

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

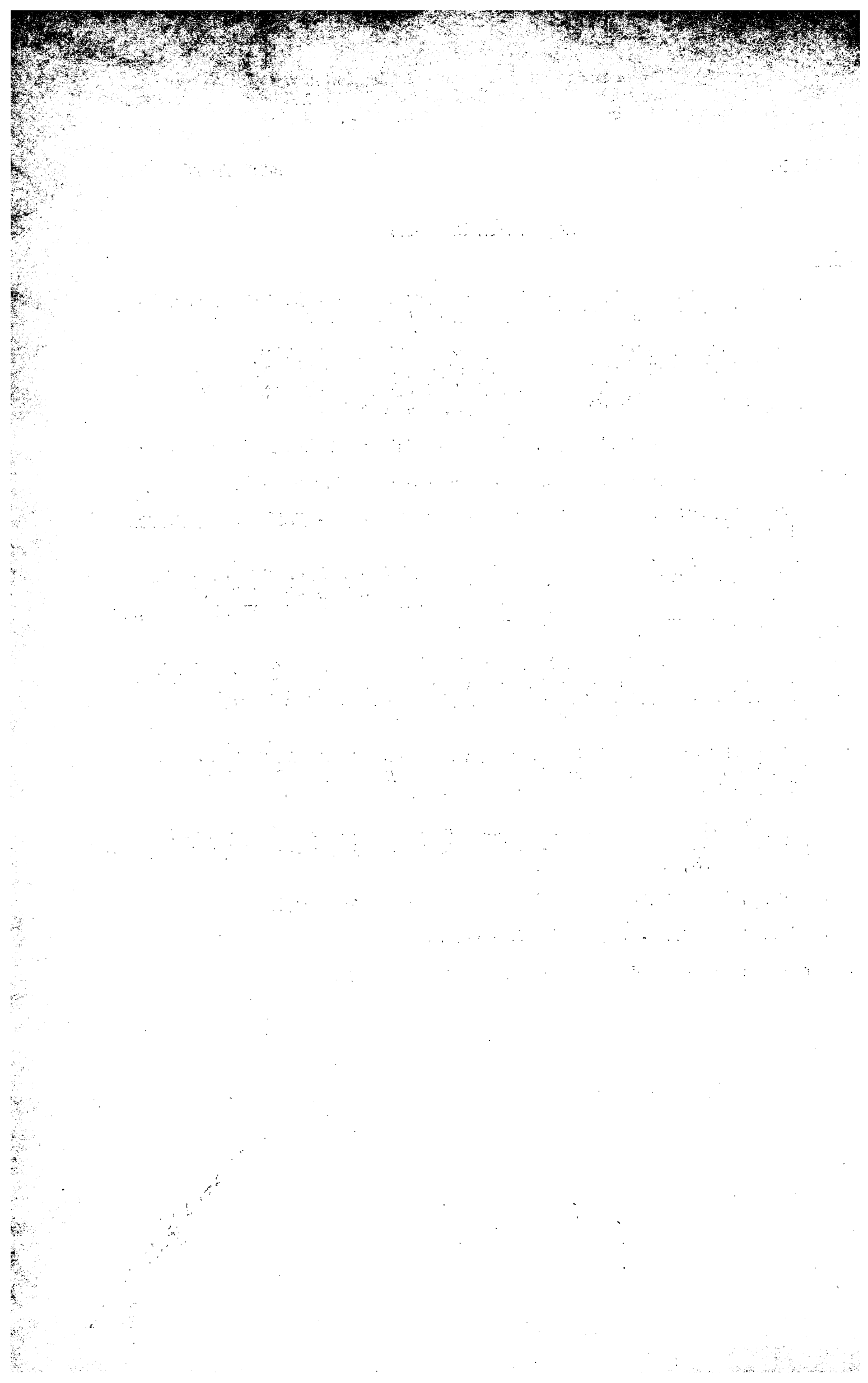
BULLETIN 851

AUGUST 18, 1949.

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 851

AUGUST 18, 1949.

DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR
15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ADAM S. WEAVER)
T/a STAN'S)
White Horse Pike & Spring Road)
Elm, Winslow Township)
P.O. Hammonton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-17 issued by the Township Committee of the Township of Winslow.)

Adam S. Weaver, Defendant-licensee, Pro. Se.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 28 of State Regulations No. 20.

On July 1, 1949, an ABC agent seized on defendant's premises a 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky", when his field test indicated that the contents of said bottle were not genuine as labeled. Subsequent analysis of the contents clearly indicated that the label on said bottle did not truly describe its contents.

Defendant has no prior adjudicated record. I shall, therefore, suspend his license for a period of fifteen days, less five days' remission for the plea entered herein, leaving a net suspension of ten days. See Bulletin 774, Item 2.

Accordingly, it is, on this 1st day of August, 1949,

ORDERED that Plenary Retail Consumption License C-17, issued by the Township Committee of the Township of Winslow to Adam S. Weaver, t/a Stan's, for premises at White Horse Pike & Spring Road, Elm, Winslow Township, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. August 8, 1949, and terminating at 2:00 a.m. August 18, 1949.

ERWIN B. HOCK
Director.

2. DISCIPLINARY PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 17 REQUIRING BONA FIDE INVOICES OR MANIFESTS COVERING SHIPMENT - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against FRANK BILANCIO T/a BILANCIO DISTRIBUTING CO. 62 Butler Street Trenton 10, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-23, issued by the Board of Commissioners of the City of Trenton.

Frank Bilancio, Defendant-licensee, Pro Se. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleads non vult to a charge that he delivered alcoholic beverages in his licensed vehicle without accompanying invoices or manifests, in violation of Rule 3 of State Regulations No. 17.

Defendant admits that on Friday, July 8, 1949, he made deliveries of alcoholic beverages to customers in his licensed vehicle bearing transportation insignia without invoices or manifests covering said shipment, as required by Rule 3 of State Regulations No. 17.

The defendant has no previous adjudicated record. I shall suspend his license for ten days, less five days' remission for the plea entered herein, leaving a net suspension of five days. Cf. Re Hubschman, Bulletin 844, Item 12.

Accordingly, it is, on this 8th day of August, 1949,

ORDERED that Plenary Retail Distribution License D-23, issued by the Board of Commissioners of the City of Trenton to Frank Bilancio, t/a Bilancio Distributing Co., for premises 62 Butler Street, Trenton, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. August 15, 1949, and terminating at 9:00 a.m. August 20, 1949.

ERWIN B. HOCK Director.

3. APPELLATE DECISIONS - CENTER MARKET BAR & GRILL, INC: v. NEWARK.

CENTER MARKET BAR & GRILL, INC.,)

Appellant,)

-vs-

MUNICIPAL BOARD OF ALCOHOLIC)

BEVERAGE CONTROL OF THE CITY OF)

NEWARK,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Alexander Permison, Esq., Attorney for Appellant.

Charles Handler, Esq., by George B. Astley, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it suspended appellant's license C-431, issued for premises at 94 Mulberry Street, Newark, for a period of fifteen days. The suspension was imposed after respondent found appellant guilty in disciplinary proceedings of a charge alleging that it allowed, permitted and suffered a brawl in and upon the licensed premises in violation of Rule 5 of State Regulations No.20.

Upon the filing of the appeal, an order was entered on April 29, 1949, staying the suspension until further order is entered herein.

On January 1, 1949, John, Margaret, Ginny, and a soldier identified as Bill, visited appellant's premises between 5:00 p.m. and 6:00 p.m. After they had had a few drinks, the bartender, Albert DeSantis, refused to serve any more drinks to one of the party. The bartender was probably justified in such refusal because the party had previously visited other taverns where they had also been drinking. There is a serious dispute as to the events which occurred immediately thereafter.

The bar in appellant's premises is so constructed that a customer in the barroom must pass through a door into the kitchen and thence pass through another door between the kitchen and barroom in order to get behind the bar.

At the hearing John testified that, after the refusal, both he and the bartender walked towards the kitchen, with the bar between them, while John was insisting on knowing why the bartender refused to serve. John says he never entered the kitchen or went behind the bar or attempted to strike the bartender. He further testified that the bartender came through the kitchen to the front of the bar and struck him over the back of the head with a baseball bat as he turned away with the intention of leaving the premises. His story is fully corroborated by Margaret.

The bartender's version is that both John and Margaret came through the kitchen to the rear of the bar; that John attacked him and Margaret threw a tray at him, and that he struck John with a stick in defending himself. His story is corroborated to some extent by a fellow-employee and a patron, although the fellow-employee said that Margaret never went behind the bar.

Respondent believed the story told by John and Margaret. So do I. Whatever the instrument used, the blow admittedly struck by the bartender inflicted a wound which required three stitches. The wound was located on the back of the head a few inches above the right ear, and since the bartender is right-handed and admitted wielding the

club with his right hand, it would indicate that the blow was struck from the rear and not in self-defense. It may well be that the bartender had instructed a patron to call the police, but I can find no justification for a subsequent attack with some instrument upon the customer even if the customer was using vile language. As was said in Re Polster, Bulletin 388, Item 10:

"Undoubtedly the bartender was provoked. Who wouldn't be? Names, however, break no bones, and do not excuse a violation of the State Regulation which prohibits brawls and disturbances on licensed premises. If customers become unruly, obstreperous or abusive, the proper procedure is to call the Police, instead of indulging in a punitive expedition to vindicate personal prowess and purge the record of naughty names."

From the evidence I conclude that appellant, by its employee, allowed, permitted and suffered a brawl to occur on its licensed premises and, hence, the action of respondent will be affirmed. Cf. Re Martins Incorporated, Bulletin 576, Item 8.

The suspension will operate against the renewed license issued to appellant for the 1949-50 licensing year. See State Regulations No. 16.

Accordingly, it is, on this 9th day of August, 1949,

ORDERED that the order entered herein on April 29, 1949 be and the same is hereby vacated, effective at 2:00 a.m. August 15, 1949; and it is further

ORDERED that Plenary Retail Consumption License C-431, for the 1949-50 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Center Market Bar & Grill, Inc., for premises 94 Mulberry Street, Newark, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. August 15, 1949, and terminating at 2:00 a.m. August 30, 1949.

ERWIN B. HOCK
DIRECTOR.

4. APPELLATE DECISIONS - BYRNE v. BELLEVILLE AND DeFURIA.

HENRY J. BYRNE,)
)
 Appellant,)
)
 -vs-)
)
 BOARD OF COMMISSIONERS OF THE TOWN)
 OF BELLEVILLE and FREDERICK F.)
 DeFURIA, trading as FREDDIE)
 FARMER'S WINES & LIQUORS,)
)
 Respondents.)
 -----)

ON APPEAL
CONCLUSIONS AND ORDER

Theodore Bellet, Esq., Attorney for Appellant.
Lawrence E. Keenan, Esq., Attorney for Respondent Board of Commissioners.
Max N. Schwartz, Esq., Attorney for Respondent Frederick F. DeFuria.

BY THE DIRECTOR:

This appeal is from the action of respondent Board of Commissioners in granting a transfer of respondent DeFuria's plenary retail distribution license from 527 Joralemon Street to 139-A Washington Avenue, Belleville.

Appellant alleges in substance that (1) the action of respondent Board is arbitrary and capricious because no need existed, nor was there a convenience to be served by permitting respondent DeFuria to operate his liquor establishment at the new location; and (2) that the action of respondent Board of Commissioners was improper and contrary to law because, after entertaining objections at the local hearing, the members retired to another room for the purpose of deliberating in the matter of the transfer application before announcing their decision.

As to appellant's ground No. (1):

Appellant, who holds a plenary retail distribution license for premises at 109 Washington Avenue, produced no witnesses to substantiate his claim that there was no need for a plenary retail distribution license at 139-A Washington Avenue.

Arthur E. Mayer, a Belleville realtor produced on behalf of respondent, testified that the intersection of Washington and Belleville Avenues, the section where respondent DeFuria's new premises are located, is the busiest intersection in the Town of Belleville. Other evidence, adduced at the hearing on appeal, demonstrates that the section in question is a very substantial shopping center. Although a number of licensed premises are located in the vicinity it does not appear that the granting of the instant transfer will aggravate to any appreciable degree the existing concentration of licenses in that area. (See Protos v. Newark and O'Neal, Bulletin 809, Item 5.)

The fact that a transfer of a license may be contrary to the economic interest of another licensee is not a sufficient reason for setting the transfer aside. (See Knast and Krause v. Camden and Eshner, Bulletin 810, Item 2.)

The question whether public convenience and necessity call for the granting of a transfer to premises in a particular section of the community is a matter confided to the sound discretion of the issuing authority. On appeal, the burden of proving that the issuing authority abused its discretion rests upon the appellant. (See Cooperate Service Co. v. Newark et al., Bulletin 813, Item 1.)

The State Director's function in appeals of this type is not to substitute his personal opinion for that of the municipal issuing authority, but to determine whether reasonable cause exists for its opinion and, if so, to affirm. (See Rafalowski v. Trenton, Bulletin 155, Item 8; Ashton v. Hopewell et al., Bulletin 782, Item 11; Koos v. Ocean Township and Harvey, Bulletin 810, Item 4.)

Upon careful consideration of the record before me on this appeal, I cannot find that respondent Board's action approving the transfer here appealed from was arbitrary and unreasonable so as to constitute an abuse of discretion warranting a reversal.

As to appellant's ground No. (2):

There appears to be no merit in appellant's contention that respondent Board's cameral session was improper and contrary to law. It appears, instead, that the hearing on objections was in no wise irregular; and no evidence was presented on this appeal to indicate that respondent's action, granting the transfer, was improperly motivated.

Respondent Board's action will be affirmed.

Accordingly, it is, on this 10th day of August, 1949,

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

ERWIN B. HOCK
Director.

5. COURT DECISIONS - HOPKINS v. NEWARK ET ALS. - ORDER OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-371-48

JOHN J. HOPKINS,)
Appellant,)

-vs-

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
NEWARK, TED'S BAR & GRILL, INC.,)
and ERWIN B. HOCK, Director of the)
Division of Alcoholic Beverage)
Control, Department of Law and)
Public Safety of the State of New)
Jersey,)
Respondents.)

Civil Action

On Appeal from Conclusions and
Order of the Division of
Alcoholic Beverage Control.

Argued July 19, 1949 - Decided Aug. 9, 1949.

Before: McGEEHAN, HANEMAN and PROCTOR, J. J.

Mr. Anthony Giuliano argued the cause for the appellant (Messrs. Giuliano & Giuliano, Attorneys).

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for respondent Erwin B. Hock, Director of the Division of Alcoholic Beverage Control (Theodore D. Parsons, Attorney General, Attorney).

Mr. George B. Astley argued the cause for the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark (Charles Handler, Attorney).

Mr. Samuel R. Blaine argued the cause for respondent Ted's Bar & Grill, Inc.

The opinion of the court was delivered by

PROCTOR, J.A.D.

This is an appeal from an order entered by the Director of the Division of Alcoholic Beverage Control which set aside the action of the respondent, Municipal Board of Alcoholic Beverage Control of the City of Newark, granting the appellant a transfer of a plenary retail consumption license from the premises #113 Broadway to #597 Broadway, City of Newark.

The Newark ordinance, so far as here pertinent, provides "No Plenary Retail Consumption license * * * shall be granted or transferred to other premises within a distance of seven hundred and fifty

(750) feet from an existing licensed premises covered by a Plenary Retail Consumption license * * *."

The premises at #597 Broadway are on the northeasterly corner of Romaine Place and Broadway. Broadway runs from north to south. Romaine Place is a street thirty feet wide, open to vehicular traffic, which enters into Broadway at right angles but does not cross it. Romaine Place contains dwelling houses on both sides and has a sidewalk ten feet wide. The plenary retail consumption licensed premises of respondent, Ted's Bar & Grill, Inc., are located on the westerly side of Broadway at #618 and are diagonally across the street to the north of #597 Broadway a distance of approximately 270 feet. The distance from #597 Broadway to #618 Broadway, measured by crossing Broadway within the extension of the curb and property lines of Romaine Place and thence north along the westerly sidewalk of Broadway is approximately 400 feet. The distance between the two premises measured along the easterly sidewalk of Broadway to Elwood Avenue, which is the next street entering Broadway to the north, thence crossing Broadway by a marked crosswalk where there are traffic signals and thence south along the westerly sidewalk of Broadway exceeds 750 feet. There are no marked crosswalk lines or traffic signals on Broadway at Romaine Place, although on both sides of Broadway at that intersection there are bus stops.

Though the ordinance provides that no license shall be transferred to another premises within a distance of 750 feet from an existing licensed premises, it sets forth no method of measurement. The Municipal Board adopted the method of measurement contained in R. S. 33:1-76, which provides for the minimum distance that must separate licensed premises and churches and schools, viz., that the distance "shall be measured in the normal way a pedestrian would properly walk from the nearest entrance of said church or school to the nearest entrance of the premises sought to be licensed." The Municipal Board decided in applying the statutory formula that the measurement should be made from #597 Broadway north to the intersection of Elwood Avenue and there across Broadway because that intersection had marked crosswalks and traffic signals and thence south to #618 Broadway, and as a result thereof found that the premises were more than 750 feet apart. On this finding the Municipal Board granted the transfer.

On appeal to the Director of the Division of Alcoholic Beverage Control, the Director concluded in applying the method of measurement in the statute above mentioned that the normal way a pedestrian would properly walk from the same starting point would be across the crosswalk at Romaine Place to the westerly side of Broadway and thence northerly to #618 Broadway (Ted's Bar & Grill, Inc.), by which route the distance would be approximately 400 feet. On this conclusion he revoked the action of the Municipal Board.

Assuming, as did the Municipal Board and the Director, that the method of measurement to be used under the ordinance is the same as that set forth in R.S. 33:1-76, we agree with the conclusion reached by the Director that the premises are within a distance of 750 feet from each other. The determination by the Municipal Board, in applying the aforesaid method of measurement, that the measurement should be made only to an intersection where marked crosswalks or traffic signals exist has no support in the law. The type of crosswalk at Romaine Place and Broadway has been declared by our courts to be lawful for pedestrian traffic. See Clarkson v. Ley (E. & A. 1929) 106 N.J.L. 380; see note in 78 A.L.R. 1198; see also R.S. 39:1-1 and R.S. 39:4-34. Therefore, the crosswalk at Romaine Place and Broadway is the normal way that a pedestrian would properly walk.

We conclude that the Director was correct in finding the premises at #597 Broadway, to which the proposed transfer is sought, are within a distance of 750 feet from the existing licensed premises at #618 Broadway.

The order of the Director of the Division of Alcoholic Beverage Control is affirmed.

6. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF ALCOHOLIC BEVERAGES IN RESTAURANT - ALCOHOLIC BEVERAGES AND RESTAURANT FIXTURES AND EQUIPMENT ORDERED FORFEITED - MUSIC BOX AND PIN BALL MACHINE RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on)
May 21, 1949 of a quantity of)
alcoholic beverages, soda and)
various fixtures and furnishings,)
at a restaurant located at 6300)
Magnolia Avenue, in the Township)
of Pennsauken, County of Camden)
and State of New Jersey.)

Case No. 7445

ON HEARING
CONCLUSIONS AND ORDER

-----)
Daniel L. Glickman, trading as Manhattan Novelty Company, Pro Se.
Harry Castelbaum, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages, soda, \$28.25 in cash, and various fixtures and furnishings, itemized in a schedule attached hereto, seized on May 21, 1949 at Joseph Cream's restaurant located at 6300 Magnolia Avenue, Pennsauken, N. J. constitute unlawful property and should be forfeited.

It appears that the property was seized after Cream had sold and served alcoholic beverages to ABC agents in his restaurant on May 19, 20 and 21st. Cream did not hold any license authorizing him to sell or serve alcoholic beverages and the restaurant was not licensed for the sale of alcoholic beverages. Cream gave the agents a signed statement admitting that he sold alcoholic beverages there.

When the matter came on for hearing, pursuant to R.S. 33:1-66, Daniel L. Glickman, trading as Manhattan Novelty Company, appeared and sought return of a music machine and a pin ball machine. Joseph Cream did not appear to oppose forfeiture of the seized property.

It is self-evident that the alcoholic beverages seized in the restaurant were intended for unlawful sale and constitute illicit alcoholic beverages. R. S. 33:1-1(i).

Such illicit alcoholic beverages and all personal property seized therewith in the restaurant constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

However, I am authorized to return property subject to forfeiture to a person who establishes to my satisfaction that he acted in good faith and did not know or have any reason to suspect that alcoholic beverages were being sold unlawfully at the place where his property is kept. R.S. 33:1-66(f).

Mr. Glickman testified that he has had one or more machines in the restaurant since it was opened about three years ago, and that on the periodic occasions when he visited the premises he did not see any alcoholic beverages being sold or on display.

It appears to have been a routine placement of a machine in a business establishment. Joseph Cream's fingerprint records do not disclose any previous violation of any liquor laws. Under the circumstances, I am satisfied that Daniel L. Glickman did not know or have any reason to suspect that Joseph Cream was operating a speak-easy. The music box and pin ball machine will therefore be returned to him upon payment of the costs of their seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 22nd day of August, 1949, Daniel L. Glickman pays the costs of the seizure and storage of the music box and pin ball machine, such items will be returned to him; and it is further

DETERMINED and ORDERED that the balance of the seized property, more fully described in Schedule "A" attached hereto, including the cash, and currency in the machines, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the State Director of Alcoholic Beverage Control.

ERWIN B. HOCK
Director.

Dated: August 12, 1949.

SCHEDULE "A"

- 38 - quart bottles of beer
- 212 - 12-oz. bottles of beer
- 7 - quart bottles of wine
- 6 - 4/5 quart bottles of other alcoholic beverages
- 135 - bottles of soda
- 1 - Rockola Music Box #58840 and currency therein
- 1 - Keeney's Pinball Machine and currency therein
- 14 - chairs
- 4 - tables
- 1 - Coca Cola cooler
- 1 - National Cash Register #1914973-1122 and \$28.25 therein
- 1 - bar
- 38 - drinking glasses
- 4 - measuring pitchers

7. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF ALCOHOLIC BEVERAGES IN DWELLING - ALCOHOLIC BEVERAGES AND FURNITURE ORDERED FORFEITED - APPLICATION FOR RETURN OF PROPERTY BY WIFE OF SPEAKEASY OPERATOR DENIED.

In the Matter of the Seizure) Case No. 7459
 on June 18, 1949 of a quantity)
 of beer, whiskey, wine, soda and)
 various furnishings and fixtures)
 at premises located at the inter-) ON HEARING
 section of Inman and Girard Avenues,) CONCLUSIONS AND ORDER
 Potters Section, in the Township of)
 Raritan, County of Middlesex and)
 State of New Jersey.)

 Samuel Adler, Esq., Attorney for Otis Palmer.
 Harry Castelbaum, Esq., appearing for the Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic and other beverages, and various furnishings and fixtures, itemized in a schedule attached hereto, seized on June 18, 1949 in Otis Palmer's residence located at the intersection of Inman and Girard Avenues, Potters Section, Raritan, New Jersey, constitute unlawful property and should be forfeited.

It appears that the seizure was made by ABC agents and local police officers pursuant to a search warrant issued upon the basis of a complaint by an ABC agent that he purchased drinks of alcoholic beverages for himself and three companions from Otis Palmer in the early morning hours of Sunday, June 12th in Palmer's second floor apartment. Palmer does not hold any license authorizing him to sell or serve alcoholic beverages.

According to the agent, on June 12th the place was crowded with persons eating and drinking. On June 18th there were about 35 persons in the apartment eating and drinking when the officers entered. The ABC agents seized a pint bottle of whiskey in back of a music box, beer and wine in a bedroom, beer in the kitchen and in a refrigerator, and a music box and other furnishings and fixtures in the apartment.

When the matter came on for hearing pursuant to R.S. 33:1-66, counsel entered an appearance for Otis Palmer and stated that Palmer was unable to appear because he was then in jail as a result of criminal proceedings in the case. Counsel further stated that it was Palmer's contention at his hearing in the police court that he had not sold any alcoholic beverages and that there was an anniversary party at the time of the raid.

At the instant hearing, Palmer's wife, Emma Palmer, testified on her husband's behalf. She claimed that she was the owner of various items of furniture; that the wine and beer was there for their fifth wedding anniversary party, but that the pint of whiskey belonged to one of the guests; and that neither she, nor her husband, to her knowledge, sold any alcoholic beverages in the place. She said that her husband purchased the music box, for which he paid \$150.00, as a birthday gift for their child.

As to what occurred on June 12th, she says that she was in the apartment at the time the ABC agent claims that he was there, and

that he was not in the apartment, nor were there any other persons there. It is a small three-room apartment.

Mrs. Palmer's denial that the ABC agent or anyone else was at her apartment in the early morning hours of June 12th is naturally colored by her desire to avoid forfeiture. It is impossible to reconcile the absolute contradiction between her story and that of the ABC agent. I do not believe her, and find as a fact that on June 12th the ABC agent purchased alcoholic beverages from Otis Palmer in the apartment.

The next issue to be determined is whether the alcoholic beverages seized in the apartment on Saturday, June 18th were intended for like unlawful sale. The pattern seems to be the same, in that at about midnight the apartment was again crowded with people eating and drinking. The music box which was there is a common adjunct to the present-day speakeasy. See Seizure Case No. 6898, Bulletin 687, Item 1. Mrs. Palmer's statement that it was purchased for a child's amusement seems to be absurd. Accordingly, the evidence strongly indicates that Palmer was operating a speakeasy on June 18th. I am not compelled to disregard this evidence merely because of Mrs. Palmer's uncorroborated assertion that the persons were there as guests at her anniversary party. Her testimony, in this instance, is not any more convincing than her version of what occurred on June 12th. I therefore find that the alcoholic beverages seized on June 18th were intended for unlawful sale and hence are illicit. R. S. 33:1-1(i).

Such illicit alcoholic beverages, and all personal property seized therewith in the apartment constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66. Mrs. Palmer cannot obtain return of any of the furniture and fixtures, even if she were the owner thereof, because she either had actual knowledge, or is presumed to have knowledge, of her husband's illegal activities in the family home. See Seizure Case No. 6990, Bulletin 731, Item 5.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part at the direction of the State Director of Alcoholic Beverage Control.

ERWIN B. HOCK

Dated: August 12, 1949.

Director.

SCHEDULE "A"

- 72 - bottles of beer
- 1 - pint bottle of whiskey
- 2 - 1-gal. jugs of wine
- 52 - bottles of soda
- 1 - Wurlitzer Music Box A42754A and currency therein
- 1 - radio
- 1 - Montgomery & Ward Electric Ice Box
- 18 - other items of household furniture

8. DISCIPLINARY PROCEEDINGS - HOLDER OF SOLICITOR'S PERMIT EMPLOYED BY A RETAILER OF ALCOHOLIC BEVERAGES - PERMIT SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against)

WILLIAM FINE)
92 West Sixth Street)
Bayonne, N. J.,)

CONCLUSIONS AND ORDER

Holder of Solicitor's Permit No. 2177, issued by the Director of the Division of Alcoholic Beverage Control.)

William Fine, Defendant-permittee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant, holder of a solicitor's permit, pleads non vult to the following charge:

"From on or about July 22, 1947, and until on or about July 1, 1949, while you were interested in the wholesaling of alcoholic beverages by reason of your employment as a solicitor for Austin Nichols & Co., Inc., holder of a plenary wholesale license, you were, at the same time, also interested in the retailing of alcoholic beverages at the retail licensed premises of Alex Lukaszewich, 427-429 Avenue C, Bayonne, New Jersey, by reason of your employment as a bartender on said retail licensed premises; in violation of R. S. 33:1-43."

It appears that defendant, while working as a solicitor for a wholesale licensee, was also working Saturday and Sunday nights as a bartender for a retail licensee. He discontinued his employment as a bartender on July 1, 1949.

In view of the plea of non vult entered herein and the absence of a prior record or aggravating circumstances, a minimum five-day suspension of defendant's permit will be imposed. Cf. Re Gursky, Bulletin 747, Item 2.

Accordingly, it is, on this 15th day of August, 1949,

ORDERED that Solicitor's Permit No. 2177, issued to William Fine by the Director of the Division of Alcoholic Beverage Control, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. August 22, 1949, and terminating at 9:00 a.m. August 27, 1949.

ERWIN B. HOCK
Director.

9. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALES DURING PROHIBITED HOURS - SALES TO NON-MEMBERS - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ST. ANTHONY BENEFICIAL SOCIETY)
111 Church Street)
Glassboro, N. J.,)

CONCLUSIONS AND ORDER

Holder of Club License CB-6, issued by the Director of the Division of Alcoholic Beverage Control.)

St. Anthony Beneficial Society, by John A. Brigandi, President.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to charges alleging that (1) on Sunday, June 26, 1949, at about 1:30 p.m., it sold, served and delivered alcoholic beverages, in violation of an ordinance adopted by the Mayor and Borough Council of the Borough of Glassboro which prohibits any such activity between midnight Saturday and 6:00 a.m. Monday; and (2) at the same time it sold alcoholic beverages to persons other than club members and their bona fide guests, in violation of Rule 8 of State Regulations No. 7.

Report of the investigation herein discloses that, on Sunday, June 26, 1949, at about 1:30 p.m., an ABC investigator entered the barroom of defendant's premises. The agent purchased a glass of beer which was served by a member of the club who was acting as bartender. The investigator was neither a member nor a guest of a member of defendant society. There were two other persons on the occasion in question in the barroom drinking alcoholic beverages.

Defendant has no prior adjudicated record. I shall, therefore, suspend the license for the minimum period of fifteen days for the unlawful sale on Sunday, and for a further period of fifteen days for the sale to a non-member. Re Sons of Italy Lodge No. 854, Social Club, Bulletin 828, Item 12. Five days will be remitted for the plea, making a net suspension of twenty-five days.

Accordingly, it is, on this 15th day of August, 1949,

ORDERED that Club License CB-6, issued by the Director of the Division of Alcoholic Beverage Control to St. Anthony Beneficial Society, for premises 111 Church Street, Glassboro, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 6:00 a.m. August 22, 1949, and terminating at 6:00 a.m. September 16, 1949.

ERWIN B. HOCK
Director.

10. APPELLATE DECISIONS - HAINES v. PEMBERTON TOWNSHIP.

ALFRED D. HAINES,)
)
 Appellant,)
)
 -vs-)
)
 TOWNSHIP COMMITTEE OF THE)
 TOWNSHIP OF PEMBERTON,)
)
 Respondent.)
 -----)

ON APPEAL
CONCLUSIONS AND ORDER

W. Thomas McGann, Esq., Attorney for Appellant.
Alexander Denbo, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's denial of appellant's application for a plenary retail distribution license.

When, on April 22, 1949, respondent denied appellant's application, and denied separate applications for plenary retail distribution license filed by five other persons, there were (as now) outstanding in the township sixteen (16) plenary retail consumption licenses and one (1) limited retail distribution license. No plenary retail distribution license has been issued in the township.

A retail alcoholic beverage license is not issuable in a municipality unless the fee for the particular type of license has been duly fixed by the municipal governing body. (On February 8, 1949, the Township Solicitor wrote to this Division stating that he had been instructed to prepare an ordinance providing for a plenary retail distribution license and requesting a recommended form of ordinance for the purpose. This Division's responsive letter of February 10, 1949 set forth a fee-fixing ordinance form and ended with the following paragraphs:

"The Township's population, according to the 1940 Federal census, was 2,386. Thus, the State Limitation Law (P.L. 1947, c. 94) permits issuance of not more than one (1) plenary retail distribution license in Pemberton Township.

"If the fee-fixing ordinance is finally adopted please let us have, thereupon, a certified copy."

On April 1, 1949 respondent adopted, on final reading, an ordinance fixing a plenary retail distribution license fee at \$250.00.

Respondent's application-denying resolution of April 22d set forth no sufficient grounds of denial; indeed, the grounds set forth in such resolution were improper and without mention or consideration of the question of public convenience and necessity. However, as hereinafter appears, it is not necessary for me to deal here with the general merits. It is nevertheless appropriate to remark that, unless a municipal issuing authority is of the definite conviction that a new license is, presently or in the reasonably foreseeable future, required to serve a public need in the municipality, the adoption and existence of an ordinance to permit a new license makes no sense.

Respondent did not have jurisdiction to grant appellant's application. As required by Rule 2 of State Regulations No. 2, where, as here, application is for a license for premises not yet constructed, the two Notices of Application must contain a statement that "plans and specifications for building to be constructed may be examined at the office of the Municipal Clerk".

Where application is for a license for premises not yet constructed or completed, the most an issuing authority may do is grant the application subject to an express condition that the license shall not be issued unless and until the premises as described in the plans and specifications, submitted to and found acceptable by the issuing authority, shall first be completed. (Re Harris, Bulletin 183, Item 11; Re Salter, Bulletin 184, Item 8.)

The record of the hearing on this appeal shows that appellant filed no plans and specifications and that appellant's published Notices of Application contained no mention of any plans and specifications. In the light of the jurisdictional defect -- failure to follow a requirement that is definitely essential -- I am constrained to affirm respondent's denial of the application.

Accordingly, it is, on this 16th day of August, 1949,

ORDERED that respondent's action be and the same is hereby affirmed and the appeal herein is hereby dismissed.

ERWIN B. HOCK
Director.

11. STATE LICENSES - NEW APPLICATIONS FILED.

Jack Rosenberg
T/a The Jarlyn Company
Port Authority Terminal Bldg. #5
Port Newark
Newark, N. J.

Application for Wine Wholesale License filed August 4, 1949.

Dominick and Louis Aiello
T/a Aiello Brothers
S.E. Cor. 25th & Dickinson Sts.
Philadelphia, Pa.

Application for Transportation License filed August 11, 1949.

Edward Agriss
T/a Premier Beer Co.
809 Second Ave.
Asbury Park, N. J.

Application for Limited Wholesale License filed August 11, 1949.

Flock Brewing Company
601 Franklin St.
Williamsport, Pa.

Application for Limited Wholesale License filed August 15, 1949.

ERWIN B. HOCK
Director.

12. FAIR TRADE - NOTICE OF COMPLETE PUBLICATION.

August 8, 1949.

The next official publication of minimum resale prices pursuant to Fair Trade rules (Revised Regulations No. 30) will become effective on October 1, 1949. Prices to be listed must be filed with the office of this Division not later than August 20, 1949. The publication will be a complete pamphlet in accordance with Rule 3 of Regulations No. 30, providing for issuance of quarterly complete publications.

In submitting price listings it is important to note the following:

1. The importance of listing all brands of alcoholic beverages (including malt beverages) is emphasized in light of Rule 6 of Revised Regulations No. 30 which prohibits price advertising of any brand not listed in Fair Trade.
2. It is earnestly suggested that traditional and adequate markups should be maintained for the retailer.
3. Only manufacturers and wholesalers owning brands or wholesalers having specific written authorization of the owner of brands, may file price listings for publication in minimum resale price pamphlets.
4. Where listers of brands choose to publish a permissive case lot discount, the phrase "Discount of % permitted on case lot purchases" should be used.
5. True copies of labels or photostats of labels of any brands not previously listed in Fair Trade must be submitted with the price listings.
6. Price listings may be submitted by letter in the same form as heretofore but must bear a statement certifying the existence of a Fair Trade contract between the manufacturer or wholesaler and a licensed New Jersey retailer. It is important to note that copies of such Fair Trade contracts need no longer be filed with the Division.

Notification of the proportionate share of aggregate expense involved in the publication of the complete pamphlet will be made to participating companies as soon as the pamphlet is mailed to all retail licensees.

Erwin B. Hook
Director.