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

Director

BULLETIN 1859 June 5, 1969

TABLE OF CONTENTS

ITEM

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Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
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1. APPELLATE DECISIONS - KAZNICA v. PATERSON.

VICTORIA P. KAZNICA & ROBERT KAZNICA t/a KAZNICAIS,	)	
Appellants,	)	ON APPEAL CONCLUSIONS AND ORDER
v.	)	
BOARD OF ALCOHOLIC BEVERAGE CONTROL FOR THE CITY OF PATERSON,	)	
Respondent.	)	

Sellinger & Chester, Esqs., by Robert H. Chester, Esq., Attorneys for Appellants
Joseph L. Conn, Esq., by Samuel K. Yucht, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent whereby it suspended appellants' plenary retail distribution license for premises 586-588 - 21st Avenue, Paterson, for fifteen days effective July 22, 1968, after finding appellants guilty in disciplinary proceedings of the following charge:

> "On Saturday, June 1, 1968, at approximately 9:45 p.m., you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of an alcoholic beverage, directly or indirectly to a person under the age of 21 years, viz; Ola ---, age 16; in violation of Rule 1 of State Regulation No. 20."

Upon the filing of the appeal an order dated July 22, 1968 was entered by the Director staying the effect of the suspension pending the determination of the appeal.

Appellants' petition of appeal alleges that the action of respondent was unreasonable in that it was "erroneous in fact and in law."

Respondent's answer denies the aforesaid allegations and avers that its action was "proper both as to the factual determination of guilty and as to the penalty imposed."

Both parties agreed to present this appeal solely upon the stenographic transcript of the hearing before respondent, pursuant to Rule 8 of State Regulation No. 15. No additional testimony was taken in connection herewith.

It appears from the testimony of Ola --- that he was sixteen years of age when on June 1, 1968 he purchased a half-pint of Bacardi rum at appellants' licensed premises; that, when he came out of the premises, he was stopped by a police officer who, after ascertaining that he was a minor, accompanied him to appellants' liquor store where Robert Kaznica (hereinafter Kaznica), when questioned by the officer, admitted the sale.

On cross examination Ola testified that he saw a man known to him as "Bugaloo" purchase a fifth of Bacardi rum and some beer but "I wasn't paying attention" to him when he left. He also saw "this old man ahead of me counting change on the counter." When asked by appellants' attorney if the said man was in the room when the proceeding was being heard, Ola identified Harold N. Oliver, saying "I think it's him, but I can't remember because he was counting change on the counter."

When questioned by Andrew Bengert (a member of respondent Board) concerning the purchase of the rum, Ola stated that he personally bought the half-pint of rum, paying $1.60 for the item, and it was put "in a little bag" which Ola had in his pocket, where it was found by the police officer. Ola further stated that he was not questioned regarding his age by Kaznica.

Police Officer Dominic J. Trifari testified that he and Sergeant Cennamano were seated in a police car parked "a block and a half from Kaznica's store" when Ola was observed leaving the premises; that Ola walked in an easterly direction toward the officers and, when he reached the car, "we noticed in his jacket he had a brown paper bag and the head of the bottle was sticking out of it, the top of it;" that Ola was called to the car and asked his age and in response thereto "said he was twenty-two or twenty-three;" that Ola was asked for identification and produced a birth certificate which "showed the boy to be sixteen years old." As a result of further questioning Ola was taken to appellants' licensed premises from which he was initially observed leaving; that, upon entering, Mr. Oliver was seen, as were two other people; that Kaznica was called and, when questioned about the matter, said that Ola "had been in there a short time earlier and that he had purchased a half a pint of rum; that he paid $1.60 for it; that he had put it in a bag;" that, when Officer Trifari asked Kaznica if he had asked Ola for proof of age, Kaznica said that he had not.

Robert Kaznica (one of the appellants) testified that he remembered Ola entering the liquor store on June 1 with an older man and that the said man purchased "a quart of Bacardi Rum and a half a pint of Bacardi Rum and a can of Colt 45 beer;" that "I put the pint, the half-pint in a small number four bag and I put the quart in a big brown bag and I put them together along with the can of beer. It is my standard practice when I put two bottles together, I always put one bag to insulate the other bag;" that the older man left with the boy; that he did not sell anything to Ola.

On cross examination concerning the alleged statement made on June 1 to Officer Trifari that he sold rum to Ola, Kaznica said, "Frankly, sir, I don't know what I admitted, because the sight of the police officer, when they walked into the store, I just got excited, you know. I don't honestly recall admitting that. I had admitted, to be honest with you, that the boy was in the store. I do remember the boy."

Harold N. Oliver testified that on June 1 he was in appellants' liquor store when Ola entered with an older person; that "the older person made the purchase" and Kaznica placed "a small bottle in the small bag and he put the larger bottle in a larger bag and put the smaller bottle in the larger bag with the can of beer;" that "I saw the older man pick up the bag and the younger fellow headed toward the door first; the older man after him" but he did not see them go out the door.

On cross examination Oliver said that he has known appellants since 1929, at which time Oliver had moved to Paterson.

We are dealing in this matter with a purely disciplinary action and such action is civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951). Thus the proof must be supported by a fair preponderance of the credible evidence. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956).

The testimony in this matter is somewhat conflicting. However, I am satisfied with the authenticity of Ola's testimony that he purchased rum at appellants' licensed premises. He identified Kaznica as the person who made the sale of the alcoholic beverage to him and, in the presence of Officer Trifari whose testimony corroborated that of Ola, Kaznica acknowledged that he had done so. Kaznica, in attempted explanation, testified that he did not know what he had admitted to Officer Trifari as he (Kaznica) was excited at the time.

I am not impressed with the testimony of either Kaznica or Oliver concerning what occurred at the time in question. The Director's function in a matter of the kind now under consideration is not to reverse the determination of the local issuing authority unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by respondent Board. Schulman v. Newark, Bulletin 1620, Item 1. I therefore find that, under the circumstances present herein, there has been sufficient proof to establish appellants' guilt. I conclude that appellants have failed to meet the burden that respondent's action was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15.

It is therefore recommended that an order be entered affirming respondent's action, dismissing the appeal and fixing the effective dates for the suspension of license imposed by respondent and stayed pending the entry of the order herein.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the record, including the transcript of the testimony and the Hearer's report, I adopt the conclusions and recommendations of the Hearer as my conclusions herein.

Accordingly, it is, on this 2nd day of April, 1969,

ORDERED that the action of respondent be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Distribution License D-57, issued by the Board of Alcoholic Beverage Control for the City of

Paterson to Victoria P. Kaznica and Robert Kaznica, t/a Kaznica's, for premises 586-588 - 21st Avenue, Paterson, be and the same is hereby suspended for fifteen (15) days, commencing at 9:00 a.m. Wednesday, April 9, 1969, and terminating at 9:00 a.m. Thursday, April 24, 1969.

JOSEPH M. KEEGAN
DIRECTOR

2. APPELLATE DECISIONS - 111 PARK STREET CORPORATION v. ORANGE.

111 PARK STREET CORPORATION, t/a The Galaxy,	)	
Appellant,	)	ON APPEAL
v.	)	CONCLUSIONS AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF ORANGE,	)	
Respondent.	)	

Albert L. Levy, Esq., Attorney for Appellant
Joseph L. Magrino, Esq., by Phillip F. Guidone, Esq., Attorney for Respondent
Thomas P. Kelly, Esq., Attorney for Objectors

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal challenges the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Orange (hereinafter Board) which by resolution and order dated July 24, 1968 revoked appellant's plenary retail consumption license for premises 111 Park Street, Orange.

The resolution sets forth the following:

"WHEREAS, the above licensee having been notified that a hearing was to be held to determine whether the license held by 111 Park Street Corp. should be renewed for the year 1968 and:

"WHEREAS, a public hearing was held on June 28, 1968 and on July 2, 1968 and;

"WHEREAS, the Municipal Board of Alcoholic Beverage Control of the City of Orange having issued said license for the year 1968 subject to its decision in this matter and:

"WHEREAS, the testimony having established that the licensee did allow permit or suffer in or upon the licensed premises, foul, filthy, indecent and obscene language, brawls, act of violence, disturbance and unnecessary noise and did allow permit and suffer the licensed place of business to be conducted in such a manner as to become a nuisance in violation of State regulation 20 rule #5.

"It is therefore on this 24th day of July, 1968: on motion duly made and seconded.

"RESOLVED AND ORDERED, that License No. C 25 heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to 111 Park St. Corp. for premises at 111-113 Park Street, Orange, New Jersey be revoked effective July 31, 1968 at 2:00 a.m.

"And it is further

"RESOLVED AND ORDERED, that the licensed premises located at 111-113 Park Street, Orange, New Jersey be and the same hereby is declared ineligible to become the subject of any further license of any kind or class under the Alcoholic Beverage Law, during the period from July 31, 1968, at 2:00 A.M., the effective date of said revocation, to August 1, 1969, at M."

In its petition of appeal appellant alleges that the said action was erroneous for reasons which may be briefly summarized as follows: (a) since the license was renewed for the current licensing period, the Board had no authority "to rescind or revoke said license in the manner so done;" (b) the Board failed to comply with R.S. 33:1-31 in that it did not serve notice of charges and have a hearing thereon before taking the said summary action (revocation of the said license); (c) the evidence did not support the determination that the appellant "did allow, permit or suffer in or upon the premises, foul, filthy, indecent and obscene language, brawls, acts of violence, disturbances and unnecessary noise" so as to constitute a nuisance; (d) the determination of the Board was unlawful, arbitrary, capricious and contrary to the weight of the credible evidence.

In its answer the Board denies the substantive allegations except to admit that "on or about June 28, 1968, that the application for renewal was granted."

Upon the filing of the appeal the Director entered an order staying the order of revocation pending the determination of the appeal.

This is an appeal de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded both parties to present testimony herein and cross-examine witnesses.

Briefly the facts are as follows: Appellant made application for renewal of its license and complied with the statutory requisites. Objections having been filed to the said renewal, the appellant was notified on June 25, 1968 to appear on June 28, 1968 for a hearing on its said application. Nothing in the said notice indicated that any charges were being made against the licensee nor did the said notice of hearing set forth any charges against which appellant would be required to defend itself.

The hearing on the application for renewal was held on June 28, 1968 and, after numerous witnesses testified, the hearing was adjourned to July 2, 1968, at which time further testimony was taken. In the interim appellant's application for renewal of its said license was granted and a license issued, apparently with the "condition" that the renewal was subject to the final determination of the Board on the said charges. The minutes of the Board's action with respect to the said renewal were not introduced into evidence at this hearing so that there is no definitive statement which has been produced before me with respect to the alleged "condition."

On June 24, 1968 the Board adopted the resolution and order as hereinabove set forth revoking the said license effective July 31, 1968 at 2 a.m.

The rule is well established that, when an issuing authority reaches a final determination on an application for a license or renewal thereof, it then has no jurisdiction to reconsider its action at a subsequent meeting in the absence of mistake of law or fact or fraud perpetrated upon it (not claimed herein). Cascio v. Roselle Park, Bulletin 1579, Item 1; Ashen v. Elizabeth, Bulletin 1553, Item 2; Essex County Retail Liquor Stores Assn. v. Newark et al., Bulletin 1457, Item 3; Lantz v. Hightstown, 46 N.J.L. 102; White v. Atlantic City et al., 62 N.J.L. 644. This doctrine has been followed in this Division since the beginning of its administration of alcoholic beverages control. See Re Hendrickson, Bulletin 47, Item 10; Plager v. Atlantic City, Bulletin 80, Item 11; Tyler's Country Club, Inc. v. Woodbridge, Bulletin 1311, Item 1. The "condition" presumably accompanying the said renewal is not such condition as contemplated by R.S. 33:1-32. That section reads:

> "Subject to rules and regulations, each issuing authority by resolution, first approved by the commissioner [now director], may impose any condition or conditions to the issuance of any license deemed necessary and proper to accomplish the objects of this chapter and secure compliance with the provisions hereof, and all such licenses shall become effective only upon compliance with the conditions so stated and shall be revocable for subsequent violation thereof." (Emphasis supplied)

Manifestly, the alleged condition herein, which relates to a continued hearing on the said application, after the actual issuance of the license herein, does not fall within the purview of the aforementioned statute.

A careful reading of the resolution purportedly revoking the appellant's license makes it abudnantly clear that the Board intended to take action upon specific charges as in disciplinary proceedings rather than upon the application for renewal. It will be noted that the resolution cites a specific charge and makes a determination that the appellant was guilty thereof. It may well be that such determination could be sustained based on the preponderance of the credible proofs, but only if the procedural steps preliminary to the consideration of such charges were taken by the Board. However, this was not done. In order for the Board to consider such charge or charges it is required to comply with the following provisions of R.S. 33:1-31:

> "No suspension or revocation of any license shall be made until a 5-day notice of the charges preferred against the licensee shall have been given to him personally or by mailing the same by registered mail addressed to him at the licensed premises and a reasonable opportunity to be heard thereon afforded to him."

It is readily apparent that no proper and timely notice of charges was preferred and served upon the appellant. Thus the appellant was not statutorily afforded due process and a fair opportunity to meet the said charges. The fact that witnesses were produced by the appellant both at the hearing before the Board and at this

plenary de novo hearing does not relieve the Board of its statutory obligation in this respect, and its order of revocation is therefore fatally defective. See Tyler's Country Club, Inc. v. Woodbridge, supra.

In Pepe and Ferrazano v. River Vale, Bulletin 1198, Item 2, the local issuing authority renewed the applicant's license and in the same resolution suspended the license for thirty days "for conduct in the operation of the premises heretofore, which, in the opinion of the Township Committee, is not in the best interest of the community." On appeal to the Director the appellants alleged that the action of the Township Committee was erroneous because no charges were ever served by the respondent upon the appellants. The Director held that the suspension imposed may not be viewed as a "'condition' within the meaning of the term as used in R.S. 33:1-32." He cited Hoffman v. Orange and DeLascia, Bulletin 598, Item 7, which pointed out that the action of an issuing authority in renewing a license and imposing a suspension without preferring charges is improper. The Director consequently held that, if violations have been committed by the appellants, the local issuing authority may institute disciplinary proceedings against the licensees but had no jurisdiction to impose a penalty on renewal without preferring charges. The basic principle enunciated in that action is applicable in the matter sub judice.

Since I conclude that the Board made a final determination with respect to the renewal application, and thereafter revoked the said license without complying with the statutory requisites as delineated in R.S. 33:1-31, it is unnecessary to consider the merits of the substantive charges.

It is therefore recommended that the action of the Board be reversed, without prejudice to its right to institute disciplinary proceedings in compliance with the procedural statutory prerequisites.

In view of the voluminous testimony of witnesses reflected in the transcript, it is further recommended that, in the event disciplinary proceedings are instituted by the Board against the appellant for suspension or revocation of its license, the transcript and exhibits herein be made available to the Board for its consideration at the hearing therein, with both parties afforded opportunity to introduce such supplemental testimony as would afford a full and fair hearing on the merits.

Conclusions and Order

Exceptions to the Hearer's report, with supportive argument, were filed by the attorney for the respondent pursuant to Rule 14 of State Regulation No. 15.

I have carefully considered the entire record herein, including the transcript of the proceedings, the exhibits, the Hearer's report and the exceptions thereto filed by the respondent's attorney. I find the exceptions to be without merit, concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 8th day of April 1969,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Orange be

and the same is hereby reversed without prejudice to its right to institute disciplinary proceedings upon compliance with all statutory prerequisites; and it is further

ORDERED that, in the event that such proceedings are instituted, the transcript and exhibits herein shall be made available to the Board for its consideration at the hearing thereof, with both parties afforded the opportunity to introduce such supplemental testimony as would afford a full and fair hearing on the merits.

JOSEPH M. KEEGAN
DIRECTOR

3. APPELLATE DECISIONS - SEIDEL v. HIGHTSTOWN.

IRVING SEIDEL, t/a REX BAR,	)	
Appellant,	)	ON APPEAL
v.	)	CONCLUSIONS AND ORDER
COMMON COUNCIL OF THE BOROUGH OF HIGHTSTOWN,	)	
Respondent.	)	

Leonard A. Coyle, Esq., Attorney for Appellant
Mason, Griffin & Moore, Esqs., by Hervey S. Moore, Jr., Esq., Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the denial by respondent Common Council of the Borough of Hightstown (hereinafter Council) of an application for a renewal of his plenary retail consumption license for the period expiring June 30, 1969, and from its denial (by non-action thereon) of the appellant's purported application for a place-to-place transfer of the said license from premises located at 128 Mercer Street to premises designated as Lots 24 and 25 on Academy Street, Hightstown.

The adopted resolution dated June 5, 1968, sets forth in its pertinent part:

> "BE IT RESOLVED, by the Mayor and Council of the Borough of Hightstown, that the application of Irving Seidel for renewal of his Plenary Retail Consumption license is hereby denied, as the renewal application was not in accordance with the provisions of R.S. of N.J. 33:1-12.13, in that the application does not cover the same premises.
>
> "BE IT FURTHER RESOLVED that the Clerk and Treasurer of the Borough of Hightstown are hereby authorized to return the license fee of $1,000.00 to Irving Seidel."

In his petition of appeal appellant contends that he filed an application for both a transfer to proposed premises on

Academy Street, Hightstown, and renewal thereat, and met the statutory prerequisites. He alleges that his former licensed premises located on Mercer Street were demolished after the Borough of Hightstown obtained possession through condemnation proceedings under its urban renewal program. He further asserts that, although the Council denied his application for renewal, it failed or refused to act upon his application for a place-to-place transfer. He therefore maintains that the action of the Council was erroneous and should be reversed.

The Council admits in its answer that it denied the appellant's application for renewal for the reasons set forth in the aforementioned resolution. It denies that the appellant applied for a place-to-place transfer and states that in fact no request for transfer was made to the Council. Council further defends that appellant did not comply with the statute or Rule 2 of State Regulation No. 6 governing the procedure for an application for a place-to-place transfer.

This appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15.

I

The crucial and dispositive issue herein is whether the appellant in fact filed an application for a place-to-place transfer so as to confer jurisdiction on the Director in this appeal. My examination of the entire record persuades me that no application for place-to-place transfer was filed, and that the purported application was fatally defective. The application filed with the municipal clerk on or about May 14, 1968 (a copy of which is attached to the answer) reflects the fact that the only square marked with an X at the top of the application (indicating the nature of the application) is one for a renewal of the license. No mark was placed in the box relating specifically to a transfer although in answer to Question 6 which asks: "Describe in detail building or buildings containing the premises to be licensed: (a) Type of construction" it was answered: "Asking for transfer New Building Brick & Block." This is the only indication in the application that a transfer was sought.

Furthermore, the Notice of publication that relates to the application (introduced in evidence as A-2) sets forth that an application was made for a renewal for premises Lots 24 and 25 Academy Street, and nowhere in the said notice does it mention any intention to apply for a place-to-place transfer, as required by Rule 4 of State Regulation No. 6. Rule 4 sets up the specific form of notice required to be published and states that such notice "shall be published in the following form" (undersoring added). The purpose of this notice is to apprize the public of the fact that a place-to-place transfer is contemplated, and both the premises from which the transfer is to be made and the premises to which the license is to be transferred must be stated.

Moreover, the appellant admits that the premises on Lots 24 and 25 Academy Street contain an aluminum shed and that he intends to build a building of brick and block in which the licensed business would be operated. However, he failed to file plans of the building to be constructed with the said application. Appellant admitted that he did not file the plans with the application and suggested that plans filed over a year ago with the Zoning Board of Adjustment were the ones contemplated to be used for construction of this building. These plans were not

submitted into evidence. However, the filing of plans with the Zoning Board of Adjustment on a previous occasion does not meet the requirements of the rules and regulations of this Division.

The requirement of filing with the application plans for a building to be constructed at the proposed new site, and inserting notice thereof in advertising such notice of application (Rules 2 and 4 of State Regulation No. 6) is to enable the local issuing authority and any other person interested therein to determine if such proposed building will be sufficient and satisfactory. Passarella v. Atlantic City et al., Bulletin 818, Item 1.

Failure to file such plans with the application and to insert notice that they have been filed when advertising the notice of application, in a case where the building is not yet constructed, deprives the local issuing authority of jurisdiction to act upon the application. Birdsall v. Mullica, Bulletin 1320, Item 3; Lang v. Clifton, Bulletin 1367, Item 6; Woodbridge Twp. Liquor Dealers, Inc. & Starrick v. Woodbridge and Chicken Barn, Inc., Bulletin 1315, Item 2; Memorial Presbyterian Church v. Vineland and Lee Taylor's, Inc., and Mendini and Tubertini v. Vineland and Lee Taylor's, Inc., Bulletin 1346, Item 2.

That the appellant intended merely to file an application for renewal is further manifested by the fact that he tendered the fee for such renewal in the sum of $1,000 but did not accompany the application with the $5 transfer fee required with an application for such transfer. The appellant asserts that he had no legal advice in preparing this application and that his true intention was to file both an application for renewal and a place-to-place transfer. However, he admits that he has been in the tavern business for eighteen years and that in 1966 he made an application for a transfer of his property in the proper form required by State Regulation No. 6.

Finally, as a practical matter, it is clear that, even if a valid application for a transfer were approved by the Council, the appellant could not operate under the said license at the proposed new premises because it would be contrary to the zoning restrictions at thosepremises. In this connection it should be noted that the appellant had made application to the Zoning Board of Adjustment of this Borough to use the premises at 24-25 Academy Street for a tavern and bar in June 1967. This application was denied by the Zoning Board of Adjustment on July 26, 1967. No appeal was taken by the appellant from the Zoning Board's decision. The appellant also met informally with members of the Council on February 28, 1968 and was specifically advised that the Council would not approve of such transfer because of the zoning restrictions.

We are conversant with the established principle that a transfer of a license or the approval thereof by the issuing authority is not improper because a zoning ordinance prohibits a liquor licensed premises at the proposed location. Lubliner et al. v. Paterson et al., 59 N.J.Super. 419 (1960), aff'd 33 N.J. 428. The grant of a transfer does not permit the licensee to operate without complying with all the applicable statutes and ordinances. However, realistically, the issuing authority need not be blinded by the fact that such transfer would be an exercise in futility.

In the circumstances of this matter I conclude that no valid application was made for a place-to-place transfer by the

appellant herein, and that his purported application for such place-to-place transfer was patently and fatally defective.

II

Having determined that the appellant had not in fact filed an application for a place-to-place transfer, but that the said application was merely one for a renewal of his plenary retail consumption license, we now examine the action of the Council with respect thereto.

It appears that his present premises were acquired by the Urban Renewal Authority of the Borough and were accordingly demolished. Since the renewal application was made for premises other than those theretofore licensed, it was violative of the provisions of R.S. 33:1-12.13 in that it did not cover the same licensed premises. Thus the Council properly denied the said application. Furthermore, and completely dispositive of this aspect of the appeal is the fact that, although the appellant was notified of the action of the Council on June 24, 1968, the appeal herein was taken on or about November 15, 1968. Rule 3 of State Regulation No. 15 provides that an appeal from the refusal to renew a license must be taken within thirty days after the service or mailing of notice by the municipal issuing authority of the action appealed from. It is quite obvious that appellant's time for appeal from the denial of the renewal has long since expired. Therefore the Director has no jurisdiction to entertain an appeal from the action of the Council. Hess Oil & Chemical Corporation v. Doremus Sport Club, Newark and Division of Alcoholic Beverage Control, 80 N.J. Super. 393, reprinted in Bulletin 1531, Item 1.

Although I am satisfied that the Director has no jurisdiction to entertain this matter, I have nevertheless considered, on an advisory basis, the entire matter on the merits and find that the Council acted circumspectly and properly in denying the application. Even if the same were in proper form and complied with all legal requirements, the testimony of Mayor Ernest B. Turp and Chief of Police Lawrence W. Archer is convincingly persuasive that the proposed location of a tavern and bar at Lots 24 and 25 of Academy Street would be inimical to the public interest because the Borough had recently created a public park immediately adjoining the said premises. This park is frequented by children of the Borough who use the public playground in the said park, and it was considered undesirable and unsuitable for a tavern and bar to be located immediately adjacent thereto.

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

Conclusions and Order

No exceptions were filed to the Hearer's report pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the argument of counsel in summation, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 8th day of April 1969,

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

JOSEPH M. KEEGAN
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LOTTERY (RAFFLE) - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR RECORD DISREGARDED BECAUSE OF INTERVENING CHANGE OF STOCKHOLDERS - LICENSE SUSPENDED FOR 70 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against GREEN LANTERN, INC. 325 Sixteenth Avenue Newark, New Jersey Holder of Plenary Retail Consumption License C-836 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark	CONCLUSIONS AND ORDER

Robert C. Gruhin, Esq., Attorney for Licensee
Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) and (2) on divers dates between November 26 and December 12, 1968, it permitted acceptance of numbers bets and on December 9, 1968 the conduct of a raffle on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20, and (3) in its current application for license failed to disclose its prior record of license suspension, in violation of R.S. 33:1-25.

Licensee has a previous record of suspension of license by the Director for twenty days effective February 4, 1964, for permitting acceptance of numbers and horse race bets, non-disclosure of which being the subject of the third charge. Re Green Lantern, Inc., Bulletin 1553, Item 8. However, a complete change of stockholders in the licensee corporation has occurred in the meantime.

The prior record of suspension disregarded in admeasuring the penalty by reason of intervening change of stockholders (Re Vienna Cafe, Bulletin 1835, Item 6), the license will be suspended on the first and second charges for sixty days (Re Saunders, Bulletin 1842, Item 2) and on the third charge for ten days (Re Nazario, Bulletin 1840, Item 3), or a total of seventy days, with remission of five days for the plea entered, leaving a net suspension of sixty-five days.

Accordingly, it is, on this 1st day of April, 1969,

ORDERED that Plenary Retail Consumption License C-836, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Green Lantern, Inc. for premises 325 Sixteenth Avenue, Newark, be and the same is hereby suspended for sixty-five (65) days, commencing at 2:00 a.m. Tuesday, April 8, 1969, and terminating at 2:00 a.m. Thursday, June 12, 1969.

JOSEPH M. KEEGAN
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN LICENSE APPLICATION - FRONT - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT AFTER 25 DAYS UPON PROOF OF CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Disciplinary Proceedings against	)
JOSEPH DE ORIO t/a Tubby's Walk Inn Restaurant 254 Walker Street Cliffside Park, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-34, issued by the Mayor and Borough Council of the Borough of Cliffside Park	)

Martino & Zweiman, Esqs., by John V. Martino, Esq., Attorneys for licensee
Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that by false statements in the current license application he concealed (1) and (2) the fact that Ernest and Mary Davino were the real and beneficial owners of the licensed business, and (3) the fact that Sylvia Magrino and George DeStefano had a security interest in the equipment of the licensed business, all in violation of R.S. 33:1-25, and that (4) he aided and abetted the Davinos to exercise the rights and privileges of the license, in violation of R. S. 33:1-52.

Had the unlawful situation been corrected during the pendency of this proceeding, and considering the absence of any prior record, the license would be suspended on the first, second and fourth charges for twenty days (Re Pappanastasiou, Bulletin 1826, Item 4) and on the third charge for ten days (Re Through Corp., Bulletin 1732, Item 3), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

However, since the unlawful situation has not been corrected, the license will be suspended for the balance of its term, with leave to the licensee or any bona fide transferee to apply for lifting of the suspension whenever the unlawful situation has been corrected, but such lifting to be effective in no event sooner than twenty-five days from the date of the commencement of the suspension herein.

Accordingly, it is, on this 31st day of March 1969,

ORDERED that Plenary Retail Consumption License C-34, issued by the Mayor and Borough Council of the Borough of Cliffside Park to Joseph De Orio, t/a Tubby's Walk Inn Restaurant, for premises 254 Walker Street, Cliffside Park, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1969, commencing at 3 a.m. Monday, April 7, 1969, 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 3 a.m. Friday, May 2, 1969.

JOSEPH M. KEEGAN
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SAIE BELOW FILED PRICE - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
NORSEL LIQUOR COMPANY)
11 West Park Avenue) CONCLUSIONS AND ORDER
Merchantville, N. J.)
)
Holder of Plenary Retail Distribution License D-2 issued by the Borough Council of the Borough of Merchantville)

Joseph Wm. Cowgill, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on divers dates between November 26 and December 9, 1968, it sold numerous orders of various kinds of alcoholic beverages below filed price, in violation of Rule 5 of State Regulation No. 30.

Reports of investigation disclose that, among others, two orders totaling $642.29 and $404.02 were sold with impermissible discount afforded.

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 Sitar, Bulletin 1659, Item 7.

Accordingly, it is, on this 2nd day of April 1969,

ORDERED that Plenary Retail Distribution License D-2, issued by the Borough Council of the Borough of Merchantville to Norsel Liquor Company for premises 11 West Park Avenue, Merchantville, be and the same is hereby suspended for fifteen (15) days, commencing at 9:00 a.m. Wednesday, April 9, 1969, and terminating at 9:00 a.m. Thursday, April 24, 1969.

JOSEPH M. KEEGAN
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CHARLES AND MARY KELLY)
t/a Charley Kelly's)
1139 Raritan Road
Clark Township)
PO Rahway, New Jersey)

Holders of Plenary Retail Consumption License C-2 issued by the Municipal Council of the Township of Clark)

CONCLUSIONS AND ORDER

Licensees, by Charles Kelly, Pro se
Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on March 13, 1969, they sold drinks of beer to two minors, both age 18, in violation of Rule 1 of State Regulation No. 20.

Licensee Charles Kelly has a previous record of suspension of license then held for premises 142 Raritan Road, Clark Township, by the municipal issuing authority for two days effective December 2, 1940, for permitting gambling on the licensed premises.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re J.J.C., Inc., Bulletin 1822, Item 6.

Accordingly, it is, on this 2nd day of April, 1969,

ORDERED that Plenary Retail Consumption License C-2, issued by the Municipal Council of the Township of Clark to Charles and Mary Kelly, t/a Charley Kelly's, for premises 1139 Raritan Road, Clark, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. Monday, April 7, 1969, and terminating at 3:00 a.m. Thursday, April 17, 1969.

JOSEPH M. KEEGAN
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 55 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

MAEBEL M. KELLNER
t/a "The Tides"
Highway #35, Shark River Island
112 Brighton Avenue
Neptune, N. J.

Holder of Plenary Retail Cohsumption License C-14 issued by the Township Committee of the Township of Neptune

CONCLUSIONS AND ORDER

Licensee, Pro se
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on November 4, 1968, she possessed alcoholic beverages in six 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 municipal issuing authority for ten days effective October 29, 1951, for ten days effective January 4, 1955, for forty-five days effective January 4, 1956, and for sixty days effective December 9, 1957, all for sale during prohibited hours, and by the Director for twenty-five days effective October 13, 1953 and for twenty days effective April 3, 1962, both for sale to minors. Re Kellner, Bulletin 988, Item 1; Bulletin 1422, Item 5; Bulletin 1447, Item 11.

The license will be suspended for twenty-five days (Re China Chalet, Inc., Bulletin 1831, Item 11), to which will be added thirty days by reason of the record of six prior suspensions of license for dissimilar violations (Re Cohen, Bulletin 1770, Item 3), or a total of fifty-five days, with remission of five days for the plea entered, leaving a net suspension of fifty days.

Accordingly, it is, on this 22nd day of April, 1969,

ORDERED that Plenary Retail Consumption License C-14, issued by the Township Committee of the Township of Neptune to Maebel M. Kellner, t/a The Tides, for premises Highway #35, Shark River Island, 112 Brighton Avenue, Neptune Township, be and the same is hereby suspended for fifty (50) days, commencing at 3:00 a.m. Tuesday, April 29, 1969, and terminating at 3:00 a.m. Wednesday, June 18, 1969.

JOSEPH M. KEEGAN
DIRECTOR

9. STATE LICENSES - NEW APPLICATION FILED.

Carmine M. Prato, t/a Fisher Blvd. Beer & Soda Distributors
1133 Fisher Blvd., Dover Township, PO Toms River, N. J.

Application filed June 2, 1969 for person-to-person and place-to-place transfer of State Beverage Distributor's License SBD-112 from Theodore J. Leitereg, t/a Leitereg Beer & Soda Distributing Co., Rear 106 Matawan Road, Madison Township, PO Laurence Harbor, New Jersey

Joseph M. Keegan
Director