thirty years, the other activities including the operation of a fish market and the manufacturing of ice.

"From 1940 until the latter part of 1958 T. Palmer Holmes held a plenary retail consumption license for a building at Fishermen's Wharf. This building, which he leased from appellant, adjoins appellant's restaurant and is separated therefrom by a wall, although both are under the same roof. The door to the barroom is about seven feet from the door to the restaurant.

After purchasing a large plot of land across the road from appellant's restaurant, Mr. Holmes applied to respondent in the latter part of 1958 for a transfer of his license to a new building which he erected on his land. His new building is about 150 feet from appellant's restaurant. At or about the same time appellant filed with respondent an application to transfer a plenary retail consumption license which it holds for premises located on a dock at Two Mile Beach to its premises at Fishermen's Wharf. Appellant also filed with respondent a written objection to Mr. Holmes' application for the transfer of his license to his new building, upon the ground that he had agreed with appellant that, if he desired to transfer his license elsewhere, he would have to have appellant's consent. Both applications were considered by respondent at its meeting held on December 22, 1958. At that time it was explained to appellant's representative that the agreement restricting the transfer of the Holmes license was unenforceable and, since there were no other objections, respondent granted the application of Mr. Holmes for the transfer of his license to his new building. At the same meeting it denied appellant's application for the transfer of its license from the dock at Two Mile Beach because said premises are about seven miles from Fishermen's Wharf and the granting of the requested transfer would result in the addition of another license in the vicinity of Fishermen's Wharf. No question is raised herein as to the validity of the action taken by respondent on December 22, 1958.

"It is admitted in the pleadings that the application for transfer which is the subject of this appeal was filed on or about January 1, 1959. A hearing upon said application was held by respondent on January 14, 1959, and a transcript of the testimony taken at said hearing has been introduced into evidence herein. From said transcript it appears that a resolution adopted by the Lower Township Beverage Association opposing the transfer was read and, after hearing arguments presented by the attorneys for appellant and Mr. McGonigle and statements made by Mr. Strauss and Mr. Laudeman, on behalf of appellant, the motion to deny the application was adopted by unanimous vote. Thereafter respondent advised applicant that the denial was based upon reasons which may be summarized as follows:

- (a) inadequate parking facilities
- (b) there is a charge pending against the transferor alleging sales to minors
- (c) application attempts to license too great an area
- (d) such other reasons as may appear in the transcript.

In its answer filed herein respondent also alleges as a reason for denial that

- (e) there is presently a licensed premises in the immediate area which in the opinion of the respondent serves the public need and convenience and the transfer of another license into this area is against the best interests of the public and the growth and development of the Township of Lower.

"The transcript of the hearing below indicates that the discussion at said hearing concerned principally the extent of the premises sought to be licensed. Admittedly, appellant's application covered its entire dock and not merely the building for which Mr. Holmes formerly held a license. The hearing appears to have been fair and impartial and, in any event, appellant was granted an

opportunity to present its evidence fully at the de novo hearing held herein. Fran-Bo-Car, Inc. v. Englewood, Bulletin 1186, Item 3.

"On behalf of appellant, Elmer N. Strauss, secretary and treasurer of the corporation, testified at the hearing herein that in his opinion the restaurant could not have carried on successfully without the adjacent bar, but the fact is that the restaurant has never been licensed. On behalf of respondent, Mayor Roop testified at the hearing herein that seventeen consumption licenses have been issued in the Township and that, considering the existence of the licensed premises operated by Mr. Holmes and the existence of licensed premises identified as The Anchorage about 500 feet away, there is no need or necessity for the existence of a third license at the restaurant owned by appellant. It was stipulated that, if Committeeman Van Dusen, who was present at the hearing, were called to testify, his testimony would be the same as the Mayor's testimony. So far as public need and necessity is concerned, it would appear that patrons of the restaurant can now purchase alcoholic beverages at the present premises of Mr. Holmes which are now located about 150 feet from, instead of adjacent to, appellant's restaurant. The licensed premises of Mr. McGonigle are located about one-quarter mile from appellant's restaurant and some distance northwest of State Highway Route #4, so that it does not appear in this case that the transfer is being sought for premises which are located in the same section of the municipality. So far as public need and necessity is concerned, the situation in this case is essentially similar to that which existed in Longyear v. Jefferson, Bulletin 972, Item 4, wherein the action of respondent was affirmed.

"It is well established that the transfer of a license is not a right inherent in the license but is, rather, a privilege which the issuing authority may grant or deny in the exercise of a reasonable discretion. Drucker v. Trenton, Bulletin 474, Item 9. The mere fact that denial of the application may result in personal hardship to appellant is not sufficient to overcome the primary consideration of the general welfare of the community. Hyman v. Howell, Bulletin 1039, Item 3. After reviewing the evidence and the briefs filed on behalf of appellant and respondent, I conclude that appellant has not sustained the burden of proof in establishing public need and necessity for another license in that section of the municipality and, hence, has not shown an abuse of discretion by the Township Committee. Biscamp v. Teaneck et al., 5 N.J. Super. 172 (A.D. 1949). It is unnecessary to consider the additional reasons for denial. I further conclude that there is no evidence that the members of the Township Committee were biased or prejudiced, or that the denial was arbitrary or capricious. It is recommended, therefore, that an order be entered affirming respondent's action and dismissing the appeal."

Written exceptions to the Hearer's Report and written argument thereto were filed with me by appellant, pursuant to Rule 14 of State Regulation No. 15, in which the principal points urged by appellant are: (1) the appellant has not been afforded opportunity to examine under oath the representatives of the sole objector to the transfer, the Lower Township Beverage Association, in order to ascertain the motives behind its objections, (2) the Hearer failed to take into consideration various surrounding circumstances in finding that the members of the Township Committee were not improperly motivated, and (3) the Hearer's finding that the transfer sought is from one section of the municipality to another is contrary to the weight of the evidence.

I thereafter heard oral argument by the attorneys for the parties, at which appellant's attorney also contended that respondent's action was improperly influenced by the fact that

respondent's counsel, Charles W. Sandman, Jr., was both a close personal friend of, and has for a long period of time been attorney for, one of the interested parties, namely, T. Palmer Holmes. Mr. Sandman admitted such relationship, but emphatically denied having attempted to bring any influence upon the members of respondent Township Committee. Appellant's attorney additionally argued that respondent had manifested definite prejudice in favor of Holmes through its advance informal approval of Holmes' transfer application, formally approved on December 22, 1958, at which time Holmes had already almost completed the construction of his new licensed building.

The crux of the Hearer's Report is the finding that the transfer sought is from one section of the municipality to another. Where this is present, the local license issuing authority may rightly consider the concentration of licenses at the new location in resolving the question of public need and convenience being served by the transfer. See Longyear v. Jelferson, supra.

While it is true that the number of licensed premises to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority, DiGioacchino v. Atlantic City, Bulletin 1030, Item 3, where, however, the transfer is from one location in an area to another location in the same area, the mere fact that other existing licensees also serve the same area is not a valid reason for denial of the transfer since no increase in concentration of licenses results from such transfer. See Geltzeiler v. Newark, Bulletin 1171, Item 1; Black v. Newark, Bulletin 1219, Item 1.

I have carefully considered the entire record in this case, including the transcript of testimony, the exhibits in evidence, the briefs of counsel, the Hearer's Report and the exceptions and written and oral argument herein, and, as a result, I find that the transfer sought is not from one section of the municipality to another. The exhibits admitted in evidence clearly show that there are presently six consumption licenses clustered in the area in question. These licenses, including the license of Holmes across the street from appellant's proposed location, are all located within a radius of approximately six hundred feet. The entire area is admittedly commercial in character. The testimony discloses that respondent's witness referred to the fact that there are six licenses in the "immediate vicinity" ... "in this one little area". The Township extends at least seven miles in one direction.

Under these circumstances, the increase in concentration of licenses was not a proper ground for denying a transfer. It therefore becomes necessary to consider the remaining grounds assigned for respondent's action in its answer to the petition of appeal, namely, insufficient parking space, traffic congestion, the pending minors charge against McGonigle, the policy of respondent to keep the Cold Spring Dock area free of licensed premises and the excessive size of the area sought to be licensed.

I have given careful consideration to each of these grounds, but am unable to find support for any of them in the record before me. The evidence indicates that appellant has sufficient parking space to accommodate more than two hundred cars and that no parking problem has existed at its premises in the past, nor has there been established any violation of the municipal zoning law with regard to the construction of buildings having insufficient parking space; that the possibility of increased

traffic on Schellenger's Landing Road leading from State Highway No. 4 to appellant's premises is negligible in view of the fact that most of the traffic to Holmes' establishment will enter from Route No. 4 directly by way of a private drive (as confirmed at the oral argument before me) rather than by way of Schellenger's Landing Road; that the pendency of a charge or investigation involving a transfer of a license is not a proper ground for denial of the transfer since under Rules 1, 2 and 3 of State Regulation No. 16, any transfer that is granted in no way affects the pending charge or investigation - the license, nevertheless, remains subject to disciplinary action for proper cause arising prior to the transfer; and that there has not been established any well defined bona fide municipal policy to keep the Cold Spring Dock area free of licensed premises, especially in view of the many license renewals granted for appellant's premises in the past, cf. Spezzi v. Sayreville, Bulletin 1152, Item 4, nor do I find any reasonable grounds advanced for presently imposing such restriction. As to the question of licensing the dock and pier areas adjacent to the buildings sought to be licensed, I have decided to limit the licensed premises merely to these buildings, in conformity with appellant's willingness to do so.

In view of my aforementioned findings, it is not necessary to consider the other points raised by appellant. However, for future guidance, I wish to point out that it has been held that a local license issuing authority is not obligated to grant a full trial-type hearing where there are no questions of fact involved. See Nordco, Inc., v. State, 43 N.J. Super 277 (App. Div. 1957). Where, as here, the resolution presented to the respondent Township Committee by the objecting association did not attempt to establish any facts upon which a decision was based, but merely pointed out certain questions to be considered and evaluated by the Township Committee in arriving at its decision, the lack of a full trial-type hearing involving sworn testimony and cross-examination is not ground for reversal.

There is no inherent right to the transfer of a liquor license but, where it appears that there is an arbitrary or unreasonable refusal to transfer a license, the action of the local issuing authority will be reversed. De Lotto v. West Paterson, Bulletin 1172, Item 1, and cases cited therein.

I therefore conclude that appellant has sustained the burden of establishing that the action of respondent herein was arbitrary and unreasonable under the circumstances and must be reversed.

Accordingly, it is, on this 26th day of June 1959,

ORDERED that the action of respondent be reversed, and respondent is ordered to transfer said license in accordance with the application filed by appellant, except that the application is hereby amended to include as the licensed premises only the building mentioned therein and not the dock and pier areas adjacent thereto.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - THE GREAT ATLANTIC AND PACIFIC TEA COMPANY
v. FRANKLIN AND FISCHGRUND.

THE GREAT ATLANTIC AND PACIFIC TEA)
COMPANY,)

Appellant,)

v.)

ON APPEAL
CONCLUSIONS

MAYOR AND COMMON COUNCIL OF THE)
BOROUGH OF FRANKLIN, AND ISIDOR &)
FRANCES FISCHGRUND, t/a FRANKLIN)
LIQUORS,)

Respondents.)

Milford Salny, Esq., Attorney for appellant.

Emanuel A. Honig, Esq., Attorney for the transferors, Isidor and
Frances Fischgrund.

Mackerley and Friedman, Esqs., by William J. McGovern, Esq.
Attorneys for respondent municipality.

Samuel Moskowitz, Esq., Attorney for the objectors North Central
Counties Retail Liquor Stores
Association, James Jacobson,
Saul Gandle and Hugh Quinn.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of Respondent Mayor and
Common Council (hereinafter the respondent issuing authority) at
a meeting on January 12, 1959, whereby it denied by a three to two
vote (Councilman Nestor being absent) an application for transfer
of plenary retail distribution license D-3 from Isidor Fischgrund
and Frances Fischgrund to appellant and from 61 Main Street to
the easterly side of Route 23 (opposite Franklin Avenue), Borough
of Franklin. The resolution approved by respondent issuing authority
set forth as the reason for its action that 'the transfer be denied
on the ground that the area for which the transfer proposed to be
made is adequately served by existing outlets'.

"Appellant, in its petition of appeal, contends that the action
of respondent issuing authority was erroneous because:

- (a) The evidence before respondent does not support its decision;
- (b) The evidence and the available facts required the approval of the application;
- (c) Respondent's action served only the private interests of other license holders in the Borough and did not serve the public interest or the public convenience;
- (d) The interests of public convenience, safety and welfare would be promoted by granting appellant's application;
- (e) The action of respondent was arbitrary and capricious and contrary to the laws and regulations of the State of New Jersey and of this Division governing the same.'

"The answer of respondent issuing authority denies these allegations and avers, in substance, that its action was proper from the standpoint of health, morals, safety and welfare of the municipality.

"I might state that, as a matter of pleading, the person consenting to a transfer of a license is neither a necessary nor a proper party to an appeal filed from denial of an application to transfer a license. See The Pines of Watchung v. Watchung et als., Bulletin 1061, Item 2. Hence, I recommend that the names of Isidor & Frances Fischgrund, t/a Franklin Liquors, be stricken as parties respondent herein.

"The transcript of the proceedings before the respondent issuing authority, by consent of the parties hereto, was marked as an exhibit in the within matter. Supplemental testimony was presented by the parties to this appeal.

"A petition objecting to the transfer of the license in question containing the names of twelve liquor licensees (nine plenary retail consumption and three plenary retail distribution licensees) was filed with respondent issuing authority and marked as an exhibit in this proceeding. However, two plenary retail consumption licensees whose liquor establishments are located closer to the proposed premises than the premises of the other objectors requested that their respective objections be withdrawn.

"Five of the six members of the Council, the mayor and the chief of police of the municipality wherein the proposed premises are located appeared and testified as witnesses in this matter. The deposition of Councilwoman Osborne, who could not appear personally as a witness, was permitted by agreement to be read into the record.

"Three of the councilmen testified that they were of the opinion that there are sufficient plenary retail consumption outlets in the vicinity of the proposed premises to meet the requirements of those desiring alcoholic beverages in original containers for off-premises consumption. Furthermore, each appeared to be concerned with a traffic problem in the vicinity. The opinions of two councilmen (one of whom was Councilman Nestor) and of Councilwoman Osborne aforementioned were in agreement that the transfer for which application was made should be approved. The mayor testified that if his vote was needed at the time of the hearing before the respondent issuing authority, he would have voted to deny the transfer.

"Chief Lacika testified that, in his opinion, the transfer of the license to the proposed site would not create a traffic hazard. He agreed, however, that whenever any new businesses are established a volume of traffic would no doubt increase but, he stated, the mere fact that a liquor license is permitted in a market would not create a traffic hazard. Moreover, he expressed the further opinion that when there is adequate parking facilities as here traffic hazards would be minimized.

"The question now to be considered is whether the existing liquor outlets in the area of the proposed premises may be considered adequate to meet the needs and convenience of the public. The nearest licensed premises are located approximately 700, 1700 and 2700 feet, respectively, from the appellant's proposed establishment. All of the said liquor businesses hold plenary retail consumption licenses which gives them the privilege

to sell in the barroom alcoholic beverages in original containers for off-premises consumption. The nearest package goods store is located approximately 1.3 miles away.

"Although the existence of places holding consumption licenses may be considered in determining need for a package store in a section of a community, it cannot be said that the three retail consumption licensed premises, all of which are at least 700 feet from appellant's premises, preclude the need for a package goods store in that section of the Township. As was said in Budd Lake Market, Inc., v. Mt. Olive Township, Bulletin 160, Item 6:

'A package goods license fills a need quite distinct from that supplied by the tavern, and it may well be an important matter of social convenience and necessity that such a license be granted. See Sanford Drug Co. vs. Maplewood, Bulletin 71, Item 6.'

"When the denial of the transfer is arbitrary or unreasonable, the action of respondent issuing authority will be reversed. When the transfer is denied for good cause, the action of respondent will be affirmed. Such cause, generally speaking, is that it would be necessary and proper to accomplish the object of the Alcoholic Beverage Law and secure compliance with its provisions, e.g., that the premises are unsuitable or that there are too many licenses in the vicinity. See Gruhler and Edwards v. Phillipsburg, Bulletin 718, Item 3; Cf. Cielukowski v. Jersey City, Bulletin 716, Item 6. Although the issuing authority's discretionary powers are broad, the presumption in favor of the validity of the authority's action is not conclusive. Ways & Witteborn v. Egg Harbor Township et als., Bulletin 951, Item 3; Olko v. Saddle River Township et al., Bulletin 914, Item 3. The reasons assigned for its action must be reasonably supported by the evidence in order for such action to be sustained. O'Bertz v. Perth Amboy, Bulletin 1011, Item 1; Palmer v. Atlantic City, Bulletin 1017, Item 1.

"The objections made by competitive licensees do not appear to be meritorious as the proposed location of the license at the shopping center and the operation of a package goods store under proper supervision would not, in any way, be detrimental to the community. It is apparent from the testimony of the chief of police, who is familiar with traffic conditions in the municipality, that no traffic hazard would be created by the transfer to the proposed location. Furthermore, the sole reason given by the respondent issuing authority at the time of the hearing below that the licensed premises in the area would sufficiently serve the needs and convenience of the public does not appear to be borne out by the testimony herein. The fact that a transfer of the license may be contrary to the economic interests of the objecting licensees is not a sufficient reason for a denial of the transfer. The test to be applied is the welfare of the community. Cf. Knast and Krause v. Camden et al., Bulletin 810, Item 2.

"After careful examination of all the evidence presented herein, I conclude that the action of the respondent issuing authority in denying the transfer of appellant's license was arbitrary and unreasonable. I, therefore, recommend that its action be reversed. However, I further recommend that the license be withheld by the respondent issuing authority until such time as alterations are made to the proposed premises in accordance with the plans and specifications submitted to respondent issuing authority at the time application for transfer was filed."

Written exceptions to the Hearer's Report and written argument thereto were filed with me by appellant's attorney and written answering argument was filed by respondent's attorney, pursuant to Rule 14 of State Regulation No. 15.

After careful consideration of the entire record herein, including the transcript of the testimony taken before the respondent Mayor and Council, the memoranda filed with the Hearer by the respective attorneys prior to the Hearer's recommendations in the matter, the Hearer's Report, the written exceptions thereto and the arguments advanced by the attorneys for the respective parties herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

The license sought to be transferred expired at midnight June 30, 1959. Isidor and Frances Fischgrund obtained a renewal of their license for the current licensing year for premises 61 Main Street. Thus, the decision herein is merely advisory.

Although the action of respondent is reversed, nevertheless, since the license which is the subject of this appeal has expired, no order requiring respondent to transfer said license will be entered herein.

Under the circumstances, the appellant may file an application for the transfer of the renewal license to itself and to the premises located on the easterly side of Route 23 (opposite Franklin Avenue).

In the event that said transfer is granted, the resolution granting said transfer must contain an express condition that the transfer is granted subject to the completion of the premises in accordance with the plans and specifications filed with said application.

WILLIAM HOWE DAVIS
DIRECTOR

DATED: JULY 1, 1959

- 3. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - HINDERING - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

SAMUEL CHERLIN
t/a BENSON & CO.
233 Broad Street
Elizabeth 3, N. J.

)
)
) CONCLUSIONS
) AND ORDER

Holder of Plenary Retail Distribution License D-13, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.

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

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On April 6, 1959, you sold and offered for sale, at retail, directly or indirectly, one 4/5 quart (fifth)

bottle of Seagram's Seven Crown Blended Whiskey, an alcoholic beverage, at less than the price thereof filed with the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulation No. 30.

- "2. On April 6, 1959, you failed to facilitate and hindered and delayed and caused the hindrance and delay of the investigation of the above alleged violation, then and there being made by Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey, and further did attempt to hinder, delay and cause the hindrance and delay of such investigation by urging and counselling said Investigators to make false and untruthful reports of their investigation to show no violation had in fact occurred by offering to give money to said Investigators to make such false and untruthful reports; in violation of R.S. 33:1-35."

On April 6, 1959, defendant sold to an ABC agent a 4/5 quart bottle of Seagram's Seven Crown Blended whiskey for \$4.32, whereas at the time the minimum resale price in effect for such item was \$4.79. When one of the agents called the attention of the defendant to the violation, he offered each of the two agents a sum of money if they would forget the incident. He repeated the offer again during the investigation. The agents requested the tape from the cash register but defendant insisted he did not have the key to open same. About a half-hour after the agents had made known their identity to the defendant (during which time the agents had on several occasions requested the tape), the defendant called someone on the telephone. The agents heard him ask whether he should surrender the register tape. After this conversation the defendant walked to the cash register and, without use of a key, opened the register, obtained the tape and gave it to the agents. Although defendant verbally admitted that he sold the whiskey in question below the minimum resale price, he refused to give a signed statement with reference thereto.

Defendant has a prior adjudicated record. Effective November 16, 1953, his license was suspended by this Division for a Fair Trade violation (Re Cherlin, Bulletin 992, Item 4). From the Conclusions in said case it also appears that defendant participated in similar violations which were committed more than ten years ago when the license was in his wife's name. The minimum suspension imposed for a violation as set forth in Charge 1 is ten days. Ordinarily, the suspension is doubled for a second similar violation. However, since the similar violation in 1953 occurred more than five years ago, I shall suspend defendant's license on this charge for fifteen days. Re Stein, Bulletin 1067, Item 4. On Charge 2 I shall suspend defendant's license for fifteen days (Re Klein, Bulletin 1003, Item 6), making a total suspension of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 22nd day of June, 1959,

ORDERED that any renewal for the 1959-60 licensing year or transfer of plenary retail distribution license D-13, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Samuel Cherlin, t/a Benson & Co., for premises 233 Broad Street, Elizabeth, be and the same is hereby suspended for twenty-five (25) days, commencing at 9 a.m. Monday, July 6, 1959, and terminating at 9 a.m. Friday, July 31, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)

CLARENCE HAROOTUNIAN t/a SILVER SLIPPER 235 Buffalo Avenue Paterson, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-173, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

Martin Verp, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant entered a plea of not guilty to the following charge:

'On January 29 and 30, 1959, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets, in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.'

"To support the charge the Division called as its witnesses the ABC agents who participated in the investigation of defendant's licensed business. They will be referred to herein as Agents S, L and F.

"Agent S testified in substance that at about 11:50 a.m., January 29, 1959, he and Agent L visited defendant's licensed premises and seated themselves at the bar behind which was George DeSimone, the bartender, hereinafter called George; that seated at the far end of the bar was a male later identified as Bart Barrechia, hereinafter called Bart; that during their stay he observed a male named Siberia and others enter the premises several times and on each occasion hand Bart slips of paper and money and depart; that at about 12:10 p.m. he requested of and received from George a newspaper which he opened to the horse racing section and spread it on the bar; that after he and Agent L scanned the entries for the day, he asked George if 'Mighty Proud' was a good one and George replied that he never heard of it and that he didn't bother with horses; that while he and Agent L were discussing horses, Bart came over and asked, 'What have you got there, fellows?' and that he asked Bart if he had ever heard of 'Mighty Proud'; that Bart produced a racing form and confirmed the fact that the named horse was running that day. Agent S testified that he then placed with Bart a bet of \$4.00 on 'Mighty Proud' and that Agent L placed a similar bet on 'Sonny Dan'; that they told George what they had done and he admonished them saying, 'Whatever you do, don't say anything about this bet to anyone. Be careful'; that Agent F joined him and Agent L at this point and all three left the premises.

"Agent S further testified that at about 11:45 a.m., January 30, 1959, he and Agent L again visited the licensed premises wherein Bart handed Agent L \$21.60, money won on the bet placed the previous day; that he told George he had lost his bet but that his companion had won \$22.00; that George inquired if Bart had paid off and when informed that he had, George inquired whether they were going to bet today and said, 'Be careful when strangers come in. Like I told you yesterday, the place is hot'; that Agent L and he placed two bets with Bart, handing him currency the serial numbers of which had previously been recorded, and that they heard Bart say to two patrons who had been looking over the racing form, 'Well, if you are not going to bet, give me back the race sheet. You are wasting my time'; that Siberia entered the premises several times on this date and handed slips of paper and money to Bart and that when Agent L and he opened the newspaper and spread it on the bar, George said, 'Be careful, watch out for strangers. Like I told you yesterday, I could lose the license', and that at 12:38 p.m., Agent F and three prosecutor's detectives entered the premises and after all had identified themselves, Bart was apprehended.

"It was stipulated that the testimony of Agent L would corroborate that of Agent S in all respects.

"Agent F testified that when Bart was asked if he would submit to a search he emptied his pockets in the presence of all the enforcement officers and that there was found, among the currency he possessed, a one-dollar bill which one of the agents had given to him.

"Clarence Harootunian, the licensee, testified in substance that he has held the license herein for a period of six months; that he tends bar at night but checks the premises during the day; that he has known Bart as a patron for about eight months; that he never observed any gambling activity in and upon the premises; that he was formerly a luncheonette proprietor and that he would like to sell the tavern because there is 'too much trouble right now'.

"George DeSimone testified in substance that he works as a part-time day bartender for the licensee herein; that Bart, whom he has known for eight months, came into the tavern a couple of times a day for a drink or a sandwich; that he never saw Bart take any bets; that he doesn't know Siberia; that he never heard any of the conversation the agents had with Bart; that when Agent S insisted upon talking to him about horses, he said, 'Don't mention anything about horses in this place. It's hot' and 'My boss could lose his license', and he denied that the agents told him about placing bets with Bart. He further testified that prior to January 29, 1959, prosecutor's detectives had visited the licensed premises and that thereafter the telephone service was discontinued.

"Having carefully considered the testimony herein, I find that the Division has established the violation charged by more than a fair preponderance of the believable evidence and I recommend that an order be entered adjudging defendant guilty of permitting gambling in and upon his licensed premises. In view of defendant's otherwise good record and the fact that neither he nor his agent actively participated in the gambling activities, I further recommend that the license herein be suspended for a period of twenty days, the minimum penalty imposed for such violation. Re Stanziale, Bulletin 1259, Item 6."

No exceptions were taken to the Hearer's Report within the time limited by Rule 6 of State Regulation No. 16. Having carefully considered the facts and circumstances herein, I concur in

the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 22nd day of June 1959,

ORDERED that Plenary Retail Consumption License C-173, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Clarence Harootunian, t/a Silver Slipper, for premises 235 Buffalo Avenue, Paterson, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m., Tuesday, June 30, 1959; and it is further

ORDERED that any renewal for the 1959-60 licensing year or transfer of said license shall be and remain under suspension until 3:00 a.m., Monday, July 20, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

CARVIN CORP.
t/a CARVIN CORP.
366 Ocean Avenue
Jersey City, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-223, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Defendant-licensee, by Carl Lorello, President, and Vincent Citarella, Secretary-Treasurer.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

- "1. On May 15 and 19, 1959, you allowed, permitted and suffered gambling, viz., the making and accepting of bets in a lottery commonly known as the 'numbers game', in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.
- "2. On May 15 and 19, 1959, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game' to be sold and offered for sale, in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

On May 15, 1959, ABC agents at defendant's licensed premises observed "Jerry" (later identified as Gerald Holland) and Vincent Citarella, who was acting as bartender, accept what appeared to be "numbers" bets from various patrons. One of the agents placed a "numbers" bet with Holland in the presence of Citarella who told the agent, in effect, that if he won he could collect it from him.

On May 19, 1959, ABC agents again at the premises observed

Holland accept "numbers" bets from various patrons. One of the agents placed two "numbers" bets with Holland and told Carl Lorello, who was tending bar, that he had arranged with Holland that if he won he was to pick up the money from Vincent Citarella, to which Lorello assented. The two one-dollar bills, identified by serial numbers, which the agents had used to place such bets were recovered from Holland after the agents and local police officers had identified themselves.

Defendant has no prior adjudicated record. I shall suspend defendant's license for twenty-five days, the minimum suspension in cases involving commercialized gambling when a licensee or employee is involved. Re Rosenthal, Bulletin 1278, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 23rd day of June 1959,

ORDERED that any renewal for the 1959-1960 licensing year or transfer of Plenary Retail Consumption License C-223, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Carvin Corp., t/a Carvin Corp., for premises 366 Ocean Avenue, Jersey City, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m., Tuesday, July 7, 1959, and terminating at 2:00 a.m., Monday, July 27, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALES TO MINORS, DISMISSED.

In the Matter of Disciplinary Proceedings against

WILLIAM C. GENTES & LORETTA MARY GENTES
t/a LEONARDO BAR & GRILL
36 Center Avenue
Middletown Township
PO Leonardo, N. J.

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-12, issued by the Township Committee of the Township of Middletown. -----

Defendant-licensees, by William C. Gentes, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants pleaded not guilty to the following charge:

'On March 4, 1959, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, in violation of Rule 1 of State Regulation No. 20.'

"At the hearing herein, the Division called as its witnesses Richard ---, five other minors and the ABC agents who participated

in the investigation.

"Richard testified in substance that on the date alleged he was 19 years of age; that at about 9:30 p.m. on said date he and five minor companions drove to defendants' licensed premises and parked their car across the street therefrom; that he alone entered the tavern; that he knew an adult friend was going to be there at that time; that he spoke to his adult friend at the bar but did not speak to the bartender; that he handed the adult a \$20 bill and asked him to purchase a case of beer and a bottle of coke and then walked about 15 or 20 feet away from the bar; that, pursuant to the adult's order, the bartender placed the case of beer and bottle of coke on the bar, accepted payment from the adult and walked away. Richard further testified that he then approached the adult at the bar, collected the change and proceeded toward the door; that the adult carried the beer outside the premises and handed it over to him and that after the beer had been placed in the car, he and his companions drove off.

"The five other minors testified that on the date alleged they accompanied Richard to the vicinity of defendants' licensed premises; that the car was parked across the street from the premises; that they saw Richard proceed toward the tavern empty-handed and later observed him as he crossed the street or approached the door of the car carrying a case of beer which he put in the car. It is noted that none of the other minors corroborated Richard's testimony that the adult carried the beer from the premises. However, all of them testified that they did not see Richard at the time he came out the door of the licensed premises, and none of them was in a position to testify as to the events which took place inside the licensed premises.

"One of the ABC agents testified that Richard directed him to the defendants' licensed premises and identified it as the place 'where I bought the case of beer'. The minor did not identify the person who made the sale. If this testimony be considered as an admission by Richard that he purchased the beer, it can, at most, neutralize his testimony and the guilt or innocence of defendants may not be determined solely thereon. Smarsch v. Elizabeth, Bulletin 1083, Item 2.

"William Gentes, one of the licensees, testified that he was not in the tavern on the date alleged and his bartender, Richard Donner, testified that he was the only bartender on duty that evening, and that 'it was a night lots of cases of beer go out, a lot of six-packs go out. Most people generally come in even for a container of beer, we know who they are. It is all local people.' He testified further that he didn't know Richard and had no recollection of having seen him in the tavern.

"Considering the testimony herein, I find that the Division has not sustained the burden of establishing by a fair preponderance of the believable evidence that defendants permitted the sale of alcoholic beverages, directly or indirectly, to the minor. It is recommended, therefore, that defendants be found not guilty and that an order be entered dismissing the charge."

No exceptions were taken to the Hearer's Report within the time limited by Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 24th day of June 1959,

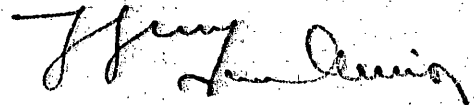
ORDERED that the charge herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
DIRECTOR

7. STATE LICENSES - NEW APPLICATION FILED.

Gold Star Liquors, Inc.
183-187 Monroe Street
Passaic, New Jersey

Application filed August 3, 1959 for additional warehouse on Plenary Wholesale license W-59 at Branch Warehouse in Building No. 12-H of Botany Mills, Inc., on Sherman Street, between Parker and Dayton Avenues, Passaic, New Jersey.



William Howe Davis
Director