Mr. Michelson

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

BULLETIN 1315

January 5, 1960

TABLE OF CONTENTS

ITEM

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

BULLETIN 1315 January 5, 1960

1. APPELLATE DECISIONS - ZELKO v. HILLSIDE AND SUNSET LANES, INC. (CASES 1 and 2).

CASE #1
STEVEN ZELKO and JOHN ZELKO, JR., t/a ELMER'S TAVERN,

Appellants,

v.

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE TOWNSHIP OF HILLSIDE, AND SUNSET LANES, INC.,

Respondents.

ON APPEAL
CONCLUSIONS
AND ORDER

CASE #2
STEVEN ZELKO and JOHN ZELKO, JR., t/a ELMER'S TAVERN,

Appellants,

v.

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE TOWNSHIP OF HILLSIDE, and SUNSET LANES, INC.,

Respondents.

Arthur E. Dienst, Esq. (James F. McGovern, Jr., Esq., on the brief), Attorney for Appellants.
Robert Diamond, Esq., Attorney for Respondent Municipal Board
Budd, Larner & Kent, Esqs., by Samuel A. Larner, Esq., Attorneys for Respondent Sunset Lanes, Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"In Case #1 appellants appeal from the action of respondent Board, on February 9, 1959, whereby the Board unanimously granted, subject to a condition hereinafter set forth, an application to transfer License C-10 from Irving I. Heller to respondent Sunset Lanes, Inc., and from premises at 1567-1573 Maple Avenue to premises to be constructed at 399 Route 22, Hillside.

"In Case #2 appellants appeal from the action of respondent Board, on June 1, 1959, whereby the Board granted, subject to certain conditions hereinafter set forth, an application filed by respondent Sunset Lanes, Inc., for a renewal for the 1959-60 licensing year of License C-10 for premises to be constructed at 399 Route 22, Hillside.

"Appellants, who were the only objectors to the transfer and renewal of the license, have operated a tavern at 476 Bloy Street, Hillside, for a number of years. The entrance to their licensed premises is about 600 feet from the entrance to the proposed premises at 399 Route 22.

"For the purpose of clarifying the issues in this case, it might be advisable to set forth certain facts about which there is no substantial dispute. The license held by Irving I. Heller had the 'broad package privilege' which permits the holder thereof to sell alcoholic beverages from a portion of the licensed premises other than the public barroom. Sunset Lanes, Inc. was incorporated on October 27, 1958. Bernard Burkam is President of Sunset Lanes, Inc. He is also President of a corporation which in 1946 purchased a large tract of land in Hillside known as Lot 1B, Block 43, whereon, since 1952, said corporation has conducted a trucking and warehousing business under the name of Burkam Brothers Trucking Terminal and Warehouse. The testimony shows that the owner of the tract entered into a verbal lease with Sunset Lanes, Inc. whereby the easterly portion of Lot 1B was leased to Sunset Lanes, Inc. and that Sunset Lanes, Inc. filed with the Building Inspector of Hillside plans and specifications for a building containing twenty-four bowling alleys, a dining room, a cocktail lounge and a package goods section, to be erected on said portion of Lot 1B. The testimony further shows that on November 14, 1958, Sunset Lanes, Inc. applied to the Municipal Board for a transfer of the license in question to itself and to the proposed building; that on January 5, 1959, said application was withdrawn and that on January 13, 1959, a second application for the same purpose was filed with said Board. Written objections to the application for transfer having been filed by appellants herein, public hearings were held by the Board on January 26, January 27 and February 2. The transcript of the testimony (345 pages) taken at said hearings was admitted in evidence at the hearing in Appeal Case #1. On February 9, 1959, respondent Board adopted the following resolution:

> '***IT IS THEREFORE RESOLVED AND ORDERED on this 9th day of February, 1959, on motion duly made and seconded that Plenary Retail Consumption License C-10 issued to Irving I. Heller, trading as Maple Bar from premises 1567-1573 Maple Avenue, Hillside, New Jersey, be transferred to Sunset Lanes, Inc., and to premises known as 399 Route 22, Hillside, New Jersey, provided, however, that the license shall not be actually transferred unless and until the premises as described in the Plans and Specifications prepared, submitted to, and found acceptable by this issuing authority, shall first be completed and unless and until a Certificate of Occupancy shall have been issued therefor; and
>
> 'IT IS FURTHER RESOLVED AND ORDERED that upon completion of the premises and building to be constructed and presentation of a certificate of occupancy and presentation of Plenary Retail Consumption License C-10, the Secretary is authorized to place the proper endorsement of said transfer on the License Certificate.'

"Appellants appealed from said action of the Board and said appeal is designated herein as Case #1.

"On May 11, 1959, respondent Board adopted a resolution amending its resolution of February 9, 1959. By said amendment the transfer in question was ordered endorsed on the license certificate, effective June 30, 1959, for the sole purpose of permitting a renewal. Sunset Lanes, Inc. thereafter filed an application for renewal of the license at 399 Route 22. Appellants filed written objections to said application and on June 1, 1959, respondent Board held a hearing thereon. At the conclusion of said hearing the Board granted the application for renewal, subject to the condition set forth in its resolution dated February 9 and also subject to the Director's decision in Case #1. Appellants appealed from said action

of the Board, and said appeal is designated herein as Case #2.

"In Case #1 the petition of appeal sets forth numerous alleged reasons for reversal, some of which are frivolous. Thus, for example, there is no need to consider the allegations that 'the site is to be jointly used with a trucking terminal' or that 'a broad package license should not be exercised within the area devoted to bowling alleys' or that the answers to certain questions in the application filed on January 13, 1959, differed from the answers to questions in the application filed November 14, 1958, which application was subsequently withdrawn. Other alleged reasons for reversal may be dismissed with brief comment. Thus, the allegations that the plans filed with the Building Inspector were not drawn to scale and that there had been no required sub-division of Lot 1B were matters which concerned primarily the Building Inspector and the Planning Board of Hillside. As Mr. Mankowitz, a member of the Board, correctly and frequently pointed out at the hearings below, the transfer cannot become effective until a certificate of occupancy is issued. Cf. Bertelli v. Clifton et al., Bulletin 1275, Item 1. Moreover, the Township Committee has recently affirmed the action of the Planning Board whereby it made a major sub-division of Lot 1B into Lots 1B and 1C. The remaining alleged reasons for reversal may be summarized as follows:

(a) The transfer would create a traffic hazard;

(b) Inadequate parking space;

(c) The applicant has no right to possession of the proposed premises;

(d) There is no full view of the interior of the licensed premises, as required by Section 14 of an Ordinance to Fix License Fees;

(e) The interest of the stockholders listed in the application is not as stated in the application;

(f) The application falsely denies that any person mentioned therein is entrusted with the enforcement of any laws concerning alcoholic beverages;

(g) Applicant has shown no need for a license at the new location.

"As to (a): Much of the testimony below concerned the alleged traffic hazard. Three traffic experts testified at length as to traffic conditions on Route 22. All agreed that the traffic thereon is very heavy during the morning and evening rush hours. However, it sufficiently appears that the peak of traffic for bowling alleys is reached after 8 p.m. or 9 p.m. It also appears that there are bowling alleys located on Route 22 in other municipalities and, under these circumstances, it cannot be said that the conclusion of the Board that the transfer would not create a traffic hazard was unreasonable.

"As to (b): Mr. Fischer, a registered architect under whose supervision the plans for the proposed building were prepared, testified at the hearing below that there is parking space for 122 cars, and Mr. Burkam testified that he can lease space to park an additional 45 cars. Thus it appears that adequate parking facilities can be provided at the proposed premises.

"As to (c): Mr. Burkam, who is President of the corporation which purchased Lot 1B, and also President of Sunset Lanes, Inc., testified that the corporate owner has verbally leased the premises in question to Sunset Lanes, Inc. It sufficiently appears that the applicant for transfer will be 'in possession and control of the

licensed premises under color of right.' Ritttenger v. Bordentown et al., Bulletin 547, Item 10.

"As to (d): Section 14 of the cited Ordinance provides:

> 'All premises in which alcoholic beverages are sold or dispensed (with certain exceptions not here material) shall be so arranged so that a full view of the interior may be had from the public thoroughfare, or from adjacent rooms to which the public is freely admitted.'

"The contention of appellants seems to be that, according to the filed plans, there is no full view of the interior of the package goods section from a public thoroughfare. However, the plans indicate that there will be a full view of the package goods section from the adjacent rooms to which the public will be freely admitted.

"As to (e): The uncontradicted testimony of Mr. Burkam is that twenty-five shares of stock of Sunset Lanes, Inc. have been issued; that he is the owner of five shares, and that Abraham Kesselman, Louis Tanenbaum, Irving Heller and George Keith each owns five shares of said stock. This agrees with the information set forth in the application dated January 13, 1959.

"As to (f): Henry Goldhor, who is a Magistrate of the Township of Hillside, was named as one of the incorporators of Sunset Lanes, Inc. and is now registered agent of said corporation. It is axiomatic that a Magistrate may not himself hold an alcoholic beverage license or be employed by any person, partnership or corporation operating a licensed alcoholic beverage business for private profit. See Bulletin 1045, Item 5. A registered agent of a corporation is the person upon whom process against the corporation may be served. R.S. 14:4-2. No evidence has been presented to show that the registered agent is otherwise interested in the licensed corporation and, under these circumstances, there is no reason why a Magistrate, or other officer entrusted with enforcement, may not act as registered agent of such a corporation. It is true that the name of the agent is 'mentioned' in the application but, in the absence of any proof that the registered agent is otherwise interested in the corporation, I do not believe that the negative answer in the application should be deemed to be a false answer.

"As to (g): The number of licensed premises to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. DeCapua v. Ocean, Bulletin 941, Item 1. At the hearing held in Case #1 Mr. Mankowitz testified as follows:

> 'Well, there was no particular evidence before us that there was a tremendous demand for a transfer nor were there any objectors. However, as we surveyed the location and the proposed use, we concluded that there was nothing like it in the community. In other words, there was no modern, up-to-date dining-room--bowling-alley combination, and so on.'

"In cases of this kind, the Director's function is to determine whether reasonable cause exists for the issuing authority's opinion and, if so, to affirm. Triangle Corp. et al. v. Camden et al., Bulletin 1276, Item 1. It appears that proper consideration to the question of need was given by the members of respondent Board and that appellants have failed to sustain the burden of proof in establishing that the members of the Board abused their discretion. DeStefano et al. v. Jersey City et al., Bulletin 1289, Item 4.

"In Case #2 (submitted on the evidence in Case #1 and transcript of testimony taken on June 1, 1959), appellants content that respondent Board had no jurisdiction to renew the license because the license had not yet been transferred. The procedure followed by the Board complied strictly with general instructions issued by the Director on April 15, 1959, concerning renewal of licenses for uncompleted premises, except that the resolution adopted pursuant to said instructions provided that the transfer should be endorsed effective June 30, 1959, instead of effective immediately. This appears to me to be an immaterial change. R.S. 33:1-12.26, among other things, defines a renewal to include any license for a new license term which is issued 'to replace a license which will expire on the last day of the license term which immediately precedes the commencement of said new license term.' It has been common practice to renew licenses which expire on June 30 at some time prior to said date. The procedure adopted by the Board on May 11, 1959, and June 1, 1959, was proper under the circumstances of the case.

"After reviewing all the evidence and exhibits and reading the briefs filed herein, it is recommended that in Case #1 an order be entered affirming the action of respondent Board. It is further recommended that in Case #2 an order be entered affirming the action of respondent Board and directing the Board to issue the renewed license to Sunset Lanes, Inc., if and when it complies with the condition set forth in the resolution of the Board dated February 9, 1959."

Pursuant to the provisions of Rule 14 of State Regulation No. 15, exceptions to the Hearer's Report and written argument thereto were filed by the attorneys for appellant. At the same time said attorneys presented to me copy of a request dated December 11, 1958 addressed to respondent Board, copy of an affidavit filed in a certain action entitled "J & S Corporation et al. v. Planning Board of Hillside et al." and copy of answer and counterclaim filed in "Burkam Bros. Inc. et al. v. J & S Corporation et al.", both of which actions were filed in the Superior Court, Law Division, Union County. The attorneys for respondent Sunset Lanes, Inc. advised me that they considered it unnecessary to reply to appellant's exceptions and written argument because the issues had been fully explored in their brief previously filed herein. They also advised me that they objected to the consideration of the affidavit and pleadings in another case and matter not introduced into evidence herein in reaching a conclusion in these cases. I have decided not to consider the copy of request, the affidavit and the copy of answer and counterclaim presented by the attorneys for appellant.

After carefully considering the evidence, exhibits, briefs, exceptions and written argument thereto, I agree with the conclusions of the Hearer in both cases and adopt said conclusions as my conclusions herein. Solely for the purpose of clarifying the question of jurisdiction which was raised in Case #2, I desire to point out that the completion-of-premises special condition (R.S. 33:1-32) in the resolution of February 9, 1959, was submitted to me and, by letter dated February 17, 1959 addressed to the Secretary of respondent Board, was approved, ex parte, by me. The special conditions regarding completion of premises and outcome of these appeals which are set forth in the resolution of June 1, 1959, were submitted to me and, by letter dated July 16, 1959 addressed to said Secretary, were approved, ex parte, by me. The ex parte approvals are hereby confirmed.

The statutory definition of "renewal" as distinguished from "new" license is set forth not only in R.S. 33:1-12.26 (Section 1 of the Borad Package Privilege Act - P.L. 1948, c. 98) but, also,

in R.S. 33:1-96 and in R.S. 33:1-12.13 (Section 1 of the State Limitation Law - P.L. 1947, c. 94). The words "effective immediately" in my Notice of April 15, 1959 were not to be taken mandatorily. The point intended to be stressed was that to permit conditional grant of application for 1959-1960 renewal an amendatory resolution concerning 1958-1959 license transfer would have to make such transfer effective prior to July 1, 1959.

I shall accept the recommendation of the Hearer as to the orders to be entered herein. The order in Case No. 2 will not refer to the special condition concerning the outcome of Case No. 1 because said condition is now unnecessary, but will refer to the other special condition set forth in the resolution dated June 1, 1959.

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

ORDERED that the action of respondent Board in Case #1 be and the same is hereby affirmed; and it is further

ORDERED that the action of respondent Board in Case #2 be and the same is hereby affirmed subject to the special condition that this license shall not be actually issued unless and until the premises as described in the plans and specifications prepared, submitted to, and found acceptable by respondent Board, shall first be completed, and a certificate of occupancy is issued therefor.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - WOODBRIDGE TOWNSHIP LIQUOR DEALERS, INC. ET AL. v. WOODBRIDGE AND CHICKEN BARN, INC.

WOODBRIDGE TOWNSHIP LIQUOR DEALERS, INC. AND MARTHA STARRICK, Appellants, v. TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WOODBRIDGE, AND CHICKEN BARN, INC., t/a TWO GUYS CHICKEN BARN, Respondents.	)	ON APPEAL CONCLUSIONS AND ORDER

James F. Norton, Esq., Attorney for the Appellants.
Nathan Duff, Esq., Attorney for respondent Township Committee of the Township of Woodbridge.
A. H. Rosenblum, Esq., Attorney for respondent Chicken Barn, Inc., t/a Two Guys Chicken Barn.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Township Committee of the Township of Woodbridge (hereinafter the Committee), whereby it granted a plenary retail distribution license for the 1958-59 licensing year to respondent Chicken Barn, Inc., t/a Two Guys Chicken Barn, for premises situated at the intersection of State Highway Route No. 440 and No. 35 in the Township of Woodbridge.

"In their petition of appeal, appellants allege that the Committee's action was erroneous in that:

'(a) An examination of the area involved shows there is no public need, convenience or necessity which would be satisfied by the granting of said license.

'(b) The public need and convenience are adequately served by the existing Retail Plenary Distribution License in the Township of Woodbridge, New Jersey.

(c) The sound exercise of discretion by the issuing authority would necessitate a denial of the application for said license, based on the facts hereinabove set forth.

(d) Respondents refused to allow the appellants to be heard in opposition to the application for said license.'

"When the matter came on for hearing, appellants' attorney stated that at 8:30 a.m. that morning, he had been informed by an unidentified person that appellant Martha Starrick and another witness would be unable to attend. No request was made for a postponement and, it appearing that there was no valid reason why the hearing should be deferred and that the case involved a question which should be determined, the Committee's attorney, at the Hearer's request, submitted the exhibits he was prepared to offer in evidence in his case and stated certain facts alleged to have motivated the Committee's action. Thereafter, the attorneys for the respective parties agreed to submit the case on the record.

"Based on the record and to clarify the issue, the progress of the application is hereinbelow set forth chronologically and the legal principles applicable thereto are indicated.

"The application was filed in December 1958. The published Notices of Intention were defective in that they omitted therefrom the statements required by Rule 2 of State Regulation No. 2, that 'Plans and specifications of building being constructed may be inspected at the office of the Township Clerk'. On December 23, 1958, no objections having been filed, the application was granted conditioned upon completion of the building. No appeal was taken from the Committee's action. Because of the defect in the published Notices of Intention, the Committee lacked jurisdiction to consider the application. Klein and Tucker v. Fair Lawn, et als., Bulletin 1175, Item 3. On April 2, 1959, the Division notified the Committee that the Notices of Intention were defective and advised that proper Notices must be published. Thereafter, Notices in proper form were published on April 16th and 23rd. On April 22nd, objections to the granting of the application were filed by appellants. The objectors were notified that the Committee would hold a public hearing on May 5, 1959 and, at said hearing, the Committee informed the objectors that it had convened 'merely to correct the error' and, without hearing the objectors, granted the application. In legal effect, the Committee had acted upon what may be deemed a continuing or pending application. On June 5, 1959 the appeal herein was filed and, as indicated in appellant's petition of appeal, is directed to the Committee's action of May 5, 1959.

"Prior to the filing of the appal, an application for renewal of the license for the 1959-60 license year was filed, and properly advertised by respondent Chicken Barn, Inc. At a meeting held on June 16th, and pursuant to the practice in such cases, the Committee adopted a resolution amending the resolution of December 23, 1958 by providing that the license for the 1958-59 licensing year be issued

effective immediately for the sole purpose of permitting a renewal. On June 23rd, the Committee granted the application for renewal of the license subject to the condition that the license should not be issued until the building had been completed in accordance with the filed plans and specifications. Although the resolution is in part ambiguous, it must be considered as a resolution to renew the license. No appeal was taken from the Committee's action of June 16 or June 23, 1959, and the renewed license will stand or fall upon the determination of the appeal herein.

"Procedurally, the Committee had jurisdiction on May 5, 1959 to consider the December 1958 application and act thereon. Technically the Committee should have heard the objectors on May 5, 1959. However, failure to hear the objectors at that time is not of itself dispositive of the appeal herein. Hearings on appeal are de novo, at which objectors are afforded full opportunity to be heard. Proctor v. Glen Rock & Grand Union Co., Bulletin 1229, Item 1, and the decisions on appeals are based on the merits of the objections presented either below or at the hearing of the appeal.

"In the case sub judice, had appellants appeared at the de novo hearing herein, they would have been given every opportunity to present their objections. Because of their failure to do so, it may reasonably be inferred that the grounds alleged in their petition of appeal are without merit. In any event, appellants have failed to sustain the burden of establishing that the action of respondent Committee was erroneous. Rule 6 of State Regulation No. 15. I recommend, therefore, that the action of the Township Committee be affirmed and that the appeal herein be dismissed."

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 10th day November, 1959,

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

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against

FRANCIS J. PACHUCKI AND THEODORE CZAYA
t/a HANK & TED'S TAVERN
401 So. 4th Street
Harrison, N. J.

Holders of Plenary Retail Consumption License C-24, issued by the Mayor and Council of the Town of Harrison.

CONCLUSIONS AND ORDER

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

BY THE DIRECTOR:

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

On July 1, 1959, an ABC agent tested the defendants' open bottles of alcoholic beverages and seized a quart bottle of "V.S.R. Three Feathers Blended Whiskey 86.8 Proof", for further tests by the Division chemist. Subsequent analysis by the chemist disclosed that the contents of said bottle when compared with an analysis of the genuine product was lower in proof and higher in acids and solids.

By way of mitigation, the defendants have submitted a statement which sets forth, among other things, that they did not tamper with the bottle in question; that they have operated the licensed premises in a lawful manner for five years, this being the first time that disciplinary proceedings have been instituted against them. I, however, do not find that these circumstances are sufficient to impel me to impose less than the minimum penalty in this case.

Defendants have no prior adjudicated record. I shall suspend defendants' license for the minimum period of ten days. Re Meola, Bulletin 1285, Item 12. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 2nd day of November 1959,

ORDERED that Plenary Retail Consumption License C-24, issued by the Mayor and Council of the Town of Harrison to Francis J. Pachucki and Theodore Czaya, t/a Hank & Ted's Tavern, for premises 401 So. 4th Street, Harrison, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m., Monday, November 16, 1959 and terminating at 2:00 a.m., Saturday, November 21, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - NUISANCE - CONTRACEPTIVES - OBSCENE MATTER - LICENSE SUSPENDED FOR 70 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	
JERRY'S & PEGGY'S BAR & GRILL, INC. 450 Chancellor Avenue Newark 8, N. J.	CONCLUSIONS AND ORDER
HOLDER OF PLENARY RETAIL CONSUMPTION LICENSE C-264, ISSUED BY THE MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK.	

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

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On August 19, 21, 22 and 25, 1959, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered lewdness, immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises; allowed, permitted and suffered a person employed on your licensed premises as a bartender to make offers, overtures and arrangements with male patrons to procure females to engage with them in acts of illicit sexual intercourse and acts of perverted sexual relations; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

"2. On August 25, 1959, you possessed prophylactics against venereal disease and contraceptive and contraceptive devices, in and upon your licensed premises; in violation of Rule 9 of State Regulation No. 20.

"3. On August 19, 1959, you allowed, permitted and suffered in and upon your licensed premises and had in your possession matter containing obscene, indecent, filthy, lewd, lascivious and disgusting pictures and representations, viz., a group of photographic illustrations of male and female persons in obscene, indecent, filthy, lewd, lascivious and disgusting poses and positions; in violation of Rule 17 of State Regulation No. 20."

ABC agents visited defendant's licensed premises on each occasion mentioned in the aforesaid charge.

On the first visit at 9:20 p.m. on August 19, 1959, the agents observed Joe (subsequently identified as Joseph Crazano) tending bar and Gerardo Serretella (hereinafter referred to as Jerry), president of defendant corporation, seated on the patron's side of the bar with a man whom the agents recognized as a bartender employed at other licensed premises. The agents heard Joe, Jerry and the other

man discussing something in low tones and then Jerry walked to the telephone booth and, upon his return, remarked, "She's tied up with another man now. She said to come around about a quarter after eleven." During conversation about the girl whom Jerry had called, he made certain remarks, which provoked laughter from those present. Joe then joined in the agents' conversation and handed one of them a slip of paper on which was a telephone number, a name and an address. Joe had received the slip from Jerry. After a discussion as to an initial thereon, Joe copied the girl's christian name, her telephone number and address on a beer coaster. He told the agents that the female whose name he had written on the coaster would engage in unnatural sex relations. Joe identified a female who was called Ricky and who had been in the establishment earlier that evening as one with whom he steadily engages in sexual intercourse. He also referred to a homosexual, known as Harold, who he stated frequented the premises and asked one of the agents to go to his (Joe's) automobile to get photographs taken during a party at Harold's summer home in another state. The agent went to the car and in the glove compartment found approximately thirty photographs of nude females, some of whom Joe described as lesbians. He also mentioned a couple who were in the premises earlier that evening and who, after they left the premises, went to a parking lot and committed unnatural sexual acts which he had called to Jerry's attention. Joe spoke about a female called Marie whom he stated often came into the establishment who indulged in unnatural sex acts. About 10:30 p.m. an automobile drove into the parking lot adjoining the premises and Joe remarked that it was Marie. He went outside to see Marie and, about fifteen minutes thereafter, returned and jokingly referred to what he and Marie had done. Joe suggested that he and the agents exchange telephone numbers of females.

The two agents returned to defendant's premises at 10:00 p.m. on Friday, August 21, 1959, and were greeted by Joe, who inquired of the agents if they had visited Carolina. One of the agents told him he had lost the coaster containing Carolina's address which Joe had given to them but recalled her telephone number. Joe wrote the name of Jeanette and a telephone number on a coaster, suggested the agents call her and state that Jerry told them to do so. Joe said Jeanette charged $7 to engage in illicit sexual relations and wrote it on the coaster. He thereupon introduced the agents to three unescorted females who made no attempt to solicit the agents for immoral purposes. As the agents were leaving, they were asked by Joe to let him know how they made out with Jeanette.

The two agents again entered defendant's premises at 9:00 p.m. on August 25, 1959, and were greeted by Joe. Upon the agents' suggestion that he call Jeanette, Joe said it was too early. The agents, upon Joe's suggestion to call Carolina, inquired as to her number and Joe gave it to them as he remarked to a male patron seated at the bar that they were speaking about his (the patron's) old girl friend. The patron made some indecent remarks about Carolina. One of the agents informed Joe that he was going to call Carolina and, when he came back to the bar, said that he spoke to a female who stated Carolina would be back at one o'clock. Joe told the agent that it was probably Carolina's sister and advised the agents to "go up, anyway". About 10:45 p.m. an agent went to the telephone and, upon his return, related to Joe that he had tried to reach Carolina and stated to the female who answered that he was calling from "Jerry's place". She suggested he call after one o'clock but, when he told her that Jerry told them she could do something for them, the female said she would have to see them first. When the agents informed Joe that they were going to Carolina's house, he wrote on a piece of paper the number of the house, the floor on which the female's apartment was located and, in reply as to the agents'

question as to the cost to engage in an unnatural sex act, Joe said, "a deuce", holding up two fingers. The agents left at 10:55 p.m. and Joe wished them luck. At 11:00 p.m. the agents re-entered the premises and identified themselves to Joe who exclaimed, "I didn't fix up you guys with anything. I just gave you a telephone number." The agents reminded Joe that, during their three visits, he and they had conversed about Carolina, Jeanette and Harold; that they obtained the indecent photographs from Joe's car and that he knew where they had stated they were going and the reason therefor. Joe admitted everything that had transpired, but stated, "But it wal all conversation, what can you prove, you didn't get any broads", and continued, "I though you guys were all right, so I gave you a few numbers, friend to friend." A search of the premises resulted in finding thirteen slips of paper, cards and beer coasters bearing the names and telephone numbers of females. The agents found a package of prophylactics under the bar. When Jerry came to the premises, he disclaimed any knowledge of the indecent activities that had taken place. Both Jerry and Joe declined to give a written statement to the agents.

Defendant's attorney, in attempted mitigation of penalty, asserts that neither the officers nor directors of the defendant corporate-licensee were present when any of the alleged violations occurred. Furthermore, he stated no one connected with the defendant licensee authorized or condoned any overtures or arrangements for procurement of females to engage in illicit sexual intercourse or perverted sexual relations. Moreover, he contended that the contraceptives found in the premises belonged to an officer of the defendant who had purchased them the afternoon of the day when found and intended to take them home and that the officers and directors denied having knowledge of obscene pictures at any time being in the licensed premises.

Gerardo Serretella (referred to as Jerry), president of defendant corporation, was on the licensed premises at times when the agents were there. I am satisfied that Jerry was fully aware as to what actually was taking place and despite that fact permitted such activities to continue on the licensed premises. I find nothing which would warrant any mitigation of the penalty to be imposed herein.

Defendant has no prior adjudicated record. Considering the three charges herein, I shall suspend defendant's license for a period 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 10th day of November 1959,

ORDERED that Plenary Retail Consumption License C-264, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Jerry's & Peggy's Bar & Grill, Inc., for premises 450 Chancellor Avenue, Newark, be and the same is hereby suspended for sixty-five (65) days, commencing at 2:00 a.m., Wednesday, November 18, 1959 and terminating at 2:00 a.m., Friday, January 22, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL CONCLUSIONS AND ORDER ON ADDITIONAL TESTIMONY TAKEN ON ORDER OF SUPERIOR COURT.

In the Matter of Disciplinary Proceedings against TUBE BAR, INC. 12 Tube Concourse Jersey City, N. J. Holder of Plenary Retail Consumption License C-184 for the 1958-59 and 1959-60 licensing years, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	SUPPLEMENTAL CONCLUSIONS AND ORDER

John Drewen, Esq., Attorney for Defendat-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"There is presently pending before the Appellate Division of the Superior Court of New Jersey an appeal from the determination of the State Director of the Division of Alcoholic Beverage Control.

"On August 24, 1959, Honorable Joseph L. Smith, a Judge of the Superior Court of New Jersey, sitting for the Appellate Division thereof, on application by the appellant herein for permission to take additional evidence, entered an order granting leave to take the additional evidence and further ordered that, upon completion thereof, said evidence be dealt with in the manner required by the provisions of Rule 4:88-9.

"On September 28, 1959, in the presence of the Hearer, Louis Deutsch, president of the appellant corporate licensee, testified that the license application referred to in Charge 2 and the identification cards of the two bartenders on duty referred to in Charge 3 were locked in a drawer located behind the bar on the licensed premises and that he was the only person who had the key to open the drawer. In answer to its attorney's question as to the reason why he failed to give the employees on duty the means of access to the drawer, Deutsch stated 'Well, I never thought they (the ABC agents) would come around on Sunday to ask for any of these things. They've never been there on a Sunday before. That's why--otherwise, I'd be there myself and show it to them, but they never come on a Sunday. It's the first time that ever happened.'

"The affidavit of Louis Deutsch aforementioned, upon which he relied upon in the application for the order granting leave to take additional testimony was marked as an exhibit in evidence herein. The contents of the affidavit is corroborated, in substance, by the testimony of Deutsch.

"It is apparent that at the time the ABC agents were in appellant's licensed premises, neither the application for the current license nor the identification cards of the respective bartenders were made available to them during the investigation. This finding of fact was contained in the Hearer's Report and it was adopted by the Director in his Conclusions and Order dated July 7, 1959. Moreover, the matter appears immaterial as there was no additional suspension imposed for the violation in question. The minimum suspension of ten days which was imposed for hindering the

investigation was the failure of the two bartenders to give their names and the failure of the manager to direct them to do so or his failure to make known the bartenders' identity when interrogated by the agents until the arrival of the local police.

"It is recommended that the finding of guilt as to Charges 2 and 3 remain undisturbed."

Written exceptions and written argument with respect thereto were filed with me by the attorney for the defendant in accordance with Rule 6 of State Regulation No. 16.

I have carefully examined the Supplemental Hearer's Report, his recommendation in this matter and the argument of the defendant's attorney. It is apparent from the record that the conduct of the employees of the defendant-licensee as charged in 2 and 3 represented part of a pattern of failing to facilitate and delay the investigation in progress at the time and, even if the defendant was found "not guilty" of such charges, a ten day penalty (the minimum in such cases) would still have been imposed on Charge 4.

The alleged mitigating circumstances do not excuse the violations set forth in Charges 2 and 3 although the penalty was not increased by reason thereof. The usual penalty for failure to have the copy of the current license application available for inspection when requested by ABC agents when in the course of an investigation in the licensed premises is ten days. Re Tamim, Inc., Bulletin 1284, Item 2. It is obvious that the Hearer, in considering the "over all" penalty to be recommended, added nothing for the so-called "technical violations" covered by Charges 2 and 3.

I concur in the Hearer's findings and conclusions and adopt his recommendation.

Dated: November 12, 1959

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE TO MINOR NOLLE PROSSED.

In the Matter of Disciplinary Proceedings against	)	
PINE HILL LODGE, INC. Brookside Road Randolph Township PO Mt. Freedom, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-16, issued by the Township Committee of Randolph Township.	)	

Emanuel N. Silberner, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On Saturday, August 29, 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, viz., Kenneth ---, age 17, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

Kenneth --- resides with his family in New York City but was employed during the summer months in Randolph Township, New Jersey.

At the original hearing, scheduled to be held on September 14, 1959, an ABC agent testified that he was in defendant's premises on August 29, 1959, and observed a drink of alcoholic beverages being served by Sid J. Burns (vice-president of defendant corporation) to Kenneth --- who partially consumed the drink. The agents stated that immediately thereafter Mr. Burns denied making the sale. A subpoena to appear at said hearing was served upon Kenneth --- but he did not appear at said hearing or at adjourned hearings scheduled to be held on September 15 and October 14.

During the period between September 14 and October 14 a number of letters were sent to the mother of Kenneth at her address in New York City. In reply thereto she advised that her son would not appear because he was attending college in Connecticut and she declined an invitation to appear here to testify as to his age. Being non-residents, neither the mother nor the son is now amenable to our subpoena. At the adjourned hearing on October 14, the Division's representative move to nolle pros the charge herein. Under the circumstances of this case, I shall grant the motion. Re Skiba, Bulletin 1206, Item 8.

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

ORDERED that the charge herein be and the same is nolle prossed.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
MING-L-INN, INC. t/a MING-L-INN 85th Street & East Landis Avenue Sea Isle City, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-6, issued by the Board of Commissioners of the City of Sea Isle City.	)	

Defendant-licensee, by William J. Garrity, Jr., President.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to a charge alleging that it possessed in and upon its licensed premises alcoholic beverages in bottles bearing labels which did not truly describe the contents, in violation of Rule 27 of State Regulation No. 20.

On August 22, 1959, an ABC agent tested defendant's open stock of assorted brands of liquor and seized a number of bottles for further tests by the Division's chemist. The chemist's report discloses that the contents of two bottles were short in proof and too high in solids, and that the contents of another bottle were diluted. The comparisons were made with samples of genuine products of the labeled brands.

Defendant has no prior adjudicated record. I shall suspend its license for twenty days, the minimum penalty imposed in a "refill" case involving three bottles. Re DiGiacomo & Grande, Bulletin 1269, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 19th day of November 1959,

ORDERED that Plenary Retail Consumption license C-6, issued by the Board of Commissioners of the City of Sea Isle City to Ming-L-Inn, Inc., t/a Ming-L-Inn, for premises at 85th Street & East Landis Avenue, Sea Isle City, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Monday, November 30, 1959, and terminating at 2 a.m. Tuesday, December 15, 1959.

William Howe Davis
Director