

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

BULLETIN 1289

August 7, 1959

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DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

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August 7, 1959

1. STATE REGULATION - REGULATION NO. 34 - RULE 12 AMENDED TO INCREASE PERIOD WITHIN WHICH RETURNS FOR CREDIT MAY BE MADE BY RETAILERS FROM SEVEN (7) DAYS TO TWELVE (12) DAYS.

TO ALL MANUFACTURERS, WHOLESALERS AND RETAILERS:

RETURN OF ALCOHOLIC BEVERAGES (OTHER THAN MALT ALCOHOLIC BEVERAGES) FOR CREDIT - RULE 12 OF STATE REGULATION NO. 34 AMENDED.

Rule 12 of State Regulation No. 34 was amended, effective May 1, 1958, to reduce the period during which alcoholic beverages (other than malt alcoholic beverages) may be returned to wholesalers by retailers from thirty (30) days to seven (7) days.

It now appears that, due to delivery schedules in some areas, it is difficult or impossible to effect such returns in seven (7) days. It further appears that a twelve (12) day period will be sufficient.

Accordingly, Rule 12 of State Regulation No. 34 is hereby amended to read as follows:

"Rule 12. No retailer shall return any alcoholic beverages other than malt alcoholic beverages for credit and no manufacturer or wholesaler of alcoholic beverages other than malt alcoholic beverages shall accept from any retailer any return of alcoholic beverages for credit unless such alcoholic beverages were originally delivered to the retailer by the manufacturer or wholesaler not more than twelve (12) days prior to such return, except pursuant to waiver of the provisions of this Rule granted by the Director upon petition setting forth good cause."

WILLIAM HOWE DAVIS  
Director

Promulgated July 22, 1959.

Effective August 5, 1959.

Filed with the Secretary of State (N. J.) July 22, 1959.

2. STATE REGULATION NO. 23 - POSSIBLE AMENDMENT CONCERNING HALF-PINTS - PUBLIC HEARING.

On April 23, 1959 I issued the following release:

"TO ALL MANUFACTURERS OF DISTILLED SPIRITS:

"In New Jersey, under Rule 1 of State Regulation No. 23, the minimum standard of fill for distilled spirits is one-tenth gallon (sometimes known as a four-fifth pint or a half-fifth). However, a problem has arisen because of the recent influx of alcoholic

beverages which meet the Federal standards of identity for classification as cordials and liqueurs by virtue of the fact that they contain sugar or dextrose, or both, in an amount not less than 2½% by weight of the finished produce. Examples are the flavored vodkas and gins and bourbon liqueurs. Some of these products are marketed in such a manner as to appear to be vodka, gin, or bourbon liqueur, whereas in fact they are not. More recently, bottled highballs and other diluted alcoholic beverages have also appeared on the market.

"Since our regulation governing standards of fill has traditionally permitted the packaging of bottled highballs, cordials and liqueurs in half-pints, any product which meets the Federal standard may be packaged in half-pints. Consequently, some products to which the required amount of sugar or dextrose have been added may be packaged in half-pints even though the basic ingredient (gin, vodka or bourbon) may not be so packaged, and this is so even though the original taste of the basic ingredient may not have been perceptibly altered. Similarly, the addition of water, soda or fruit juice to distilled spirits permits packaging in half-pints as bottled highballs.

"A number of requests have been received from manufacturers and wholesalers urging an amendment of the regulation to reduce the minimum standard of fill for distilled spirits to one-half pint.

"An expression of the views of the manufacturers of distilled spirits on this subject is invited. Please submit your comment not later than May 15, 1959."

Since then I have received numerous and widely divergent expressions of view from all levels of the industry. Some favor the reduction of the standard of fill for distilled spirits to a half-pint while others prefer the elimination of the half-pint as a permissible size for all alcoholic beverages except wines, champagnes and malt alcoholic beverages.

As was stated in the foregoing release, there have been introduced into the New Jersey market a large number of new products in half-pints which may be so packaged as cordials, liqueurs, cocktails and bottled highballs under the present regulation. Some of these products sell at extremely low prices.

There appears to be a considerable body of opinion that some change in the regulation is necessary to meet problems existing in our present-day market. However, careful thought must be given to all factors and conditions before final decision is reached.

Accordingly, I have scheduled a public hearing at 10:00 a. m. on Tuesday, August 11, 1959, at Oxford Room, Essex House, 1050 Broad Street, Newark, New Jersey, where

all levels of the industry and the public may express their views on the advisability of amending State Regulation No. 23 so as to change the minimum standard of fill for all alcoholic beverages except wines, champagne and malt alcoholic beverages.

All persons wishing to be heard are invited to attend. It would be helpful if those who desire to be heard would send written notice of such desire to the Director, Division of Alcoholic Beverage Control, 1100 Raymond Boulevard, Newark, New Jersey, immediately.

WILLIAM HOWE DAVIS  
Director

Dated: July 16, 1959.

3. APPELLATE DECISIONS - LUBLINER AND CONGREGATION LENATH HAZEDIC v. PATERSON AND HUTCHINS.

Morris Lubliner and Congregation )  
Lenath Hazedic, )  
Appellants, )

v. )

CONCLUSIONS

Board of Alcoholic Beverage Control )  
for the City of Paterson and )  
Augustus Hutchins, t/a Hutch's )  
Tavern, )  
Respondents. )

AND

ORDER

----- )  
Schwartz & Schwartz, Esqs., by Louis Schwartz, Esq.,  
Attorneys for Appellants.  
Harry Smith, Esq., Attorney for Respondent Board of  
Alcoholic Beverage Control for the City of Paterson.  
Charles Turndorf, Esq., Attorney for Respondent Augustus  
Hutchins.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent Board whereby on January 14, 1959 it approved by a two-to-one vote a transfer of a plenary retail consumption license held by the respondent Augustus Hutchins from 34 Straight Street to 39-41 Carroll Street, Paterson.

"It is to be noted at the outset that this is the sixth successive similar application for transfer. The first, in 1947, was denied and such denial affirmed on appeal (Bulletin 764, Item 9); in 1948, 1950 and 1951, respectively, applications for transfer were denied with no appeals filed therefrom; and in 1954 the application for transfer was granted, but such grant was reversed on appeal by the Director (Bulletin 1022, Item 4).

"The attorneys for the respective parties agreed that in addition to the minutes of the meeting at which respondent Board considered the application, which minutes were presented in evidence, the proceedings at all the prior hearings before the respective Boards or on appeal be made part of the record

herein.

"When denying the 1954 appeal, the Director, in his decision, while recognizing that new members of the Board (as here) when exercising their discretion were not bound by the action of their predecessors on the Board, concluded that, nevertheless, since it was the fifth application for the same transfer without any material change in facts, no real public need for a license at the new premises had been established and, hence, reversed the grant of the transfer.

"For a better perspective of the issues presently involved, it will be helpful to review what has heretofore transpired.

"In 1947 the local issuing authority denied the transfer, which denial was affirmed on appeal by the then Commissioner. In his decision he stated that it was a mixed residential and business neighborhood; that the determination of the question as to the number of licensed premises which should be permitted in the area was confided to the sound discretion of the issuing authority; that seven licensed premises were in the immediate neighborhood, with many residents voicing their objections, with similar objections by representatives of educational and religious groups; and that the burden upon appellant of establishing that the Board's action was erroneous had not been met.

"Apparently on the basis of this decision, subsequent applications in 1948, 1950 and 1951 were denied by the local issuing authority without appeal. Then, in 1954, the then existing Board granted a transfer. By this time the four successive denials, based upon the oft repeated similar objections, had gathered such impetus that the mere opinion of the new Board that transfer of the license was in the public interest seemingly could not overcome the previous opinions to the contrary and, thus, their action was reversed even though the burden had shifted and rested on the appellant to establish that the grant of the transfer by the Board was erroneous. Cf. Protos v. Newark & O'Neal, Bulletin 809, Item 5.

"At the hearing before the local issuing authority on the present application, the evidence presented for and against the granting of the transfer was in large measure similar to that presented on the previous applications. The three commissioners personally inspected the area. They expressed concern over the lack of present parking facilities and received assurance that such facilities would be provided. One of the commissioners then stated: 'We are concerned with the condition of the neighborhood as we found it during our inspection. I think the area would be improved if Mr. Hutchins were to conduct a high class type of tavern and restaurant.' This commissioner then offered the resolution granting the application conditioned upon the completion of the proposed alterations of the premises. Another commissioner then stated: 'I will not second the motion for approval. This neighborhood does not require another tavern. I would suggest that he put a restaurant in there first if that is what he wants to run. That neighborhood can't support a high class restaurant\*\*\*.' The resolution was then adopted by a two-to-one vote.

"At the present hearing on appeal, the location of the liquor licenses in the area was indicated on a sketch. It appears that the nearest tavern to the proposed location is distant 1040 feet, with other taverns being at greater dis-

tances, and that there are three package store licenses distant 100, 300 and 1000 feet, respectively, from such location. Evidence has been presented by a person familiar with the neighborhood that, from casual observation, there has been, since 1954, a larger percentage of persons of applicant's race residing in the area. The applicant caused an investigation to be made which he maintains discloses that school children are a minor problem so far as relates to the location of his tavern at the premises.

"It is interesting to note that in Auerbach v. Newark et als, Bulletin 1178, Item 1, it appears that a previous application for transfer of a 'C' license to the area was denied by the local issuing authority and such denial affirmed on appeal by the Director on the ground that such location was too close to a school and a public housing project and there were a considerable number of liquor outlets available in the vicinity to supply the needs of the neighborhood; and that the Director came to a similar conclusion on application to transfer a state beverage distributor's license to the area (although later such application was granted). On this basis, the Hearer in the Auerbach case, when considering the appeal from the grant of a transfer of a 'C' license to such area, reported that there had been no change for the better either in increase of residents in the area or improvements in business establishments; that the transfer of the license was objected to by various licensees and residents of the area on grounds similar to like objections to the two other applications above referred to; and that the record disclosed that the local and state issuing authorities had consistently held that there was no need or necessity for another liquor license in the area in question.

"Accordingly, despite the fact that the members of the respondent Board had not held office at the time the other applications were considered, the Hearer stated that, since there was no room for latitude of opinion, it was arbitrary or unreasonable for members of the successor issuing authority to arrive at a conclusion contrary to that arising from the evidence before them and, hence, recommended reversal of the transfer, citing the Hutchins case reported in Bulletin 1022, Item 4.

"The Director did not accept the Hearer's Report, being of the opinion that the previous expressions of the opinion by the licensing authorities that there was no need for an additional license in the area was not of such conclusive nature as to foreclose or preclude the present successor Board from exercising its independent discretionary authority to determine whether it is advisable to locate a 'D' license in the area where there were five 'C' licenses; that the previous denial of transfer of a 'C' license to the area was not an overwhelming or repeated official attitude on the subject sufficient to deprive the successor Board of the authority to formulate its own conclusions whether or not to grant the transfer. The Director affirmed the grant of the transfer.

"In the instant case, the record of the action of the local Board on these applications, in sequence, is four denials of transfer and two grants of transfer, the latter two within the past five years. To again disregard the sentiment expressed by two independent respondent Boards is to maintain

an adamant attitude that the passage of twelve years with the normal changes in the area to be expected is insufficient to overcome the past denials of transfers. In other words, that such denials are a bar in perpetuity or perhaps until the number of grants equals the number of denials. I do not think such is a reasonable conclusion.

"One further objection requires comment. Stress is laid upon the contention that to grant a transfer of the liquor license would be a violation of the local zoning ordinance. No definite probative evidence on that score has been presented. Other stores, including two licensed for the sale of packaged liquor, are located in the immediate area which is, as stated before, mixed business and residential. Whether all such stores exist under a non-conforming use does not appear. On the other hand, there has been presented in evidence a certificate of occupancy and a building permit issued by the local authorities for the premises in question, based upon a plan of proposed alterations of the premises. It is to be presumed that these documents have been issued by the local officials in accordance with law. In the absence of any proof to the contrary, this is not the forum to decide whether the location of a liquor license and restaurant at the premises would be in violation of the zoning law. See Union County Retail Liquor Stores Association v. Elizabeth et als., Bulletin 1154, Item 1. I therefore recommend that the action of the respondent Board be affirmed and the appeal be dismissed."

Written exceptions to the Hearer's Report and written argument in substantiation thereof were filed with me by the attorneys for appellants, pursuant to Rule 14 of State Regulation No. 15. I have carefully considered the entire record herein, including the evidence taken and exhibits introduced at the hearing, the Hearer's Report, the various exceptions and written arguments filed herein. I agree with the conclusions of the Hearer and adopt said conclusions as my conclusions herein.

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

ORDERED that the action of respondent Board of Alcoholic Beverage Control for the City of Paterson be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
Director

4. APPELLATE DECISIONS - DE STEFANO ET ALS. V. JERSEY CITY AND PECORARO.

Nicholas DeStefano, Joseph Faccone, )  
Jersey City Tavern Owners Ass'n, )  
et al., )  
Appellants, )

v.

Municipal Board of Alcoholic Bever- )  
age Control of the City of Jersey )  
City and Philip J. Pecoraro, )  
t/a Peck's Bar, )  
Respondents. )

CONCLUSIONS

AND

ORDER

----- )  
Robert W. Wolfe, Esq., Attorney for the Appellants.  
Ezra L. Nolan, Esq., by Joseph W. Tumulty, Esq., Attorney for  
Respondent Municipal Board.  
Anthony N. Marino, Esq., Attorney for Respondent Philip J.  
Pecoraro.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board whereby its members unanimously granted an application for the place-to-place transfer of respondent licensee's plenary retail consumption license from premises designated as 357 Second Street to premises designated as 348-350 First Street, Jersey City.

"Appellants in their petition of appeal allege that such action was erroneous, inequitable, arbitrary, capricious and an abuse of discretion. Respondent Board in its answer denies that such is the fact and alleges that determination was based upon the evidence submitted and that its action did not violate the provisions of any statute of New Jersey or local ordinance. The respondent licensee in his answer alleges, among other things, that he has complied with the local ordinance governing distance between licensed premises by obtaining the consent of his landlord to such transfer.

"The heart of the matter is the contention, in effect, of the objectors (five in number, all retail licensees located in the block to which transfer is sought) that such transfer will result in an undue concentration of licensees--a 'rum row', a result which has not only been condemned by the Director, but is contrary to the letter and spirit of the ordinance in question, the objective of which is to maintain a proper distance between licensed liquor establishments. The pertinent part of the ordinance reads:

'Section 4. From and after the passage of this ordinance, no Plenary Retail Consumption License shall be granted for or transferred to any premises the entrance of which is within the area of a circle having a radius of seven hundred fifty (750) feet and having as its central point the entrance of an existing licensed premises covered by a Plenary Retail Consumption License, provided, however, that if any licensee holding a Plenary

Retail Consumption License at the time of the passage of this ordinance shall be compelled to vacate the licensed premises for any reason that in the opinion of the Board of Commissioners of the City of Jersey City was not caused by any action on the part of the licensee, or if the landlord of said licensed premises shall consent to a vacation thereof, said licensee may, in the discretion of the Board of Commissioners of the City of Jersey City, be permitted to have such license transferred to another premises within a radius of five hundred (500) feet of the licensed premises so vacated. The provisions of this section relating to distances between licensed premises shall not apply to the issuance or transfer of any license to premises which will be operated by the licensee as a Bowling Academy. A premises shall be deemed to be operated as a Bowling Academy if it contains four or more pairs of bowling alleys.'

"Since the transfer granted is to a location within 750 feet of an existing licensed premises, the applicant must establish that he qualifies under the exception in the ordinance which applies to those licensees who seek to transfer to other premises within a radius of 500 feet of the licensed premises proposed to be vacated.

"The premises to which respondent licensee sought to transfer his license are within a radius of 500 feet of his original premises. Under such circumstances, Section 4 of the local ordinance provides that the local issuing authority may permit a transfer to the new premises even if they are within 750 feet of a place holding a similar type of license if applicant establishes, in effect, that he is compelled to vacate his premises, without his fault, or if the landlord of his licensed premises consents to a vacation thereof. There is no need to consider herein the so-called hardship rule which was considered fully in Dal Roth v. Div. of Alcoholic Beverage Control, 28 N.J. Super. 246 (Ap. Div. 1953). In the present case, respondent licensee has obtained the landlord's consent.

"The application for the transfer thus having been made in conformity with the pertinent section of the ordinance in question, I turn to the consideration of the action of the Board thereon. It appears that there are three retail liquor establishments on the side where the respondent licensee desires to locate (which is squarely between two of such licenses so that there would be three in a row), and two such licenses on the opposite side of the street. With the new transfer there would be six such licenses in the block. There were six liquor licenses located there at some previous time. It is implicit that with these facts before them the members of the respondent Board must have considered that the transfer of the license to the location in question did not create a 'rum row' or an aggravated concentration of licenses. As a general rule, transfer of a license from one location to another in the same area is considered unobjectionable in that it is not normally deemed that such transfer aggravates to any appreciable degree the number of licenses in the area. Union County Retail Liquor Stores Assn. v. Elizabeth, et als., Bulletin 886, Item 2.

"The Director's function on appeal is not to substitute

his opinion for that of the issuing authority, but rather, to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Hudson-Bergen County Retail Liquor Stores Assn., et al. v. Hoboken, et als., Bulletin 1242, Item 1.

"The burden of establishing that respondent's action is erroneous and should be reversed rests with the appellant. Rule 6 of State Regulation No. 15. The decision of respondent Board to transfer is based upon evidence which appears to establish reasonable cause for its opinion. I am, therefore, of the opinion that the appellants have failed to sustain the burden of establishing that respondent Board's action was erroneous and, hence, recommend affirmance of its action and dismissal of 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.

Accordingly, it is, on this 24th day of June, 1959,  
ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
DIRECTOR

5. APPELLATE DECISIONS - PEANUT BAR & GRILL v. HARRISON

Peanut Bar & Grill (Corp.),	)	
Appellant,	)	
v.	)	ON APPEAL
Town Council of the Town of	)	O R D E R
Harrison,	)	
Respondent.	)	

Joseph A. D'Alessio, Esq., Attorney for Appellant.  
Joseph P. DiSabato, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from a sixty-day suspension imposed by respondent against plenary retail consumption license C-4, held by appellant for premises 31 Harrison Avenue & 6 Jersey Street, Harrison. The suspension was imposed after appellant was found guilty in disciplinary proceedings of the following charges:

"On March 6, 1959, you allowed, permitted and suffered in or upon your licensed premises, lewdness, immoral activity, and/or foul, filthy or obscene language and/or conduct, and/or any

brawl, act of violence, disturbance, and/or unnecessary noise. You further allowed and permitted or suffered your licensed place of business to be conducted in such manner as to become a nuisance, all in violation of Rule 5 State Regulation No. 20. And further, on or about February 29, 1959, you allowed, permitted and suffered the sale, service and delivery of an alcoholic beverage to a minor at retail for consumption on your licensed premises in violation of Rule 1, State Regulation No. 20."

On the filing of the appeal, an order was entered by me on June 3, 1959 staying the effect of respondent's order of suspension pending determination of the appeal herein.

It appears that respondent's order of suspension became effective at 2:00 a.m., May 6, 1959, and between said date and the date of the order entered on June 3, 1959 which stayed the effect of the balance of said suspension, the appellant's premises remained closed for twenty-eight days.

At the date of the hearing held on June 25, 1959, appellant requested leave to withdraw its appeal. The attorney for respondent advised that respondent had no objection thereto.

It further appears that appellant's premises were closed on June 24, 1959 and will remain closed for an additional period of time sufficient to constitute a total suspension of its license for sixty days. The attorney for respondent stated that the respondent has no objection to such arrangements in serving the sixty-day suspension. No reason appearing to the contrary,

It is, on this 26th day of June, 1959,

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

ORDERED that appellant's plenary retail consumption license C-4, issued by the Town Council of the Town of Harrison for the 1958-59 licensing period, be suspended for the balance of the term and, if a renewal of appellant's license is granted by the respondent for the 1959-60 licensing period, such license shall remain suspended until a total suspension of sixty days shall have been served, namely, until 12:00 noon, Sunday, July 26, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - FAILURE TO FILE REQUISITE REPORTS WITH BEVERAGE TAX BUREAU, IN VIOLATION OF R.S. 54:45-1 - PURCHASE FROM OTHER THAN MANUFACTURER OR WHOLESALER - HINDERING INVESTIGATION - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 70 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

Paul Zuck )  
t/a Paul's Tavern )  
39 LaSalle Avenue )  
Clifton, New Jersey )

CONCLUSIONS

AND  
ORDERS

Holder of Plenary Retail Consumption License C-13, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton. )  
-----)

Shershin & Feder, Esqs., by Frank W. Shershin, Esq. Attorneys for Defendant-licensee.  
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. You failed to file with the Director of the Division of Taxation (Beverage Tax Bureau) of the New Jersey Department of the Treasury, within time, reports which accurately and truthfully disclosed the amounts of alcoholic beverages distributed, stored, purchased and sold by you during the months of October 1956 and January through September 1957, in that you omitted from the reports filed by you for each of those months several cases of various brands of alcoholic beverages which were distributed, stored, purchased and sold by you; such failure being in violation of R. S. 54:45-1.
- "2. In or about February 1957 you, a New Jersey retail licensee, without authority of special permit, purchased or obtained alcoholic beverages from a person who was not the holder of a New Jersey manufacturer's or wholesaler's license, in that you purchased four cases of quarts of Carstairs Blended Whiskey, eight cases of quarts of Gallagher and Burton's Blended Whiskey, five cases of 4/5 quarts (fifths) of Seagram's Seven Crown Blended Whiskey, two cases of quarts of Old Thompson Blended Whiskey and one case of 4/5 quarts (fifths) of Canada Dry Whisky from a person who did not hold either of the above types of licenses; your obtaining alcoholic beverages from such person being in violation of Rule 15 of State Regulation No. 20.
- "3. During October and November 1957, while agents of the Director of the Division of Alcoholic Beverage Control were investigating various alleged violations of the Alcoholic Beverage Law and Regulations, including

(a) sale of alcoholic beverages by retailers and solicitors in violation of the terms of their licenses or permits, (b) purchase of alcoholic beverages by retailers from persons not licensed or authorized to sell such beverages, (c) gifts of unlawful rebates, discounts or other inducements to retailers by wholesalers and solicitors and (d) unlawful transportation of alcoholic beverages, you failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation; in violation of R. S. 33:1-35."

An examination of defendant's monthly reports filed with the Beverage Tax Bureau during October 1956 and January through September 1957 disclosed that for each month aforesaid defendant neglected to report several cases of various brands of alcoholic beverages purchased and sold by him.

As to Charge 3, the file indicates that during the months specified in that charge, while agents of this Division were investigating several violations by defendant and other liquor licensees (which violations included the purchase of alcoholic beverages from unauthorized sources), defendant hindered and delayed that investigation by withholding from the agents relevant information, and by refusing to produce promptly various documents (such as tax reports, invoices and cancelled checks), requested by the agents. On one occasion, for example, when the agents visited his licensed premises to question him, he refused even to talk to them. Instead, upon seeing them, he ran from the premises and attempted to lock himself in his car. Defendant's attorney, in attempted mitigation of penalty, has submitted a memorandum in which he accepted full responsibility for defendant's refusal to cooperate in the investigation. However, licensees must realize they may not escape their responsibility under the Alcoholic Beverage Law by relying upon advice of counsel. Re Eva's Tavern, Inc., Bulletin 1037, Item 3.

The agents found among the documents ultimately produced by the defendant a record indicating that he had purchased, at a substantial discount in price, the 20 cases of alcoholic beverages specified in Charge 2 from someone not licensed or authorized to sell such beverages at wholesale.

The type of violations committed by defendant warrants a severe penalty.

Defendant has a prior adjudicated record. Effective May 12, 1940 his license was suspended by the local issuing authority for four days for an "hours" and a gambling violation and also for having in his employ a disqualified person. Again, effective July 16, 1951 his license was suspended for three days by the local issuing authority for an "hours" violation. Inasmuch as the violations are dissimilar to those herein and occurred more than five years ago, I shall not consider them in fixing the penalty herein. Under the circumstances, I shall suspend defendant's license for twenty-five days on Charges 2 and 3 (Re Rosner & Greenwald, Bul. 1244, Item 5) and an additional forty-five days on Charge 1, making a total of seventy days. Five days will be remitted for the plea entered herein, leaving a net suspension of sixty-five days.

Accordingly, it is, on this 15th day of June 1959,

ORDERED that Plenary Retail Consumption License C-13, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to Paul Zuck, t/a Paul's Tavern, for premises 39 LaSalle Avenue, Clifton, be and the same is hereby suspended for



agents (hereinafter identified as S, G, J and D) participated in the investigation and that visits to defendant's premises were made on the evening of December 19 extending into the early hours of December 20; on the evening of December 27 extending into the early hours of December 28, and on the evening of January 3 extending into the early hours of January 4.

"Agent S testified that on their first visit he and Agent G entered an outside door to the barroom which is located on the ground floor of the licensed premises; that nothing unusual occurred in the barroom, and that they then left the barroom and entered another outside door located at the head of a stairway leading to a banquet-type room located beneath the barroom. The agent further testified that the words 'Circus Room' appeared upon a window near this entrance and that, when they entered the banquet-type room, they observed five males seated at a small bar; twenty-two males in small groups seated at the various tables, and seven females who sat in groups at two other tables; that a large number of the males wore loud sweaters, loud shirts and multicolored scarves, and that many of them walked with hips swaying from side to side, held their glasses and cigarettes daintily and spoke in high-pitched voices. The males frequently referred to one another as 'gay,' 'doll' and 'honey.'

"The same agent testified that on the second visit he and Agent J went directly to the Circus Room and that each was required to pay at the entrance the sum of \$1.50 for three ticket stubs which they later used as payment for drinks of beer and hamburgers. The agent testified that on this occasion there were forty-five males and two females in the room, and that about forty of the males were dressed in the manner previously described; that many of the males swished their hips from side to side as they walked.

"The same agent testified that on the third visit he and Agent J went directly to the Circus Room where each was again required to pay \$1.50 for three ticket stubs; that at this time there were fifty males and two females in the room, and that about forty-seven of the males were dressed as previously described; that many of the males swished their hips from side to side as they walked, held their cigarettes daintily and spoke in high-pitched tones, referring to one another as 'gay,' 'doll' and 'honey.' He testified that on one occasion a male kissed another male on the neck. He further testified that, immediately after the agents identified themselves, practically all of these male patrons ran towards the exit and up the stairs. The testimony as to the actions of the male patrons on the third visit was substantially corroborated by the testimony of Agent D, and it was stipulated that, if Agents G and J were called to testify, their testimony would be substantially the same as that given by Agent S.

"On behalf of defendant, Ruth Murphy Loomis, president of defendant corporation, testified that groups of boys and girls, who worked nearby, had arranged for parties in the banquet room on the three evenings in question; that she was present on each evening and saw nothing unusual in the conduct of the patrons. She admitted, however, that, after the agents identified themselves on the morning of January 4, she said to one of them, 'Tell me one thing: These people who you call homosexuals, gays or whatever you call them - what are they supposed to do?' and that the agent replied, 'I can't answer that.' It

is significant that none of the persons who allegedly arranged for the parties appeared at the hearing herein. It is clear from the evidence that none of the male patrons wore feminine attire and that no dancing was permitted. Nevertheless, the evidence shows that a large percentage of the male patrons were obviously homosexuals as indicated by their appearance and actions, their walk, gestures and other mannerisms. As was said by the Director in Re Rutgers Cocktail Bar, Bulletin 1133, Item 2:

'The congregating of so large a percentage of male patrons possessing the same general features, characteristics and mannerisms is more than mere coincidence and, notwithstanding the testimony of the learned psychiatrist that a layman could not tell a homosexual from a normal individual, I am satisfied from all the evidence that the male persons in question were what are commonly termed "female impersonators." Female garb is not necessary for such a finding.'

"After reviewing all the testimony I recommend that defendant be found guilty of allowing, permitting and suffering its licensed premises to be conducted in such manner as to become a nuisance, pursuant to the charge herein.

"Defendant has no prior adjudicated record. It is further recommended that an order be entered suspending defendant's license for sixty days. Re Rutgers Cocktail Bar, *supra*; Re Clover Leaf Inn, Inc., Bulletin 1159, Item 1; Re The Paddock Bar, Inc., Bulletin 1159, Item 2 (affirmed sub. nom. Paddock Bar, Inc. v. Division of A.B.C., 46 N. J. Super. 405, App. Div. 1957)."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by defendant's attorney pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record, including the transcript of testimony, the Hearer's Report and the exceptions and argument filed herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 15th day of June, 1959,

ORDERED that plenary retail consumption license C-282, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Savoy Club, Inc., t/a Anthony's, for premises 52 Church Street, Paterson, be and the same is hereby suspended for the balance of its term, effective at 3 a.m. Monday, June 22, 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 a.m. Friday, August 21, 1959.

WILLIAM HOWE DAVIS,  
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY  
 LABELED - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
 Proceedings against )

Max Falek & Gladys Falek )  
 121 Albert Avenue )  
 Newark 5, New Jersey )

CONCLUSIONS  
 AND ORDER

-----  
 Holders of Plenary Retail Consumption )  
 License C-739, issued by the Municipal )  
 Board of Alcoholic Beverage Control of )  
 the City of Newark. )  
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Defendant-licensees, by Max Falek, Partner  
 William F. Wood, Esq., Appearing for Division of Alcoholic  
 Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that they possessed on their licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On April 27, 1959, an ABC agent tested the licensees' open stock of alcoholic beverages (35 bottles) and seized ten of such bottles because they appeared to be off in color or proof. Subsequent analysis by the Division's chemist disclosed that the contents of five of said bottles, when compared with the samples of the genuine product of the labeled brands, varied substantially in solids and acids.

Defendants have no prior adjudicated record. I shall suspend defendants' license for twenty-five days. Re Wilcox, Bulletin 1232, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

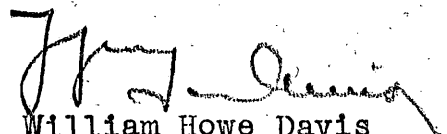
Accordingly, it is, on this 23rd day of June, 1959,

ORDERED that any renewal for the 1959-60 licensing year or transfer of plenary retail consumption license C-739, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Max Falek & Gladys Falek, for premises 121 Albert Avenue, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m., Tuesday, July 7, 1959, and terminating at 2 a.m., Monday, July 27, 1959.

WILLIAM HOWE DAVIS  
 DIRECTOR

9. STATE LICENSES - NEW APPLICATION FILED.

Standard Corporation, t/a Standard Distributing Company  
 and Prestige Brands  
 Rear 1315 Baltic Avenue, Atlantic City, New Jersey  
 Application filed August 8, 1959 for Public  
 Warehouse license.

  
 William Howe Davis  
 Director

New Jersey State Library