

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

BULLETIN 1560

May 26, 1964

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

BULLETIN 1560

May 26, 1964

1. COURT DECISIONS - HUDSON-BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION v. UNION CITY, CAPUTO'S LIQUOR CORP. and DIVISION OF ALCOHOLIC BEVERAGE CONTROL - APPEAL DISMISSED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-495-62

HUDSON-BERGEN COUNTY RETAIL
LIQUOR STORES ASSOCIATION,

Appellant

vs.

BOARD OF COMMISSIONERS OF THE
CITY OF UNION CITY, and CAPUTO'S
LIQUOR CORP., and DIVISION OF
ALCOHOLIC BEVERAGE CONTROL,
DEPARTMENT OF LAW AND PUBLIC
SAFETY, STATE OF NEW JERSEY.

Respondents.

Argued September 23, 1963 - Decided November 1, 1963

Before Judges Gaulkin, Lewis and Labrecque.

Mr. Samuel J. Davidson argued the cause for appellant.

Mr. Edward J. Lynch argued the cause for respondent Board of Commissioners of the City of Union City (Mr. Cyril J. McCauley, corporation counsel).

Mr. Melvin Gittleman argued the cause for respondent Caputo's Liquor Corp. (Messrs. Harber & Freesman, attorneys).

Mr. Avrom J. Gold, Deputy Attorney General, argued the cause for respondent Division of Alcoholic Beverage Control (Mr. Arthur J. Sills, Attorney General of New Jersey, attorney).

PER CURIAM.

(Appeal from Director's decision in Hudson-Bergen County Retail Liquor Stores Association v. Union City and Caputo's Liquor Corp., Bulletin 1499, Item 1. Appeal dismissed. Opinion not approved for publication by the Court committee on opinions.)

2. COURT DECISIONS - HOOVER v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

CLARENCE HOOVER,
t/a HOOVER'S TAVERN,

Appellant,

vs.

DIVISION OF ALCOHOLIC
BEVERAGE CONTROL,

Respondent.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1027-61

Argued November 12, 1963 - Decided November 22, 1963.

Before Judges Conford, Freund and Sullivan.

Mr. William J. McGovern argued the cause for appellant
(Messrs. McGovern and Roseman, attorneys).Mr. Avrom J. Gold, Deputy Attorney General, argued
the cause for respondent (Mr. Arthur J. Sills,
Attorney General of New Jersey, attorney).

PER CURIAM

(Appeal from Director's decision in Re Hoover,
Bulletin 1521, Item 1. Director affirmed. Opinion not
approved for publication by the Court committee on opinions.)

3. COURT DECISIONS - FAM-BAR LIQUORS INC. v. BERKELEY HEIGHTS -
DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-917-62

FAM-BAR LIQUORS, INC.,)
Appellant,)
vs.)
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF BERKELEY HEIGHTS.)
Respondent.)

Argued October 28, 1963 - Decided December 5, 1963.

Before Judges Goldmann, Kilkenney and Collester.

Mr. Walter Goldberg argued the cause for appellant
(Mr. Philip R. Carlin, on the brief).

Mr. Peter C. Triolo argued the cause for respondent
(Mr. Edward A. Pizzi, attorney).

Mr. Avrom J. Gold, Deputy Attorney General, argued
the cause for Division of Alcoholic Beverage Control
(Mr. Arthur J. Sills, Attorney General of New Jersey,
attorney).

The opinion of the court was delivered by

KILKENNEY, J.A.D.

(Appeal from Director's decision in Fam-Bar Liquors
v. Berkeley Heights, Bulletin 1518, Item 1. Director affirmed.
Opinion not approved for publication by the Court committee
on opinions.)

4. APPELLATE DECISIONS - RICHMON, INC. v. TRENTON.

RICHMON, INC.,)	
Appellant,)	
v.)	ON APPEAL
CITY COUNCIL OF THE CITY OF)	CONCLUSIONS
TRENTON,)	AND ORDER
Respondent.)	

 James J. Armstrong, Jr., Esq., Attorney for Appellant.
 Robert R. Ross, Esq., by John A. Brieger, Esq., Attorney for
 Respondent.
 Irving H. Lewis, Esq., Attorney for Objectors.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Appellant appeals from the action of respondent City Council (hereinafter Council) which, by a vote of four-to-two (one member thereof being absent) denied a place-to-place transfer of its plenary retail distribution license from premises 166 Hamilton Avenue to premises to be constructed at 1546 Edgewood Avenue, Trenton.

The petition of appeal alleges that the action of the Council was erroneous for the following reasons:

"(a) The action of the Commission was not in fact based on any of the reasons given in their Resolution denying Appellant's application.

(b) The action of the Respondent was arbitrary, discriminatory and unlawful.

(c) The action of the Respondent was an abuse of the discretion vested in it under the Alcoholic Beverage Law.

(d) The action of the Respondent was based on political and personal prejudice and preference and not on the basis of public need, necessity and convenience.

(e) The reasons given by Respondent for the denying of Appellants application were not based upon the testimony and evidence produced at the hearing."

The Council in its answer denies the aforesaid allegations contained in the petition and reiterates the reasons previously given in Resolution A8350-1/2 adopted March 15, 1962, for the denial of the said transfer, viz.:

"1. That the area to which said transfer is sought is predominantly residential in character, consisting of high-priced homes, and the granting of said application would depreciate the market value of said homes.

"2. That the granting of the transfer would increase noise and traffic in the area.

"3. That the neighborhood and location of said proposed licensed premises is not fit or suitable for such purpose.

"4. That a large majority of the residents in that area are opposed to and protested the granting of such license.

"5. That it is to the best interest of the surrounding community and the City in general that said application be denied.

"6. That the appellant did not establish any public need, convenience or necessity for the granting of such application."

A petition containing one hundred eighteen signatures of persons representing that they reside near the business section in question and stating that they have no objection to the transfer of the license to the said business area was presented by appellant and marked as an exhibit in evidence.

The site upon which appellant desires to erect premises for the proposed license is located in a business zone containing various types of retail businesses. Aside from the shopping area in question, the neighborhood appears to be residential in nature.

Edward P. Franks, Jr., a detective assigned to the Municipal Alcoholic Beverage Control Department, testified that he made various measurements from the proposed site to the nearest plenary retail distribution license and plenary retail consumption license respectively; that his measurements disclosed the proposed location to be 1.1 miles distant from the nearest package goods store located at 806 Stuyvesant Avenue, and 1.4 miles distant from the nearest tavern located at 534 Stuyvesant Avenue. His measurement showed that the nearest school was 1,056 feet away from the proposed location, and the nearest church 4,752 feet away, both of said buildings being located on West State Street. Franks further testified that the proposed premises is about five miles distant from the location of the present premises. His testimony also disclosed that the proposed location is zoned as a business B area; that Edgewood Avenue directly in front of the said site is thirty feet in width, and that next door to the proposed premises is the White Gate Caterers which has no liquor license.

William J. Waldron, a realtor (formerly an employee of the Board of Adjustment, the Planning Board and Director of Public Safety from August 1958 to July 1962), testified that:

"*** this is a pocket of a proved and zoned business in an area which has a railroad and a canal as the buffer on the north side and all residential occupancies on the east, south, and west sides."

Waldron further testified that he resides approximately three-quarters of a mile from the section where the proposed site is located, and is of the opinion that the area of the proposed location is suitable for the operation of a package goods store.

Moreover, he stated that:

"This is a business area. In my opinion package stores or any form of businesses should be located within the areas zoned for this. There is in my opinion a need for this type of service. There are many people who made the cry of the use of alcohol, I didn't. And I think the majority of the American citizens do not, and therefore, there is a need and necessity for them to have available to them as conveniently as possible an opportunity to secure whatever equipment they desire."

In 1959, when a member of the city government, he voted to deny a transfer of a plenary retail consumption license across the street (about fifty feet away) from the proposed site, and signed the resolution containing similar reasons given for the instant denial of the transfer. He also agreed at the time that the best interests of the surrounding community and the city in general would be served if the then application for the type of license sought to be transferred was denied.

During cross examination, when questioned with reference to his former opinion, as a member of the issuing authority Waldron testified that "*** the area is predominantly residential and there are many high-priced homes" and agreed that the general character of the neighborhood is "pretty much the same." It was brought out, however, that several years after 1959, when another application was made for a transfer of a plenary retail consumption license to the location in question, although denied by a majority of the members of the issuing authority he voted in favor thereof.

J. Morton Cole, a realtor for many years holding membership in real estate and insurance associations, and former member of both the Zoning Board and the Planning Board, substantiated in substance the reasons expressed by William Waldron in favor of the transfer of appellant's license.

Peter W. Radice, a councilman at large, testified that he voted in favor of the transfer in question. The reasons given were that:

"I voted in the affirmative because after hearing the testimony I could see nothing in my mind as an individual why this package license shouldn't be transferred to this area."

Furthermore he testified that he was of the opinion that a package store at the proposed site would not increase the traffic because customers usually entered the store, make their purchase of alcoholic beverages, and leave in a few moments. He concluded in his opinion that the area is suitable for a plenary retail distribution license.

George M. Pegg, councilman for the south ward, residing three to three and one-half miles away from the proposed premises, testified that in his opinion the best interests of the community would be served if the transfer were granted as "this might tend to stimulate some interest in the commercial portion of the area."

Two persons, both residing approximately one and one-half blocks away from the proposed site, voiced their opinion

that the transfer should be granted as a package store would serve the convenience of the people residing in that area.

Sadie R. Shalita, an objector residing in the immediate area, testified that she objects to the transfer as she does not want the children in the neighborhood "exposed to the accessibility of a package goods store." Furthermore she stated there is no need or necessity for a liquor store as a person wishing to purchase liquors can make a telephone call to a liquor licensee who would deliver the alcoholic beverages ordered within a short period of time.

In order that appellant be successful in this appeal it is necessary to show that the respondent has abused its discretion in denying the application for transfer. In order to meet this burden appellant must show manifest error or an abuse of discretion on the part of the respondent. Nordco v. State, 43 N.J. Super. 277, 287 (App Div. 1956); Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N.J. Super. 598, 600 (App.Div. 1955).

It has been consistently ruled that a transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Gentes v. Middletown, Bulletin 1327, Item 1; Biscamp and Hess v. Teaneck, Bulletin 821, Item 8. See also Biscamp and Hess v. Teaneck et al., 5 N.J. Super. 172 (App.Div. 1949), where, as in the present case, the issuing authority denied the transfer of a liquor license because it was of the opinion that no need or necessity existed for a liquor outlet in that particular location in the community.

Although the proposed site of a liquor store may be located in a shopping area or center, it does not necessarily follow that a transfer to the proposed site must be granted. Each case stands solely upon its individual merits, depending on the facts presented therein. It has long been established that whether or not a license should be permitted at a particular location is strictly within the sound discretion of the issuing authority, and that the Director's function on appeal is not to substitute his opinion for that of the issuing authority but, rather, to determine whether cause exists for its opinion and, if so, to affirm. Redfield v. Long Branch et al., Bulletin 1027, Item 1. Although there was a difference of opinion among members of the Council as to whether the grant or the denial of the transfer to the proposed site would serve the public interest, it shows merely an honest difference of opinion. There is nothing in the record herein indicating, or even suggesting, that the decision given by the respective members was inspired in any manner by improper motives. In Fanwood v. Rocco and Division of Alcoholic Beverage Control, 59 N.J. Super. 306, 323 (App.Div. 1960), aff'd 33 N.J. 404 (1960), Judge Gaulkin, among other things, stated:

"***The Director may not compel a municipality to transfer licensed premises to an area in which the municipality does not want them, because there more people would be able to buy liquor more easily. Such 'convenience' may in a proper case be a reason for a municipality's granting a transfer but it is rarely, if ever, a valid basis upon which the Director may compel the municipality to do so."

I have carefully examined the various points emphasized and the cases cited by both the appellant and the respondent in the memoranda submitted on behalf of the parties herein. After considering all of the evidence, including the exhibits, I conclude that appellant has failed to sustain the burden that the action of respondent was erroneous, arbitrary, capricious, unreasonable or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15.

It is recommended, therefore, that an order be entered affirming respondent's action and dismissing the appeal.

Conclusions and Order

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

After carefully considering all the evidence, exhibits, the memoranda filed by the attorneys for the respective parties and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 30th day of March 1964,

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

JOSEPH P. LORDI
DIRECTOR

5. CORPORATIONS - DISCIPLINARY PROCEEDINGS WHEN CHARTER VOIDED
FOR NON-PAYMENT OF FRANCHISE TAXES - ANNOUNCEMENT OF POLICY.

NOTICE TO ALL CORPORATE LICENSEES:

It has come to my attention that some corporations holding alcoholic beverage licenses, retail and otherwise, have had their corporate charters voided by the Governor for non-payment of state taxes, primarily corporate franchise taxes, as provided by R. S. 54:11-2. Question has therefore arisen as to whether disciplinary proceedings should be instituted against these licensees to suspend or revoke their licenses pursuant to power conferred by R.S. 33:1-31(c) and (f).

This is to constitute notice to all corporate licensees that, commencing July 1, 1964, disciplinary action will be taken against their licenses upon the receipt by this Division of information that their charters have been voided for non-payment of state taxes. I am forbearing from taking immediate action against such licensees in order to afford them a reasonable opportunity to take corrective steps to abate their delinquent tax status and to have their charters reinstated.

All corporate licensees should be guided accordingly.

JOSEPH P. IORDI
DIRECTOR

Dated: March 25, 1964

6. DISCIPLINARY PROCEEDINGS - PENALTIES - GAMBLING (BOOKMAKING AND NUMBERS) - NOTICE RE INCREASED PENALTIES.

April 27, 1964

NOTICE TO ALL RETAIL LICENSEES:

Re: Increased Penalties for Permitting Bookmaking
and Numbers Activity on Licensed Premises

I have noted with concern that there has been an increase in the number of complaints received alleging that bookmaking and numbers activity is occurring on retail licensed premises, principally in taverns.

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 book-making and lotteries.

As all licensees should well know, gambling of any kind is prohibited on licensed premises by Rules 6 and 7 of State Regulation No. 20, which provide:

"Rule 6. No licensee shall allow, permit or suffer in or upon the licensed premises any lottery to be conducted, or any ticket or participation right in any lottery to be sold or offered for sale; nor shall any licensee possess, have custody of, or allow, permit or suffer any such ticket or participation right, in or upon the licensed premises...

"Rule 7. No licensee shall engage in or allow, permit or suffer any pool-selling, book-making...or gambling of any kind...in or upon the licensed premises..."

It would appear that the presently existing schedule of minimum penalties, starting at suspension of license for twenty-five days for unaggravated first offenses of this type, has not effectively deterred violations of the same kind by other licensees. Perhaps stiffer penalties will help.

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.

JOSEPH P. LORDI
DIRECTOR

7. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1963 THROUGH MARCH 31, 1964

	1st Quarter July, Aug., Sept.	2nd Quarter Oct., Nov., Dec.	3rd Quarter Jan., Feb., Mar.	Total
ARRESTS:				
Total number of persons arrested	66	55	73	194
Licenses and employees	37	30	47	114
Bootleggers	29	25	26	80
SEIZURES:				
Motor vehicles - cars	3	4	1	8
- fishing boats	1	3	-	4
Stillis - 50 gallons or under	3	2	6	11
Mash - gallons	665	875	1,930	3,470
Distilled alcoholic beverages - gallons	1,900.954	274.964	117.641	2,293.559
Wine - gallons	16.598	7.500	9.180	33.278
Brewed malt alcoholic beverages - gallons	78.158	45.028	313.400	436.566
RETAIL LICENSEES:				
Premises inspected	2,529	2,829	2,208	7,566
Premises where alcoholic beverages were gauged	1,469	1,173	1,337	3,979
Bottles gauged	22,749	17,152	19,783	59,684
Premises where violations were found	239	281	217	737
Violations found	314	386	269	969
Unqualified employees	99	134	66	299
Reg. #38 sign not posted	75	78	58	211
Application copy not available	41	59	49	149
Prohibited signs	13	19	21	53
Other mercantile business	16	9	11	36
Disposal permit necessary	7	8	9	24
Improper beer taps	4	1	6	11
Other violations	59	78	49	186
STATE LICENSEES:				
Premises inspected	76	62	44	182
License applications investigated	25	16	18	59
COMPLAINTS:				
Complaints assigned for investigation	1,108	1,036	1,022	3,166
Investigations completed	1,032	1,028	1,059	3,119
Investigations pending	(158)	(168)	131	131
LABORATORY:				
Analyses made	324	317	303	944
Refills from licensed premises - bottles	111	110	101	322
Bottles from unlicensed premises	64	36	31	131
IDENTIFICATION:				
Criminal fingerprint identifications made	30	21	24	75
Persons fingerprinted for non-criminal purposes	1,096	741	716	2,553
Ident. contacts made w/other enforcement agencies	623	501	444	1,568
MV identifications via N.J. State Police teletype	3	1	1	5
DISCIPLINARY PROCEEDINGS:				
Cases transmitted to municipalities	43	31	32	106
Violations involved	50	33	37	120
Sale during prohibited hours	30	16	20	66
Sale to minors	8	16	10	34
Failure to close prem. during prohibited hours	5	1	4	10
Failure to afford view into prem. dur. proh. hrs.	4	-	-	4
Sale to non-members by club	1	-	1	2
Possessing chilled beer (DL licensee)	2	-	-	2
Single instance of other violations	-	-	2	2
Cases instituted at Division	68	57*	46	171*
Violations involved	104	83	57	244
Sale during prohibited hours	18	13	9	40
Possessing liquor not truly labeled	14	15	10	39
Sale to minors	14	4	4	22
Permitting lottery activity on premises	3	8	4	15
Sale below filed price	2	7	5	14
Conducting business as a nuisance	4	3	3	10
Fraud in application	4	2	4	10
Permitting bookmaking on premises	4	4	1	9
Hindering investigation	3	5	1	9
Sale to intoxicated persons	5	1	1	7
Permitting immoral activity on premises	4	1	-	5
Fraud and front	2	1	2	5
Sale outside scope of license	3	-	2	5
Furnishing unlawful inducement to retailer	4	-	-	4
Substituting alc. bev. other than ordered	2	1	1	4
Beverage Tax Law non-compliance	-	-	3	3
Failure to close prem. during prohibited hours	3	-	-	3
Permitting gambling on premises	1	1	1	3
Permitting foul language on premises	2	1	-	3
Retailer to retailer sales	-	3	-	3
Permitting hostess activity on premises	2	-	-	2
Possessing contraceptives on premises	1	1	-	2
Unauthorized transportation	-	2	-	2

*Includes one cancellation proceeding - license improvidently issued to club not bona fide.

	1st Quarter July, Aug., Sept.	2nd Quarter Oct., Nov., Dec.	3rd Quarter Jan., Feb., Mar.	Total
DISCIPLINARY PROCEEDINGS (CONTINUED)				
Cases instituted at Division (Continued)				
Possessing pinball machines on premises	-	-	2	2
Sol-Per. engaging in conduct proh. to employer	2	-	-	2
Storage off licensed premises	-	2	-	2
Single instance of other violations	6	8	4	18
Cases brought by municipalities by own initiative and reported to Division	71	58	73	202
Violations involved	88	68	85	241
Sale to minors	39	30	41	110
Sale during prohibited hours	15	5	11	31
Permitting brawl, etc. on premises	8	10	5	23
Failure to close prem. during proh. hours	6	1	7	14
Conducting business as a nuisance	1	2	6	9
Permitting lottery activity on premises	3	2	4	9
Hindering investigation	2	3	2	7
Permitting gambling on premises	4	1	-	5
Failure to afford view into prem. dur. proh. hrs.	-	2	2	4
Permitting bookmaking on premises	3	-	-	3
Sale to intoxicated persons	-	3	-	3
Act of violence	1	2	-	3
Permitting minors on prem. unaccomp. by parents or guardians (local reg.)	2	-	1	3
Permitting immoral activity on premises	1	1	-	2
Unqualified employees	-	-	2	2
Permitting gambling paraphernalia on premises	2	-	-	2
Employing persons w/o ident. cards (local reg.)	-	2	-	2
Single instance of other violations	1	4	4	9
HEARINGS HELD AT DIVISION:				
Total number of hearings held	114	106	97	317
Appeals	12	11	20	43
Disciplinary proceedings	72	64	41	177
Eligibility	23	26	22	71
Seizures	6	2	10	18
Tax revocations	-	1	4	5
Applications for license	1	2	-	3
STATE LICENSES AND PERMITS ISSUED:				
Total number issued	5,010	4,502	3,098	12,610
Licenses	624	11	5	640
Solicitors' permits	179	97	170	446
Employment permits	1,080	713	519	2,312
Disposal permits	268	217	171	656
Social affair permits	1,320	1,207	1,003	3,530
Wine permits	1	816	8	825
Miscellaneous permits	665	624	366	1,655
Transit insignia	811	775	823	2,409
Transit certificates	62	42	33	137
OFFICE OF AMUSEMENT GAMES CONTROL:				
Licenses issued	190	70	320	580
Premises inspected	880	-	-	880
Premises where violations were found	22	-	-	22
Number of violations found	24	-	-	24
Enforcement files established	77	57	31	165
Disciplinary proceedings instituted	1	-	2	3
Violations involved	2	-	2	4
Redemption of prize for money	1	-	-	1
Redemption for prize other than merchandise	1	-	2	3

JOSEPH P. LORDI
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: April 20, 1964

8. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE
REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary)
Proceedings against)

DUGOUT, INC.)

t/a MOONACHIE BAR)

106 Moonachie Avenue)

Moonachie, PO RFD Wood-Ridge, N.J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-3, issued by the Borough)
Council of the Borough of Moonachie.)

Alexander A. Abramson, Esq., Attorney for Licensee.

Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Sunday, October 27, 1963, at about 3:30 p.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., twelve 12-ounce cans of Rheingold beer, at retail, in their original containers for consumption off your licensed premises; in violation of Rule 1 of State Regulation No. 38."

Succinctly stated, the evidence adduced by the Division to substantiate the charge is as follows: On Sunday, October 27, 1963, ABC agents S and P entered the licensed premises at about 2 p.m. and seated themselves at the back end of the bar where they were served drinks by the bartender who was later identified as John Cuff (president and 97% stockholder of the corporate licensee). At about 2:20 p.m. a man (later identified as Kovalik) entered the premises and took a seat at the front end of the bar where Cuff served him. While quaffing his beverage, Kovalik engaged Cuff in conversation during which each in turn would look at the agents. Just before Kovalik left, the agents heard him tell Cuff that he would return. When Kovalik departed, the agents finished their drinks, left the premises and moved their car to a post of observation on Moonachie Avenue about seventy-five to one hundred feet from the tavern. Thereafter the agents observed a panel truck approach the tavern from the opposite direction, turn into the driveway and come to a stop at the rear of the licensed building. They further observed the driver of the truck proceed toward the rear entrance of the tavern and, in about ten minutes, they saw Cuff walk toward the truck with two six-packs of beer in his arms and put them on the truck's seat. At this point the agents drove into the driveway, stopped behind the panel truck, got out of their car, identified themselves to Cuff and questioned him as to what the beer was for, whose beer it was and whether or not it was sold to the person who owned the truck. Cuff made no reply except to say "no" to the last question. The agents seized the beer and questioned Kovalik who had come out the rear entrance. At first he denied that he owned the truck; finally admitted he did and, when shown the two six-packs of beer, said he did not buy any beer and knew nothing about it. The

agents and Cuff then re-entered the tavern, went behind the bar to the cash register on which the agents noted \$2.30 rung up, which was the retail price then in effect for two six-packs of beer. When questioned about the \$2.30, Cuff made no reply and, when the agents requested him to give them the tape, he opened the register, fumbled around with the tape and, in doing so, tore it across where the \$2.30 sale was recorded thereon.

A sketch of the licensed building and the surrounding area made by Agent S, a certified copy of the licensee's current license application and the two six-packs of beer were received in evidence without objection and marked Exhibits S-1, S-2 and S-3 respectively.

The uncorroborated testimony of Mr. Cuff may be summarized as follows: He admitted that he was tending bar when the agents came in; that he served each of them two glasses of beer while they were playing pool; that Michael Kells ("a refrigeration and air conditioning man"), whom the agents testified was Kovalik, came in; that they discussed the dismantling of the air conditioner (which was "right near where the pool table was"), and that Kells said that, since the men were playing pool, "he would go home and get a sandwich and take care of it that afternoon." He further testified that Mr. Kells returned to the tavern and that Tommy Hines (his relief bartender on Sunday afternoons) got behind the bar and he went upstairs to change his shirt and put on a sweater; that, when he came downstairs, he picked up two six-packs of beer; went out the rear entrance, and was putting the beer in the truck which was near the water tower when a car came alongside the building with these two men in it yelling "ABC! ABC! What have you got there?"; that, when he told them it was beer, they asked what he was going to do with it and he said "I am going to drink it myself." He later testified that Mike, Mike's brother (who was going to help take down the water tower) and he were going to drink the beer. He further testified that he and the agents went inside the tavern; that he saw the \$2.30 rung up on the cash register, and that he learned from Hines after the agents left that "It was for two half-gallons of beer in containers and two glasses of beer served to two men that came in." Respecting the tearing of the tape, he testified that he said to one of the agents, "I will pull it out the best I can but ... this is last night's receipts" and he denied that he sold the beer to Mr. Kells or Mr. Kovalik. He further testified that, in preparing the renewal application (Exhibit S-2), "I followed through from the first time we opened the place" and, in answering Question 7 and sub-section (b) thereof, he stated that the licensed premises consisted of the entire front floor and cellar of the licensed building and the picnic grounds and front part of the building, and that he figured that said description included the driveway and parking area to the right of the licensed building.

Agent S, called in rebuttal, testified that he didn't see any work being done on the licensed premises while he was there; that Mr. Cuff didn't say anything about dismantling the air conditioner, and that the man whom Cuff referred to as Michael Kells had shown him his driver's license on which was the name, address and date of birth of Michael Kovalik.

I have carefully considered the evidence adduced herein, and I find that the agents' testimony respecting what occurred in and outside of the licensed premises during their investigation is highly credible and convincing, while the testimony of Mr. Cuff is incredible. I find further that the

description of the licensed premises, as set forth in the licensee's renewal application (Exhibit S-2) does not include the driveway or parking area to the right of the licensed building. I conclude, therefore, that the Division has established the truth of the charge by the necessary preponderance of the believable evidence, and I recommend that the licensee be found guilty as charged.

Since the licensee herein has no prior adjudicated record, I further recommend that its license be suspended for fifteen days. Re Stein, Bulletin 1547, Item 12.

Conclusions and Order

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

Having carefully considered the transcript of the proceedings, the exhibits introduced in evidence at the hearing and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 30th day of March, 1964,

ORDERED that Plenary Retail Consumption License C-3, issued by the Borough Council of the Borough of Moonachie to Dugout, Inc., t/a Moonachie Bar, for premises 106 Moonachie Avenue, Moonachie, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. Monday, April 6, 1964, and terminating at 3:00 a.m. Tuesday, April 21, 1964.

JOSEPH P. LORDI
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD OF MINORITY STOCKHOLDER - PENALTY DEFERRED TO AVOID PUBLIC INCONVENIENCE - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

C.A.R. CORPORATION
t/a SCHILLIG'S BLACK HORSE FARMS
4th Ave. & N. Black Horse Pike
Mount Ephraim, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-1, issued by the Board of Commissioners of the Borough of Mount Ephraim.

Anthony M. Lario, 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 October 14, 1963, it possessed alcoholic beverages in four bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Commissioner for fifteen days effective July 9, 1946, for similar violation. Re C. A. R. Corporation, Bulletin 718, Item 10. In addition, the license of John J. Schillig, vice-president and minority stockholder of the licensee corporation, t/a Schillig's Escort Bar, for premises 2200 Atlantic Avenue, Atlantic City, was suspended by the Director for sixty-five days effective March 5, 1963, for permitting indecent entertainment and hostess activity and employing a non-resident without employment permit. Re Schillig, Bulletin 1496, Item 5; Bulletin 1503, Item 2.

Even assuming, as claimed by the licensee without supporting proof, that the contents of the bottles were tampered with by a disgruntled, unidentified, former employee, this constitutes no defense. Cedar Restaurant & Cafe Co., Inc. v. Hock, 135 N.J.L. 156; reprinted in Bulletin 748, Item 9. Nor does it constitute mitigation warranting the imposition of less than the established minimum penalty customarily imposed in similar cases since patrons are defrauded to the same extent by being served something other than ordered whether the substitution be made with or without the knowledge of the licensee. As was said in Re C. A. R. Corporation, supra:

"...a licensee is held strictly accountable for any 'refills' found in its stock of liquor."

The prior record of suspension of license for similar violation occurring more than ten years ago disregarded but considering the prior record of suspension of license of John J. Schillig for dissimilar violation occurring within the past five years (cf. Re Pastrana's Bar, Inc., Bulletin 1505, Item 5), the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re DiNatale, Bulletin 1545, Item 7.

I am advised by the licensee and am satisfied that present imposition of the penalty of suspension will work inconvenience to substantial numbers of the general public who will attend scheduled social affairs at the licensed premises on numerous dates between now and June 27, many of which affairs involve attendance of several hundreds of persons. Hence, the imposition of the penalty will be deferred until after the conduct of these scheduled social affairs. Cf. Re Short Hills Club, Bulletin 1516, Item 7; Re Uncle Milt's, Inc., Bulletin 1501, Item 6.

Accordingly, it is, on this 1st day of April, 1964,

ORDERED that, pursuant to Rules 2 and 3 of State Regulation No. 16, any renewal license that may be granted by the Board of Commissioners of the Borough of Mount Ephraim to C. A. R. Corporation, t/a Schillig's Black Horse Farms, for premises 4th Avenue and N. Black Horse Pike, Mount Ephraim, or to any transferee, for the licensing year 1964-65, shall be and remain under suspension from 3:00 a.m. Wednesday, July 1, 1964, to 3:00 a.m. Tuesday, July 21, 1964.

JOSEPH P. LORDI
DIRECTOR

10. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

MAMIE TARTER
t/a COLONIAL COCKTAIL LOUNGE
801 Kaighn Avenue
Camden 3, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-194, issued by the Municipal
Board of Alcoholic Beverage Control
of the City of Camden.

Licensee, Pro se.

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 6, 1964, she sold two 6-packs and seven quart bottles of beer to a minor, age 17, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Falciani, Bulletin 1533, Item 7.

Accordingly, it is, on this 6th day of April, 1964,

ORDERED that Plenary Retail Consumption License C-194, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Mamie Tarter, t/a Colonial Cocktail Lounge, for premises 801 Kaighn Avenue, Camden, be and the same is hereby suspended for fifteen (15) days, commencing at 7:00 a.m. Monday, April 13, 1964, and terminating at 2:00 a.m. Tuesday, April 28, 1964.

JOSEPH P. LORDI
DIRECTOR

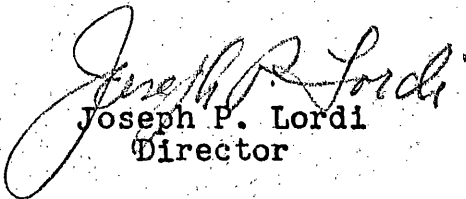
11. STATE LICENSES - NEW APPLICATIONS FILED.

Richard C. Berardo, t/a Town Beverage, 263 Walker St. and rear of 265 Walker St., Fairview, N. J.

Application filed May 14, 1964 for person-to-person transfer of State Beverage Distributor's License SBD-10 from Frank J. Accomando.

Lloyd Beverage Co., Inc., 80 Parker Avenue, Trenton, N. J.

Application filed May 15, 1964 for place-to-place transfer of State Beverage Distributor's License SBD-7 from 12 Maclean St., Princeton, N. J.


Joseph P. Lordi
Director