

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

BULLETIN 1572

July 24, 1964

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

BULLETIN 1572

July 24, 1964

1. APPELLATE DECISIONS - MONMOUTH COUNTY RETAIL LIQUOR
STORES ASSOCIATION, ET ALS. v. MIDDLETOWN AND
MIDDLETOWN ENTERPRISES, INC.

APPELLATE DECISIONS - BAYSHORE TAVERN OWNERS ASSN.
AND LANGFORDS TAVERN, INC. v. MIDDLETOWN AND MIDDLETOWN
ENTERPRISES, INC.

Monmouth County Retail Liquor)
Stores Association, et als.,)

v. Appellants,)

Township Committee of the)
Township of Middletown, and)
Middletown Enterprises, Inc.,)
t/a Junction Liquors,)

Respondents.)

On Appeal

Bayshore Tavern Owners Assn.)
and Langfords Tavern, Inc.,)

v. Appellants,)

Township Committee of the)
Township of Middletown, and)
Middletown Enterprises, Inc.,)
t/a Junction Liquors,)

Respondents.)

CONCLUSIONS

and

ORDER

Samuel Moskowitz, Esq. and Samuel J. Davidson, Esq., Attorneys
for Appellants Monmouth County etc. et als.
Edward A. Costigan, Esq., Attorney for Appellants Bayshore Tavern
Owners Assn. et al.
Vincent C. DeMaio, Esq., Attorney for Respondent Township Committee
James F. McGovern, Jr., Esq., Attorney for Respondent Middletown
Enterprises, Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

These are appeals from the action of respondent Town-
ship Committee (hereinafter referred to as Committee) whereby
on November 27, 1963, by a three-to-two vote, it granted the
application of respondent Middletown Enterprises, Inc. (herein-
after referred to as Enterprises) for a person-to-person and
place-to-place transfer of a plenary retail consumption license
from Gabriel Jouvin and William Jouvin, t/a Sea Horse Tavern,

to Enterprises and from 2 Ocean Avenue, East Keansburg, to premises to be constructed according to plans and specifications at 544 Main Street, Belford, Township of Middletown.

Appellants herein in their petitions of appeal contend that the action of the Committee was erroneous and should be reversed for reasons which may be summarized as follows:

- (a) No need or necessity for a liquor outlet at the proposed location;
- (b) Motor vehicle traffic will increase by reason thereof;
- (c) It is not for the best interests of the community for a liquor licensed premises to be located on the proposed site;
- (d) The Committee's action was based on political and personal prejudice;
- (e) The Committee was guilty of abuse of discretion, acted arbitrarily and unreasonably in granting the transfer in question;
- (f) Respondent Committee was mistaken in law by permitting conversion of a plenary retail consumption license to a plenary retail distribution license.

Respondents' answers in substance deny the allegations relied upon for reversal of the Committee's action and allege that the determination to grant the transfer subject to the completion of the building and approval thereof by proper authorities was within the discretion of the Committee.

It is agreed that the area in question where the proposed site is located is zoned for "residential and business purposes."

J. Arthur Fell, Executive Director of appellant Monmouth County Retail Liquor Stores Association, questioned the legality of the fifteen-foot bar contemplated to be erected by Enterprises in front of which are to be placed ten stools for use by patrons sitting at the bar when consuming alcoholic beverages. Mr. Fell also identified several photographs marked as exhibits in evidence which showed the proposed site of the licensed premises and the various business establishments and other structures in the immediate vicinity. Fell also described a sketch (marked as Exhibit A-5) which he prepared wherein was indicated various types of businesses and retail stores in the surrounding area of the site in question.

Appellant Richard R. Schwartz, Pastor of the Bayshore Community Church in East Keansburg, testified that he objects to the transfer of the license to the proposed site because there is a general store located across the street containing a soda fountain where children congregate, and there is heavy motor vehicle traffic on Main Street and also on Leonardsville Road where Main Street ends, which is approximately one hundred feet distant from the proposed location. Reverend Schwartz further testified that "Any other building put there, I don't care if it's a laundry, candy store, any other building put there would cause more congestion; secondly (due) to the fact that this is an area inhabited by the school children who necessarily must go there to get their bus, who must travel there in order to take divergent roads because all

all roads lead out of Campbell's Junction in all directions. And I felt that a liquor store there would not be for the best interest of the town and that it would be a temptation for the children." Furthermore, he estimated the nearest liquor outlet to be a half-mile away, his residence one mile away and the church of which he is pastor in excess of a mile from the proposed premises; that in his opinion, although the parking space to be provided by the respondent licensee is rather small, there are parking facilities available across the street to accommodate two hundred cars.

John P. Euler, Pastor Emeritus of the Bayshore Community Church, testified that he opposes the proposed location of the liquor license because it is a traffic hazard and that young people pass to and from high school and also congregate in the section.

William E. Bisgrove, Pastor of New Monmouth Baptist Church located some distance away from the proposed location, testified that he is opposed to all liquor establishments in principle, but to the one in question primarily because of its location. Furthermore, he stated that he is of the opinion there is no need for the license at the proposed site.

William Carr, Pastor of Leonardo Baptist Church located two and one-half to three miles away from 544 Main Street, testified that he opposes the transfer on moral grounds as he is very much concerned about the young people who might pass through the area on the way to and from school.

Hazel M. Woodward testified that she resides near the proposed location and is concerned with the safety of children in the area and also stated that there is lack of parking facilities to accommodate automobiles. She further testified that in principle she is opposed to the consumption of alcoholic beverages except for medicinal purposes.

It was stipulated by the parties to this appeal that the testimony of twenty-one other persons who appeared at the instant hearing would be similar to that of Mrs. Woodward if they were called upon to testify. The said persons were then asked where they resided and the approximate distance from their respective homes to the proposed location, and in all cases, with the exception of one who stated she resided one hundred yards distant, all others resided from one-quarter to three miles away.

Mayor Earl Moody testified that he voted in favor of the transfer of the license from "Ideal Beach in East Keansburg" because there was to be "a minimal bar operation and maximum package store operation" and, under the circumstances, such transfer of the license was in the best interests of the municipality. Mayor Moody further stated:

"The other factors were that this has become a built-up area. The Campbell's Junction area, although it does present some problem from the standpoint of traffic and congestion, quite true, is a flourishing little neighborhood shopping center with a number of stores in the area, service-type stores and a package-store type of operation certainly could fit in well with that. There are no bars or package stores in the immediate vicinity, and the bar that is in the nearest proximity you'd have

to cross Highway 36 in order to reach it. I could not in the absence of any compelling reason oppose such a transfer since there were some reasons for my favoring such a transfer. In my judgment I had to vote affirmatively."

Committeeman Martin V. Lawlor testified that he voted for the transfer because he was of the opinion that the transfer of the said license from its present location, where there was a concentration of liquor licenses in the area, to the proposed location would be in the best interests of the Township.

The apprehension expressed by various witnesses that the proposed licensed premises will create a moral hazard for young folks is readily understandable. However, if the premises are conducted in a law-abiding manner (and it must be assumed that such will be the case), the appellants or other objectors have nothing to fear. If, however, the licensed premises are permitted to be operated in violation of the Alcoholic Beverage Law or municipal ordinances pertaining thereto, the respondent licensee will subject its license to suspension or revocation.

The proposed premises are at least one-half mile from the nearest liquor outlet. Thus the transfer sought of the license in question will not in any appreciable degree aggravate the number of licenses in the area to sustain appellants' contention that the Committee's action should be reversed on the ground that no public need exists for the license at the premises to which the transfer was approved. See Costa v. Verona, Bulletin 501, Item 2; Metropolitan Liquor Corporation v. Jersey City, Bulletin 645, Item 1; Leonia Liquors, Inc. v. Leonia, Bulletin 766, Item 1; Union County Retail Liquor Stores Assn. v. Elizabeth et als., Bulletin 886, Item 2.

The transfer of a license to premises in a particular area has been held to be a matter confided to the sound discretion of the local issuing authority. DiGioacchino v. Atlantic City, Bulletin 1030, Item 3. In cases of the kind now under consideration, the Director's function is to determine whether reasonable cause exists for the issuing authority's opinion and, if so, to affirm its action. Curry v. Margate City, Bulletin 460, Item 9; Mulcahy et als. v. Maplewood et al., Bulletin 658, Item 4; Krogh's Restaurant, Inc. et als. v. Sparta et al., Bulletin 1258, Item 1; Jacobs v. Newark et al., Bulletin 1398, Item 4.

Although it is alleged in the petition of appeal filed by the Bayshore Tavern Owners Assn. that the Committee was politically biased and prejudiced in granting the transfer, there has been no proof whatsoever to substantiate such allegation. The record indicates that in all respects proper consideration was given by the Committee before action was taken on the application for transfer. Moreover, the record fails to indicate in any way improper motivation on the part of any members of the Committee.

In Fanwood v. Rocco and Div. of Alcoholic Beverage Control, 59 N.J.Super. 306, 321, it is stated:

"The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24) and place-to-place transfers thereof '[O]n application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to said premises.' N.J.S.A. 33:1-26. As we have seen, and as respondent admits, the action of the local board may not be reversed by the Director unless he finds 'the act of the board was clearly against the logic and effect of the presented facts.' Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs. of City of Hoboken, supra, 135 N.J.L., at page 511."

In the memorandum filed by appellants, emphasis is placed on the contention that the planned method of operation of Enterprises will in substance convert its license from a plenary retail consumption to a plenary retail distribution license and thus violate the state limitation law in such cases made and provided (R.S. 33:1-12.14).

The floor plan of the interior of the premises (marked in evidence as Exhibit R-2) indicates that the respondent Enterprises will comply with the requirements of the statute (R.S. 33:1-12.23) in that it will not sell or display for sale alcoholic beverages in original containers for consumption off the licensed premises in other than the public barroom. A fifteen-foot bar is to be located at the left rear of the barroom, the measurement of which is twenty feet wide by sixty feet in length. Ten bar stools are to be installed in front of the bar to seat patrons desiring to be served alcoholic beverages for on-premises consumption. The barroom will be completely unobstructed by any objects.

I find as a fact that the room wherein alcoholic beverages will be sold as proposed will be a public barroom with adequate bar facilities to constitute an invitation to the public to be served and consume alcoholic beverages therein within the contemplation of R.S. 33:1-12.23. See Passaic County Retail Liquor Dealers' Assn. v. Paterson et al., Bulletin 1021, Item 1 (affirmed by the Appellate Division of the Superior Court in 37 N.J.Super. 187); Messinger et al. v. Pompton Lakes et al., Bulletin 1129, Item 3; Monmouth County Retail Liquor Stores Association et als. v. Neptune City et al., Bulletin 1243, Item 2. Thus I find no merit in appellants' contention with reference to the claimed conversion of the license.

Again, if the licensed business is operated in violation of R.S. 33:1-12.23 and State Regulation No. 32, appropriate action may be taken to suspend or revoke the license. See Re Krystyniak, Bulletin 1021, Item 2.

There is nothing to indicate that the Committee acted arbitrarily or abused the discretion vested in it by approving the grant of the transfer in question.

I conclude, after examination of the entire record presented herein, that appellants have failed to sustain the burden of proof in showing that the action of the Committee

was erroneous. Rule 6 of State Regulation No. 15. Shiloh Baptist Church v. Atlantic City et al., Bulletin 1387, Item 2, and cases cited therein.

For the reasons aforesaid, it is recommended that an order be entered affirming the action of the Committee herein and dismissing the appeal.

Conclusions and Order

Pursuant to the provisions of Rule 14 of State Regulation No. 15, written exceptions to the Hearer's Report and written arguments thereto were filed with me by the attorney for appellants Monmouth County Retail Liquor Stores Association, et als. Written answers to the exceptions were filed by the attorney for respondent Middletown Enterprises, Inc., t/a Junction Liquors.

I have given careful consideration to the evidence and exhibits, the memoranda submitted by the attorneys for the respective parties to these appeals at the conclusion of the hearing, the Hearer's Report, and the written exceptions and arguments thereto of the attorneys for the parties aforementioned. I concur in the conclusions of the Hearer and affirm his recommendation in so far as the grant of the transfer of the license is concerned.

However, I disagree with the findings of the Hearer that the lay-out of the room wherein alcoholic beverages will be sold, as indicated in Exhibit R-3, constitutes a bona fide public barroom as the term is used in R.S. 33:1-12.23, State Regulation No. 32, and interpreted in Division rulings.

In view of this, I recommend that before respondent Middletown Enterprises, Inc. actually undertakes installation of its bar facilities and operation of the licensed business, it submit to this Division for approval a revised plan of the interior lay-out. This does not change the result herein since the matter of the proposed interior arrangement of the premises to be licensed is not material to the fundamental question whether the proposed building in its intended location should be licensed.

Accordingly, it is, on this 17th day of June, 1964,

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

JOSEPH P. LORDI
DIRECTOR

2. APPELLATE DECISIONS - DODD v. ORANGE.

Frank Joseph Dodd,
t/a Dodd's Cocktail Lounge,

Appellant,

v.

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

Respondent.

Vreeland and Brown, Esqs., by Leonard G. Brown, Esq.,
Attorneys for Appellant
Felix J. Verlangieri, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant appeals from respondent's action suspending his license for twenty days, effective May 18, 1964, for sale to minors. Upon filing of the appeal, I entered an order staying the suspension pending the determination of the appeal.

Prior to the hearing on appeal, by letter of June 16, 1964, appellant advised me that the appeal was withdrawn. No reason appearing to the contrary,

It is, on this 18th day of June, 1964,

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

ORDERED that the twenty-day suspension be reinstated and Plenary Retail Consumption License C-7, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to Frank Joseph Dodd, t/a Dodd's Cocktail Lounge, for premises 10-12-14 North Center Street, Orange, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1964, commencing at 2:00 a. m. Monday, June 22, 1964; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a. m. Sunday, July 12, 1964.

JOSEPH P. LORDI
DIRECTOR

3. APPELLATE DECISIONS - BATAY CORP. v. ORANGE AND SCOTT'S BAR, INC.

Batay Corp.,)
 Appellant,)
 v.)
 Municipal Board of Alcoholic Beverage) On Appeal
 Control of the City of Orange, and) O R D E R
 Scott's Bar Inc.)
 Respondents.)

Mellinger & Rudenstein, Esqs., by Seymour Rudenstein, Esq.,
 Attorneys for Appellant
 Felix J. Verlangieri, Esq., Attorney for Respondent Municipal
 Board
 Milton Malkin, Esq., Attorney for Respondent Scott's Bar Inc.

BY THE DIRECTOR:

Appellant appeals from the grant by respondent Municipal Board of Alcoholic Beverage Control of transfer of license of respondent Scott's Bar Inc. from premises 133 South Street to premises 125 Central Avenue, Orange.

Prior to the hearing on appeal, by letter of June 17, 1964, appellant advised me that the appeal was withdrawn. No reason appearing to the contrary,

It is, on this 19th day of June, 1964,

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

JOSEPH P. LORDI
 DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE AND NUMBERS BETS) - WAGERING ON BASEBALL GAMES - AGGRAVATED VIOLATION - NEW PENALTY POLICY ANNOUNCED - LICENSE SUSPENDED 120 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)
 Anthony Massa)
 563 Avenue A) CONCLUSIONS
 Bayonne, N. J.) AND ORDER

Holder of Plenary Retail Consumption
 License C-103, issued by the Municipal)
 Council of the City of Bayonne)

John J. Pagano, Esq., Attorney for Licensee
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
 Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to the following charges:

- "1. On May 14, 1964, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of

bets on horse racing, baseball games and in a lottery commonly known as the 'numbers game'; in violation of Rule 7 of State Regulation No. 20.

- "2. On May 14, 1964, 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 and possessed, had custody of and allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

Reports of investigation disclose that on the date alleged, between 11:50 a. m. and 1:15 p. m. (when the participating agents disclosed their identity), the licensee personally accepted ten telephoned bets and several placed by patrons and agents of the Division; that subsequent investigation disclosed that on the licensee's person were \$85, three bet slips with a total of twenty-eight numbers placed amounting to \$17.25, eleven horse race bets amounting to \$46; on a pad on the bar, six baseball bets for a total of \$619; and in coffee containers beside the cash register, a total of \$108 in cash, in which containers the agents had observed their bets placed. After the agents had identified themselves, one of them answered all telephone calls and "took" over \$200 in baseball bets in addition to several numbers bets. One call had as its purpose to inform the licensee that the betting odds had changed and that now the "action that he (the caller) takes for Jersey City on the Yankees is eight to ten and for Bayonne it is six to seven." When one of the agents inquired whether the licensee took numbers bets, he replied, "Sure, any type of bet I take."

Heretofore, in aggravated cases such as this, the license had been suspended for only thirty-five days. Re Bacsko, Bulletin 1435, Item 1; Re Tumulty, Bulletin 1502, Item 3. However, in the belief that previous penalty practice in cases involving commercialized gambling should be overhauled, I announced by notice to all retail licensees dated April 27, 1964 (Bulletin 1560, Item 6), that:

"I am firmly convinced that commercialized bookmaking and numbers gambling, by its very nature, requires that kind of organization which breeds corruption and affects the moral fibre of the community. The prime evil is not so much the gambling in and of itself, but rather the syndicated structure which has for its underlying purpose the violation of our laws against bookmaking and lotteries.

* * * * *

"All licensees are warned that from now on the penalty to be imposed in gambling cases involving bookmaking or numbers activity will be greater (irrespective of the plea entered) than the penalty which would have been imposed heretofore in the same situation."

As is readily apparent, the violations herein occurred on May 14, 1964, well after the making of the announcements. Even in the absence of such announcement, no licensee has a vested right to the imposition of the least penalty in what

may be deemed to be a comparable case. Re Tumulty, supra.

Absent prior record, and under all of the circumstances, particularly since it appears that the licensee personally was the principal in large-scale gambling activity occurring at the licensed premises, the license will be suspended for one hundred twenty days, with customary remission of five days for the plea entered, leaving a net suspension of one hundred fifteen (115) days.

Accordingly, it is, on this 15th day of June, 1964,

ORDERED that Plenary Retail Consumption License C-103, issued by the Municipal Council of the City of Bayonne to Anthony Massa, for premises 563 Avenue A, Bayonne, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1964, commencing at 2:00 a. m. Monday, June 22, 1964; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a. m. Thursday, October 15, 1964.

JOSEPH P. LORDI
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

Six Steps Down, Inc.)
1085 Broad Street)
Newark, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-669, issued by the Muni-)
cipal Board of Alcoholic Beverage)
Control of the City of Newark)

Norman Fischbein, Esq., Attorney for Licensee
David S. Piltzer, Esq., Appearing for the Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 19, 1964, it possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Cariolo, Bulletin 1563, Item 5.

Accordingly, it is, on this 16th day of June, 1964,

ORDERED that Plenary Retail Consumption License C-669, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Six Steps Down, Inc. for premises 1085 Broad Street, Newark, be and the same is hereby suspended for five (5) days, commencing at 2:00 a. m. Monday, June 22, 1964,

and terminating at 2:00 a. m. Saturday, June 27, 1964.

JOSEPH P. LORDI
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN LICENSE APPLICATION - FRONT - EMPLOYING CRIMINALLY DISQUALIFIED PERSON - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT AFTER 90 DAYS UPON PROOF OF CORRECTION.

In the Matter of Disciplinary)
Proceedings against)

Fountainebleau (A Corp.))
258 Washington Street)
Newark, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-769, issued by the Municipi-)
pal Board of Alcoholic Beverage)
Control of the City of Newark)

Friedman & D'Alessandro, Esqs., by Kalman Friedman, Esq.,
Attorneys for Licensee
David S. Piltzer, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges as follows:

"1. In your application dated June 20, 1963, filed with the Newark Municipal Board of Alcoholic Beverage Control, upon which you obtained your current plenary retail consumption license, in answer to Question No. 22, you falsely listed Catherine Wilson, Essie Ivory and Edward Taliaferro as the holders of 98%, 1% and 1%, respectively, of your issued and outstanding stock and in answer to Question No. 23, you falsely stated that no one other than said stockholders had any beneficial interest, directly or indirectly, in the stock held by said stockholders, whereas in truth and fact said stockholders did not have any beneficial interest in said stock and Eleanor Wilson had such an interest in that she was the real and beneficial owner of all of said stock; said false statements, misrepresentations and evasion and suppression of material facts being in violation of R.S. 33:1-25.

"2. In your aforesaid application, you falsely stated 'No' in answer to Question No. 31, which asks: 'Have you agreed to pay (by way of rent, salary or otherwise) to any employee, or other person, any portion or percentage of the gross or net profits or income derived from the business to be conducted under the license applied for?', whereas in truth and fact you had agreed to permit Eleanor Wilson to retain all the profits and income derived from your licensed business; in violation of R.S. 33:1-25.

"3. From on or about August 15, 1962 to date, you knowingly aided and abetted Eleanor Wilson to exercise, contrary to R.S. 33:1-26, the rights and privileges

of your successive plenary retail consumption licenses; in violation of R.S. 33:1-52.

"4. From on or about August 15, 1962 to date, you employed and had connected with you in a business capacity Eleanor Wilson, a person convicted of crime involving moral turpitude, viz., conviction in the Essex County Court on March 24, 1960, of knowingly possessing lottery slips; in violation of Rule 1 of State Regulation No. 13."

The facts are sufficiently set forth in the quoted charges. To date it does not appear that any correction of the unlawful situation has been accomplished.

Licensee has a previous record of suspension of license by the Director for fifteen days effective January 9, 1964, for purchase from another retailer and sale to another retailer. Re Fountainebleau, Bulletin 1547, Item 13.

The prior record of suspension of license for dissimilar violation within the past five years considered, the license will be suspended for ninety-five days (Re Joe D's Blue Moon, Inc., Bulletin 1542, Item 1; Re Village Tap Room, Inc., Bulletin 1551, Item 1), with remission of five days for the plea entered, leaving a net suspension of ninety days. However, in view of the fact that the unlawful situation appears to persist, the license will be suspended for the balance of its term, with leave to the licensee or any bona fide transferee to file verified petition for lifting of the suspension after the license has been under suspension for at least ninety days.

Accordingly, it is, on this 17th day of June, 1964,

ORDERED that Plenary Retail Consumption License C-769, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Fountainebleau (A Corp.), for premises 258 Washington Street, Newark, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1964, commencing at 2:00 a. m. Wednesday, June 24, 1964; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1965, commencing at 12:01 a. m. Wednesday, July 1, 1964, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the unlawful situation for lifting of the suspension on or after 2:00 a. m. Tuesday, September 22, 1964.

JOSEPH P. LORDI
DIRECTOR

7. SEIZURE-FORFEITURE PROCEEDINGS - UNLAWFUL TRANSPORTATION OF ALCOHOLIC BEVERAGES, CLAIMANT UNABLE TO OBTAIN NEW YORK PERMIT - MOTOR VEHICLE RETURNED TO CLAIMANT DUE TO EXTENUATING CIRCUMSTANCES - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on)	Case No. 11,161
December 7, 1963 of a quantity)	
of alcoholic beverages and a)	On Hearing
Pontiac coupe on the New Jersey)	
Turnpike, southbound, Milepost 112,)	CONCLUSIONS
in the Town of Secaucus, County of)	AND ORDER
Hudson and State of New Jersey.)	

Edward F. Zampella, Esq., by Nathan Blumberg, Esq.,
appearing for James B. Hill
Green and Lasky, Esqs., by Martin J. Cohen, Esq.,
appearing for Commercial Credit Corporation
David S. Piltzer, Esq., appearing for the Division of
Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report and Supplemental Hearer's Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of R.S. 33:1-66 and State Regulation No. 28, to determine whether 12 - 4/5 quart bottles of whisky, 47 - 1/2 pint bottles of whisky, and 1 Pontiac coupe bearing Maryland registration plates FT-4075, more particularly described in a schedule attached hereto, made part hereof, and marked Schedule "A", seized on December 7, 1963 on the New Jersey Turnpike, southbound, Milepost 112, in the Town of Secaucus, County of Hudson and State of New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing, James B. Hill, represented by counsel, appeared and sought return of the alcoholic beverages. The Commercial Credit Corporation, also represented by counsel, sought recognition of its lien claim on the motor vehicle.

The facts as they appear from the testimony of the ABC agents, a New Jersey State Police Trooper and documents in the file, admitted into evidence with consent of counsel, are as follows: On December 7, 1963 at about 8:50 P. M., a State trooper stopped the subject motor vehicle for speeding. The driver identified himself as James Hill, who then resided in Baltimore, Maryland, and the passenger identified himself as Istelle Cabrello, a resident of the Bronx, New York.

While questioning the driver, the trooper observed a rifle in the back seat, and Hill was thereupon forthwith arrested for violating the New Jersey Fishing and Game Laws. A search of the trunk of said vehicle revealed the following: 1 full case of Teachers Scotch Whisky; 9 - 1/2 pints of Teachers Scotch Whisky; 14 - 1/2 pint bottles of Ballantine's Scotch Whisky and 24 - 1/2 pint bottles of White Horse Scotch Whisky. The whisky and motor vehicle were seized and turned over to ABC agents. Hill was additionally charged with the transportation and possession of illicit alcoholic beverages in

violation of R.S. 33:1-50 and R.S. 33:1-2. The alcoholic beverages were transported in a vehicle which was not licensed for that purpose and the circumstances indicated that they were intended for delivery to another state without any lawful permit.

The seized whisky constitutes illicit alcoholic beverages because the quantity transported without a license was in excess of that permitted under our statute. R.S. 33:1-1(i). Thus, such illicit alcoholic beverages and the motor vehicle in which they were transported and found, constitute unlawful property and are subject to forfeiture; R.S. 33:1-1(y); R.S. 33:1-2; R.S. 33:1-66.

When originally questioned, Hill stated that he had just returned from a hunting trip, which accounted for the loaded rifle. When he was placed under arrest he opened the trunk at the request of the State trooper, and the alcoholic beverages were revealed. Hill also informed the trooper that this whisky was purchased for his personal consumption. He was on his way to New York because he was in the process of purchasing a garage business. He repeated this assertion in a voluntary signed statement given to ABC agents, which was marked in evidence. In that statement he stated that he purchased the alcoholic beverages in Baltimore with no knowledge of the amount of liquor that he could legally transport. He also admitted that he had no transportation license or permit for this liquor. He was en route to "my home in New York when I was stopped on the N. J. Turnpike".

Hill, testifying at this hearing in support of his claim for the return of the alcoholic beverages and the motor vehicle testified as follows: He presently lives in the Bronx, and on the date in question was coming from Baltimore. He purchased a quantity of whisky reflected in Schedule "A" in Baltimore and stated that he purchased $\frac{1}{2}$ pints of whisky because "you can't buy them in New York". The liquor was purchased at Sagel's Market and the regular price was paid therefor. Several invoices were offered in evidence in support of this testimony. He insisted that the liquor was purchased for his own private bar. He also admitted that he had just purchased a garage business and he felt that it would be a good gesture to hand out $\frac{1}{2}$ pint bottles to prospective customers around Christmas time.

In further explanation of his present employment, he stated that he was involved in a serious accident in his last place of employment and had been incapacitated for a period of 3 years. After he received a substantial financial settlement on account of injuries sustained, he used part of that money to purchase the business and also the motor vehicle in which he was riding. He presently suffers from chronic asphyxia, palpitation of the heart and some loss of vision.

Finally, he asserted that he did not intentionally violate the laws of New Jersey and has, indeed, never been convicted of crime.

Hill has not presented any permit or permits to import the alcoholic beverages to New York in accordance with the requirements of that State. Bulletin 1204, Item 8. Rule 2 of State Regulation No. 18 governing the transportation of alcoholic beverages through New Jersey for delivery to another state requires the transporter to establish that such alcoholic beverages may lawfully be delivered to their destination. Absent such proof, the transportation of such alcoholic beverages is unlawful, and subjects the property to forfeiture.

It is, accordingly, recommended that if, within 30 days after the date of an appropriate Order, Hill obtains such permits authorizing the importation into the State of New York of the seized taxpaid alcoholic beverages, thereby complying with the law of New York and New Jersey, the said alcoholic beverages and motor vehicle in which they were transported and seized be returned to him, upon payment of the costs of seizure and storage.

Counsel for Hill has represented, at this hearing, to me that he has arranged with the lienor, Commercial Credit Corporation, for adjustment of any default payments and charges due to it. Therefore, it is unnecessary at this juncture to consider the claim of the said lienor since, upon compliance with the recommendation hereinabove made, the claim of the Commercial Credit Corporation will be a contractual matter between Hill and the said company.

Supplemental Hearer's Report

A Hearer's Report was filed on April 21, 1964 in the above matter with the Director pursuant to Rule 4 of State Regulation No. 28.

In that Report I concluded that James B. Hill, the claimant who sought return of the alcoholic beverages and the motor vehicle, seized herein, transported alcoholic beverages in a quantity in excess of that permitted under our statute R.S. 33:1-1(i). Thus such illicit alcoholic beverages and the motor vehicle in which they were transported and found constituted unlawful property and were subject to forfeiture. R.S. 33:1-1(y); R.S. 33:1-2; R.S. 33:1-66.

I was persuaded from the testimony that Hill did not intentionally violate the law of New Jersey and sought to transport these alcoholic beverages to his place of residence in New York.

The factual complex as set forth in the Hearer's Report were such that I sympathetically recommended that "if, within 30 days after the date of an appropriate Order, Hill obtains such permits authorizing the importation into the State of New York of the seized taxpaid alcoholic beverages, thereby complying with the law of New York and New Jersey, the said alcoholic beverages and motor vehicle in which they were transported and seized be returned to him, upon payment of the costs of seizure and storage".

It has come to my attention and is now apparent that, because of the change of policy on the part of the New York State Liquor Authority, no such permits will be issued to Mr. Hill for the importation of the said alcoholic beverages into that state.

Accordingly, I am imperatively compelled to recommend that the said alcoholic beverages and the motor vehicle in which they were transported shall be forfeited.

In view of these facts it is now appropriate to consider the testimony entered on behalf of Commercial Credit Corporation which sought recognition of its alleged claim on the Pontiac coupe.

Jerry Chesser, assistant manager of the Commercial Credit Corporation in charge of credits and collections, presented

in evidence a conditional sales contract, executed by James B. Hill, to Johnny's Used Cars for the purchase of the subject 1964 Pontiac Bonneville, which contract was assigned to the Commercial Credit Corporation. Before purchasing this contract from the dealer, he obtained a credit statement and checked Hill's credit references. He ascertained that Hill lived in Baltimore and had been employed as a longshoreman. He also was informed that Hill had made a \$2400.00 down payment on the said motor vehicle and appeared to be a good credit risk.

He further testified that he found nothing derogatory concerning Mr. Hill nor was there anything to suggest that this motor vehicle would be used in unlawful liquor activity.

Hill had made 2 payments to this claimant after the assignment of the conditional sales contract to it, but was in default in his payments at the time of the hearing.

Finally, this witness testified that, in the event of forfeiture and sale of the motor vehicle by this Division, the claimant would be entitled to the sum of \$1347.82 in satisfaction of its lien claim.

I am satisfied, from the evidence presented, that the Commercial Credit Corporation acted upon the information as testified to by its representatives. I am also persuaded that this claimant acted in good faith, and did not know or have any reason to suspect that Hill would be involved in the unlawful transportation of alcoholic beverages for which this vehicle would be used.

Accordingly, I recommend that the lien of the Commercial Credit Corporation be recognized to the extent of the sum due them, as testified to, namely \$1347.82. Seizure Case No. 10,860, Bulletin 1493, Item 7. R.S. 33:1-66(f)

It appears likely that the amount realized at public sale of the motor vehicle will exceed the costs of seizure and storage and the amount of the lien; I therefore recommend that such vehicle be sold at public auction subject to the lien.

Conclusions and Order

Written exceptions to the Hearer's Report and written Argument thereto were filed on behalf of the claimant, James B. Hill, pursuant to Rule 4 of State Regulation No. 28.

The said exceptions and argument advocated that since the Hearer found that Hill acted in good faith at all times "and violated the statutory requirements unknowingly" and "the good faith of Hill at all times is obvious", the said motor vehicle and alcoholic beverages should be returned.

After due consideration of the exceptions filed herein, I am persuaded that there are extenuating circumstances which warrant the return of the motor vehicle, but not the alcoholic beverages, to the said claimant. I will, therefore, adopt the Hearer's recommendation that the alcoholic beverages be forfeited, and shall direct the return of the motor vehicle to the claimant, upon payment of costs of seizure and storage.

In view of my Conclusions herein, it is, therefore, unnecessary at this time to consider the Hearer's recommendation with respect to the alleged lien claim of the Commercial Credit Corporation.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 29th day of June, 1964, James B. Hill pays the costs of the seizure and storage of his Pontiac coupe, more fully described in Schedule "A", attached hereto, it will be returned to him; and it is further

DETERMINED and ORDERED that the alcoholic beverages, as listed in Schedule "A", constitute unlawful property, and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66, or retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

Dated: June 15, 1964

JOSEPH P. LORDI
DIRECTOR

Schedule "A"

- 12 - 4/5 quart bottles of whisky
- 47 - 1/2 pint bottles of whisky
- 1 - Pontiac coupe, Maryland Registration FT 4075

8. DISCIPLINARY PROCEEDINGS - SALE BELOW FILED PRICE - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR SIMILAR AND DIS-SIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

VINCENT B. SABBIA AND NICHOLAS F. SABBIA
t/a SABBIA FOOD CENTER
36-40 Dales Avenue
Jersey City, N. J.

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Distribution
License D-78, issued by the Municipal
Board of Alcoholic Beverage Control of
the City of Jersey City.

Louis R. Cerefice, Esq., Attorney for Licensees.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to charges alleging that (1) on February 26, 1964, they sold a half-gallon bottle of whiskey at less than filed price, in violation of Rule 5 of State Regulation No. 30, and (2) in their application for current license they failed fully to disclose their record of prior license suspensions, in violation of R.S. 33:1-25.

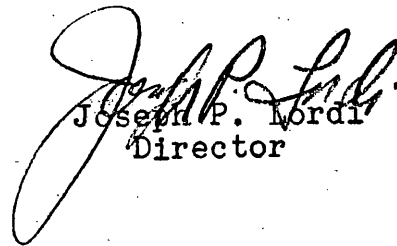
Licensees' complete record of previous suspension of license is as follows: (1) by the Director for fifteen days effective August 20, 1962, for sale below filed price (Re Sabbia, Bulletin 1476, Item 5), (2) by the Director for seventy-five days effective January 5, 1961, for purchase of a quantity of stolen beer (Re Sabbia, Bulletin 1373, Item 3), and (3) suspension of license of Vike-Inn, Inc. (of which Vincent B. Sabbia was president) for premises 418 Jackson Avenue, Jersey City, by the Director for twenty days effective November 5, 1958, for sale in violation of State Regulation No. 38 and failure to possess copy of license application on the licensed premises (Re Vike-Inn, Inc., Bulletin 1253, Item 5).

The prior record of dissimilar violation of Vike-Inn Inc. disregarded because occurring more than five years ago but the record of prior similar violation within the past five years considered, the license will be suspended on the first charge for twenty days (Re Joffe and Barbarosh, Bulletin 1553, Item 7) and the prior record of dissimilar violation occurring within the past five years also considered, the license will be suspended on the second charge for fifteen days (Re Villa Rosa, Bulletin 1563, Item 2; Re Vamos, Bulletin 1541, Item 5), or a total of thirty-five days, with remission of five days for the plea entered, leaving a net suspension of thirty days.

Accordingly, it is, on this 22nd day of June 1964,

ORDERED that Plenary Retail Distribution License D-78, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Vincent B. Sabbia and Nicholas F. Sabbia, t/a Sabbia Food Center, for premises 36-40 Dales Avenue, Jersey City, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1964, commencing at 9 a.m. Monday, June 29, 1964; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 9 a.m. Wednesday, July 29, 1964.


Joseph P. Lodi
Director

New Jersey State Library