

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

BULLETIN 1181

AUGUST 15, 1957.

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

BULLETIN 1181

AUGUST 15, 1957.

1. STATE REGULATION NO. 34 - WHOLESALE PRICES AND MAXIMUM REBATES, FREE GOODS, ALLOWANCES AND OTHER INDUCEMENTS - RULE 2 AMENDED.

August 1, 1957

TO ALL MANUFACTURERS AND WHOLESALERS PRIVILEGED TO SELL ALCOHOLIC BEVERAGES OTHER THAN MALT ALCOHOLIC BEVERAGES (V, VL, S, SL, R, W, WL AND WW LICENSES):

STATE REGULATION NO. 34 - RULE 2 AMENDED

Rule 2 of State Regulation No. 34 has been amended, effective August 1, 1957, to require that manufacturers and wholesalers selling to wholesalers file their quarter-annual prices on or before the fifteenth day of February, May, August and October instead of the twentieth as heretofore.

Experience has shown that when both suppliers and distributors had the same filing date (i.e., the twentieth), the distributors often were not notified of wholesale prices until their filing date and consequently had insufficient time in which to project and prepare their prices to retailers.

The amended Rule should correct such situations and provide distributors with adequate lead time for the calculation and filing of their prices.

Revised Rule 2 of State Regulation No. 34 is as follows:

STATE REGULATION NO. 34

RULE 2. Manufacturers and wholesalers of alcoholic beverages, other than malt alcoholic beverages, intending to sell such alcoholic beverages to wholesalers, shall file with the Director not later than the fifteenth day of February, May, August and November of each year price and discount listings as provided for and as limited in this Rule, containing as to each alcoholic beverage listed (1) its correct brand or trade name, (2) its nature and type, (3) its age and proof or alcoholic content when stated on the label, (4) the number of unit containers per case, (5) the capacity of each unit container, and (6) the wholesale bottle and standard case prices and, at the option of the manufacturer or wholesaler, the one-half and one-quarter standard case prices, which prices shall be individual for each alcoholic beverage and not in combination with any other alcoholic beverage. Said listing may contain a statement of any discount to be allowed.

Manufacturers and wholesalers of alcoholic beverages other than malt alcoholic beverages, intending to sell such alcoholic beverages to retailers, shall file with the Director not later than the twentieth day of February, May, August and November of each year price and discount listings as provided for and as limited in this Rule, containing as to each alcoholic beverage listed (1) its correct brand or trade name, (2) its nature and type, (3) its age and proof or alcoholic content when stated on the label, (4) the number of unit containers per case, (5) the capacity of each unit container, and (6) the wholesale bottle and standard case prices and, at the option of the manufacturer or wholesaler, the one-half and

one-quarter standard case prices, which prices shall be individual for each alcoholic beverage and not in combination with any other alcoholic beverage. Said listing may contain a statement of any discount to be allowed; provided, however, that a discount allowed to a retailer shall not exceed two per centum (2%), to be allowed uniformly for payment in cash at or before delivery or within five (5) days thereafter, to be applicable to the total purchase price of a single complete delivery of an entire purchase order.

Manufacturers and wholesalers selling to both wholesalers and retailers shall file separate listings of prices and discounts to wholesalers and retailers.

If, after the time for filing price listings as hereinabove provided, a wholesaler desires to sell a brand or size of an alcoholic beverage not then currently listed by him because not previously available to him, such wholesaler may file with the Director a supplemental price and discount listing for such brand or size in the manner and form hereinabove prescribed. A wholesaler filing such supplemental price listing may not sell such brand or size of alcoholic beverage to any retailer unless (1) the brand and size is listed in the then currently effective Minimum Consumer Resale Price Pamphlet, (2) written approval for such sale has first been obtained from the Director, and (3) such wholesaler has given written notice of such supplemental listing to his retailers. If such brand and size has been listed by another manufacturer or wholesaler for the then current quarter-annual period, approval will not be granted unless the price listed in such supplemental listing is not less than the lowest price listed by such other manufacturer or wholesaler.

Promulgated Thursday, August 1, 1957.

Effective Thursday, August 1, 1957.

Filed with the Secretary of State (N.J.) Thursday, August 1, 1957.

2. APPELLATE DECISIONS - ROSSELLI ET AL. v. HAMPTON TOWNSHIP AND NEWTONIAN, INC.

LENA ROSSELLI, t/a LENA'S KEMAH LODGE; PAUL SCHUCKHAUS, t/a MILLIE & PAUL'S; EDWARD RAVELL, t/a HAMPTON HOUSE,

Appellants,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HAMPTON and NEWTONIAN, INC.,

Respondents.

ON APPEAL  
CONCLUSIONS AND ORDER

-----  
Edward F. Smith, Jr., Esq. and William T. Cahill, Esq.,  
Attorneys for Appellants.

Frank A. Dolan, Esq., Attorney for Respondent Township Committee.  
Mackerley & Friedman, Esqs., by Peter Friedman, Esq. and James M. Barry, Esq., Attorneys for Respondent, Newtonian, Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Township Committee whereby it approved an application for a person-

to-person and place-to-place transfer of a plenary retail consumption license held by Marion E. McKeown and Charles F. McKeown to Newtonian, Inc. and from premises on Route 519 to premises to be constructed on Route 206, Hampton Township. Two of the three members of the respondent Township Committee voted for approval of the transfer and the other member voted to deny the application.

"The reasons advanced by the appellants in their petition of appeal for reversal of the action of the respondent Committee may be summarized as follows:

- (a) no need exists for another liquor outlet in the area;
- (b) the area is congested in the vicinity of a drive-in theater;
- (c) the proposed location is within 500 feet of another liquor establishment;
- (d) a safety hazard now existing will be aggravated;
- (e) it will be unfair to present licensees; and
- (f) residential properties will depreciate in value.

"At the commencement of the hearing herein, the respondent-licensee moved to dismiss the amended petition of appeal filed by the appellants. It appears that the application for transfer of the license in question was approved by respondent-Committee on December 27, 1956; that on January 26, 1957 a notice and petition of appeal were served upon the Clerk of the respondent-Township; that in said petition of appeal the transferee, Newtonian, Inc., was not a party and no notice of the appeal was served upon it; that the notice and petition of appeal, aforementioned, were received at this Division on January 29, 1957; and that subsequent thereto, on February 18, 1957, an amended petition of appeal wherein Newtonian, Inc. was made a party respondent was received at this Division.

"Although it appears that the appeal taken in this matter may not have been filed in accordance with R.S. 33:1-26 and Rules 2 and 3 of State Regulation No. 15, it is unnecessary to pass formally upon this motion in view of the recommendation hereinafter set forth on the merits of the case.

"The testimony presented by the witnesses in the instant case discloses that the highway on which respondent-licensee desires to locate is a well-traveled thoroughfare. It also appears from the testimony that during the past five years it has become very commercialized in character, to wit: that in addition to the licensed premises operated by the appellants, there is an automobile sales agency, a garage, an oil company having large bulk storage tanks, a modern ice cream bar, a drive-in theater (located on the other side of the highway, approximately 350 feet from the proposed premises), a plumbing supply house with outside storage of fuel tanks, another automobile agency with a lot for used car business, a public utility company garage and a creamery establishment. There are also divers residents along the highway interspersed at various places among the commercial enterprises aforementioned.

"Three disinterested witnesses who live in the Township called by the appellants testified that they were of the opinion that there are sufficient liquor outlets on the highway to meet the present needs of those desiring alcoholic beverages in that section of the community. Appellant Paul Schuckhaus testified that in his opinion there is no need for or a convenience to be served by another liquor business on the highway and if permitted to operate at that location it would be detrimental to his liquor business from a financial aspect. It was stipulated by the attorneys for the parties to the appeal that if the two other appellants were called as witnesses the testimony which they would present would be similar to that given by Schuckhaus.

"Walter Yetter, a member of the respondent Township Committee, testified that he voted for the transfer in question because he was of the opinion that the transfer to the highway of the license in question was the logical place as the area had developed into a somewhat commercial or semi-commercial area and that 'the public could be best served on a highway rather than in some remote spot within the Township.' Committeeman Yetter further testified that not only would the people within the Township best be served but also it would enure to the benefit of the transient trade. It was stipulated by the attorneys for the respondent parties that if Committeeman Meade, who also voted in favor of the transfer and who was present at the hearing herein, were called as a witness, his testimony would corroborate that of Committeeman Yetter.

"Officer Richard N. Kell of the New Jersey State Police, who appeared at the hearing pursuant to a subpoena ad testificandum served upon him, testified that he is 'the traffic safety coordinator' in that area and that in his opinion the operation of the proposed licensed premises at the proposed site, in itself, would not create a special traffic problem as any type of business or a private home presents a problem when cars enter or leave a highway.

"The respondents called as witnesses the municipal building inspector, a realtor and appraiser, and a licensed surveyor and engineer, who testified, among other things, that in their opinions, a need for and a convenience would best be served by the location of the respondent-licensee's establishment at the proposed site on the highway.

"Jacob A. Blakeslee, a member of respondent Committee, testified that he voted to deny the application in question as he was of the opinion that the transfer of the license to the proposed location was not for the best interest of the residents of the municipality.

"The number of licensed premises to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. Santoriello v. Howell, Bulletin 252, Item 8; Mita v. Orange, Bulletin 266, Item 10; Sudol v. Wallington, Bulletin 267, Item 10; Pitman v. Pemberton, Bulletin 277, Item 6; Boody v. Gloucester, Bulletin 300, Item 11; Smith v. Winslow, Bulletin 334, Item 1; Alpert v. Asbury Park, Bulletin 380, Item 2; Winslow v. Pennsauken, Bulletin 401, Item 11; Bodrato et al. v. Northvale et al., Bulletin 433, Item 1; Hearty et al. v. Liberty et al., Bulletin 671, Item 5; Segal et al. v. Clifton et al., Bulletin 732, Item 5; McGill v. Orange et al., Bulletin 900, Item 2; DeCapua v. Ocean Township, Bulletin 941, Item 1;

Duffy et al. v. Mount Laurel and Sclaroff, Bulletin 969, Item 1.

"The facts in the instant appeal are substantially similar to those in Duffy et al. v. Mount Laurel and Sclaroff, supra, wherein the Director remarked 'So far as testimony by the residents of Mount Laurel Township is concerned, there appears to be a real difference of opinion as to whether or not the majority of the members of the Township Committee acted in accordance with the general welfare of the community. There is absolutely no evidence that any member was improperly motivated. The most that has been shown is that there is an honest difference of opinion between the members of the Township Committee.' Furthermore, the Director in said case stated that 'There is room for latitude of opinion in cases of this kind. My function on appeals of the type now before me, however, is to determine whether reasonable cause exists for the issuing authority's opinion and, if so, to affirm. Curry v. Margate City, Bulletin 460, Item 9; Mulcahy v. Maplewood, Bulletin 658, Item 4.'

"I am satisfied that the comments made by the Director in the Mount Laurel case as quoted above are equally applicable to the case now under consideration and I, therefore, reiterate them here.

"The fact that the transfer of the license may be contrary to the economic interests of appellants is not a sufficient reason for setting aside the transfer. Knast et al. v. Camden et al., Bulletin 810, Item 2.

"The attorneys for the appellants in a memorandum filed herein emphasized the fact that the members of the respondent Committee did not take into consideration whether or not there may be a need for or a convenience to be served by the transfer of the license to the proposed premises when constructed and that, therefore, the matter must be remanded to the respondent Committee for further consideration. In line with their contention, they cited the case of Mevoli et al. v. Camden and Shapiro, Bulletin 933, Item 1. In the first place, in said case it appeared that no objector appeared before the local Board because the notice of intention to apply for the transfer was published in a newspaper not circulated to any extent in the section of the municipality wherein the proposed licensed premises were located which fact was borne out by the testimony of the publisher thereof. Furthermore, the need for an additional licensed premises was not discussed or considered by the members of the respondent Board. Thus, for the said reasons the matter was remanded for further consideration.

"In the instant case there is sufficient evidence that the advisability of transferring the license to the proposed location in the interest of the residents and transients was considered by the members of the respondent Committee. The majority of the members were of the opinion that the proposed location on the highway was for the best interests of the community because 'we felt that the logical conclusion was that it was on a state highway which is the only one that traverses our Township and it would seem that it would be the logical place being on a state highway. And also this area had been developed into somewhat more or less now a commercial area or semi-commercial.' The members who voted in favor of the transfer testified that they do not have a local police department and that the highway is patrolled by the State Police.

"I am satisfied that in all respects proper consideration was given by the members of respondent Committee before action was taken on the application for transfer. In so far as reasons (b), (c) and (f) in the petition of appeal are concerned, the record is barren of adequate proof to warrant serious consideration.

"I recommend after careful examination of the evidence adduced in the instant case that the action of the respondent Committee in approving the application to transfer the license in question to the proposed site be affirmed."

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

I have carefully considered the entire record in this case and the Hearer's Report submitted herein. I concur in and adopt the conclusions set forth in the Hearer's Report as my conclusions and, as recommended by the Hearer, I shall enter an order affirming respondent's action.

Accordingly, it is, on this 1st day of July, 1957,

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

WILLIAM HOWE DAVIS  
Director.

3. APPELLATE DECISIONS - STANLEY COMPANY OF AMERICA ET ALS. v. NEWARK AND GRANT LUNCH CORP.

STANLEY COMPANY OF AMERICA, )  
ET ALS., )  
Appellants, )  
-vs- )  
MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY OF )  
NEWARK, and GRANT LUNCH CORP., )  
Respondents. )  
----- )

ON APPEAL  
CONCLUSIONS AND ORDER

David H. Wiener, Esq., Attorney for Appellants Stanley Company of America and L. Bamberger & Co.  
Maurice Schapira, Esq., Attorney for Appellant Ohrbach's, Inc.  
Mead, Gleeson, Hansen & Pantages, Esqs., by Stanley G. Bedford, Esq., Attorneys for Appellants The First Presbyterian Church, The Second Presbyterian Church, Newark Downtown Association, Essex Amusement Corporation, Branford and Halsey Realty Co., and Newark Theater Building Corporation.  
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney for Respondent Municipal Board of Alcoholic Beverage Control.  
Kasen, Schnitzer & Kasen, Esqs., by Daniel G. Kasen, Esq., Attorneys for Respondent Grant Lunch Corp.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board whereby on March 26, 1957 it granted by a two to one vote of its members an application for a place-to-place transfer of a plenary retail consumption license for the 1956-57 licensing period from 74-76 Market Street to 124 Market Street, Newark.

"Marvin A. Robinson, Chairman of the respondent Board, announced the determination of the Board as follows:

'On June 19th, 1956, this board, by a majority vote, granted an application for a person to person and place to place transfer of license C-737, from Jerome Stein, as receiver of Joseph Ross, 211 Washington Street, and 68-74 Bank Street, to Grant Lunch Corporation, at 74-76 Market Street.

'This application was granted subject to the express condition that the license could hereafter be transferred only to premises at 124 Market Street, and that the license would not be transferred or sold to any other person or persons.

'It was represented to this board, at the hearing in June of 1956, by counsel for the applicant and by two officers of the corporation that there were rumors that the Newark Parking Authority was planning to acquire the property upon which the licensed premises (74-76 Market Street) is located for a public parking building.

'Because of these circumstances the licensee felt that it was desirable to secure license C-737, not for the purpose of selling it, but for the purpose of seeking a place to place transfer to 124 Market Street. Negotiations for the purchase of this property was being conducted at the time. It was specifically represented to the board, by the president of the corporation, that "we want to buy it for the reason that in case the Parking Authority will take from Washington to Plane Streets, and it will take six months to build, or establish operations, that is the only way we bought the license, to have security. We only want to use one license."

'It was under these conditions and circumstances, and also with the understanding that the existing license at 74-76 Market Street would be surrendered when the Parking Authority commenced condemnation and demolition proceedings, that Commissioner Walsack and Commissioner Robinson voted to grant the application for transfer from 68-74 Bank Street to 74-76 Market Street.

'Now, for the matter presently before this board for decision, the application for the transfer of license C-737 from 74-76 Market Street to 124 Market Street.

'The objectors' case was predicated on the assumption that this licensee will operate his business in such a manner as to cause them considerable financial losses. They also testified that they were extremely concerned about probability that an undesirable element might be attracted to the proposed location, thereby causing a general decline in the character of the surrounding area with the resultant lowering of property values.

'The applicant's testimony was that they plan to operate an establishment in keeping with the nature and quality of the business area. And that they hope and intend to serve those men and women who patronize the department stores, specialty stores and moving picture theatres in the immediate area.

'They further testified they have made a large investment in acquiring this property, approximately \$124,000 and fully understand the jeopardy in which they place this investment in the event that they violate or fail to comply with all the requirements, rules, regulations and ordinances as they pertain to a retail consumption license.

'Accordingly, after carefully weighing and evaluating all the testimony and evidence produced by the applicant and objectors, this board, by a majority vote, have voted to grant this application for transfer from 74-76 to 124 Market Street.'

"The stenographic transcript of the proceedings before the respondent Board was submitted as part of the record of the case herein pursuant to Rule 8 of State Regulation No. 15. Additional testimony was taken and exhibits were introduced in evidence at the instant hearing.

"The testimony presented discloses that the area of the proposed premises is devoted exclusively to business and commercial establishments, including divers liquor licensed premises. There is a plenary retail consumption license located at 126 Market Street, immediately adjoining the premises to which the transfer was sought. A license is also issued and outstanding for the premises to which the license in question was transferred and although there is no present operation thereunder, it remains outstanding.

"It is apparent from the record and it is also common knowledge that there is no dearth of liquor outlets in the immediate vicinity to accommodate those persons desiring to purchase alcoholic beverages.

"The record also discloses testimony of persons objecting to the transfer of the license now under consideration wherein they contended that they are apprehensive as to the manner in which the respondent-licensee would operate at the new location. The said objectors claimed that their concern was based upon the method of operation of respondent-licensee's other establishments on Market Street and that permission to operate an additional establishment would not enure to the best interest of the neighborhood or of the municipality in general. Various improper incidents allegedly occurring in the other establishments involving patrons and others during a specific period of time were cited in an attempt to substantiate the fact that respondent-licensee was derelict in the operation of its business establishments. Whether or not that be so, it is unnecessary to pass upon that question in the instant proceeding.

"The question that warrants attention concerns the bona fides of the application for the place-to-place transfer filed by the respondent-licensee herein. It is necessary to give a brief history of the license in question in order to arrive at a justifiable conclusion in this case: An application for a person-to-person and place-to-place transfer of the license from Jerome Stein, Receiver in Bankruptcy for Joseph Ross to respondent-licensee and from premises 221 Washington Street to 74-76 Market Street was heard by respondent Board. The officers of respondent-licensee testified that the purpose for requesting the transfer was to have the license in reserve so that an application for its transfer to 124 Market Street might be made

if and when condemnation proceedings by the Newark Parking Authority to acquire the property at 74-76 Market Street were brought. It was contended that this was a desirable business arrangement because of the usual lapse of time between the institution of condemnation proceedings and the actual demolition of the buildings condemned. See Marplane Corporation v. Newark et al., Bulletin 1149, Item 3.

"It is apparent that the application for the transfer now under consideration was prematurely filed and if affirmed by the Director would permit the operation by respondent-licensee of two liquor establishments in close proximity to each other despite the fact that assurances were given by the officers of respondent-licensee (which were relied upon as given in good faith) that such was not the intention for acquiring the second license for premises 74-76 Market Street. The record herein contains no evidence whatsoever that condemnation proceedings have been instituted nor is there any evidence that such proceedings will be started in the foreseeable future.

"Under the circumstances herein, I recommend that the action of the respondent Board be reversed."

Written exceptions to the Hearer's Report and written argument pursuant thereto were filed with me by the attorneys for respondent-licensee, and written answering argument was filed with me by the attorneys for appellants within the time prescribed by Rule 14 of State Regulation No. 15.

I have examined the transcripts of the proceedings herein together with the Hearer's Report and the exceptions taken thereto and am of the opinion that it might be advisable to quote some of the pertinent testimony of the officers of the respondent-licensee given by them at the time the Marplane case, referred to in the Hearer's Report, was heard. In said case Louis Halperin, secretary and treasurer of the respondent-licensee, testified in answer to a question as to the purpose "in having two licenses at the same address", that "the purpose is in case the property at 74 and 76 Market Street is demolished, we have an idea to transfer to the Courtier Corp. at 124 Market Street"; that when asked "Is it your intention, by the use of these two licenses, that you will operate 124 Market Street and 74-76 Market Street at the same and one time?" he answered, "No"; that in answer to the question "Well, if it is not, I would like for you to explain for us how the situation with respect to that move would be any different whether you had one license or two licenses?" he replied, "Well, the idea is that the parking authorities would notify us that the building is going to be demolished. It may take them six or seven months before they start demolishing and we immediately have got to have a license at 124 Market Street, because we can't stay. We have to establish our business at 124 Market Street."

Helen Jackowitz, president of respondent-licensee, testified in the Marplane case aforementioned that "I have full authority, as president of the corporation, and Mr. Halperin, as secretary-treasurer, we can do anything that we see fit, and we thought that this license, we wanted to buy it for the reason that in case the parking authorities will take from Washington to Plane Street, and it would take six months to build, that is the only way we bought the license, to have security, that we only want to use one license. I think that is all I have to say."

After careful consideration of the entire record in this case, I concur in the Hearer's findings and conclusions and adopt his recommendation.

However, it might be well to point out that if a new application be filed at a future date for a place-to-place transfer similar to the application considered herein, the determination thereof by the local issuing authority must be in accordance with the facts then existing with a special emphasis being given to the paramount question whether there is a need for, or a convenience to be served, by a liquor license at the proposed location. Any action of the local issuing authority does not in any manner prejudice the right of appeal to the Director by any aggrieved party thereto. R.S. 33:1-26.

The action of the respondent Board in approving the place-to-place transfer in the instant case will be reversed.

Accordingly, it is, on this 15th day of July, 1957,

ORDERED that the action of the respondent Board be and the same is hereby reversed.

WILLIAM HOWE DAVIS  
Director.

4. APPEAL CASES - JULY 1, 1955 THROUGH JUNE 30, 1957.

To: William Howe Davis, Director  
From: Edward J. Dorton, Deputy Director.

Cases undecided June 30, 1955	17
Cases filed for period July 1, 1955 through June 30, 1956	<u>82</u>
Total-----	99

DISPOSITION

Affirmed	37
Reversed	26
Remanded	1
Modified	1
Withdrawn	4
Undecided (12 cases heard, 2 cases partially heard 16 cases not heard)	<u>30</u>
Total-----	99

Cases undecided June 30, 1956	30
Cases filed for period July 1, 1956 through June 30, 1957	<u>66</u>
Total-----	96

DISPOSITION

Affirmed	56
Reversed	14
Remanded	5
Modified	1
Withdrawn	4
Undecided (9 cases heard, 7 cases not heard)	<u>16</u>
Total-----	96

Edward J. Dorton  
Deputy Director.

5. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE TO MINORS  
NOLLE PROSSED.

In the Matter of Disciplinary Proceedings against )

HOLLYWOOD GARDEN INC. )  
401 Hamilton Boulevard )  
South Plainfield, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of South Plainfield. )  
----- )

Richard L. Gray, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to a charge alleging that it sold, served and delivered alcoholic beverages to minors Robert ---, age 20, and Francis ---, age 18, on February 26, and February 26 and 27, 1957, respectively, and permitted the consumption of such beverages by said minors in and upon its licensed premises, in violation of Rule 1 of State Regulation No. 20.

"At the hearing held on June 5, 1957, the Division's representative moved to nolle prosee the aforesaid charge because of the unavailability of the minors who are stationed in Texas with the U. S. Armed Forces and because of the indefiniteness of their return to this jurisdiction.

"I, therefore, recommend that the charge herein be nolle proseed."

I have considered the facts and circumstances underlying the above Report and I concur in and adopt the Hearer's recommendation.

Accordingly, it is, on this 10th day of June, 1957,

ORDERED that the charge herein be and the same is hereby nolle proseed.

WILLIAM HOWE DAVIS  
Director.

6. DISCIPLINARY PROCEEDINGS - CHARGES ALLEGING SALES TO MINORS DISMISSED.

In the Matter of Disciplinary Proceedings against )

FRANCIS DiBERNARD & )  
JOSEPH DiBERNARD )  
T/a CLUB 23 )  
23 Ledgewood Avenue )  
Netcong, N. J., )

CONCLUSIONS AND ORDER

-----)  
Holders of Plenary Retail Consumption License C-7, issued by the Common Council of the Borough of Netcong. )

In the Matter of Disciplinary Proceedings against )

HARRY & MAC'S LAKEVIEW TAVERN, INC. )  
T/a HARRY & MAC'S LAKEVIEW TAVERN )  
Central Avenue )  
Stanhope, N. J., )

CONCLUSIONS AND ORDER

-----)  
Holder of Plenary Retail Consumption License C-6, issued by the Mayor and Council of the Borough of Stanhope. )

-----)  
Dolan and Dolan, Esqs., by John T. Madden, Esq., Attorneys for Defendant-licensees Francis DiBernard & Joseph DiBernard.

Milford Salny, Esq., Attorney for Defendant-licensee Harry & Mac's Lakeview Tavern, Inc.

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

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"In separate proceedings instituted against the above named licensees each pleaded not guilty to an identical charge alleging the sale of alcoholic beverages to Emma --- (age 16) and Alexandra --- (age 17) and alleging that each of said minors was permitted to consume alcoholic beverages on the licensed premises. Since both cases depend upon the truth of the testimony given at the hearing by the minors and an adult companion, both cases may be decided at the same time.

"The only undisputed fact in these cases is that, shortly after 2:00 a.m. November 24, 1956, Emma --- returned to her home in an intoxicated condition.

"From the testimony it appears that, when Emma arrived at her home on the morning of November 24, she told her mother that on the previous evening she had been in Alexandra's car when two strange men requested her to enter their car; that she did so and that they made her drink something -- 'she didn't know what it was.' Apparently, neither the mother nor a local police officer to whom she told this story was satisfied with her explanation. Approximately a week later she gave a written statement to the local police, and subsequently gave a written statement to ABC agents which resulted in the institution of these proceedings.

"At the hearing herein Emma and Alexandra both testified that, after leaving the movies on the evening of November 23, they met Lyle --- (a married man) who drove them to DiBernard's premises where they remained for about a half-hour and thereafter drove them to Harry & Mac's where they remained for about two hours.

"As to what allegedly occurred in DiBernard's premises, the two girls and Lyle --- testified that they sat in a booth and that Joseph DiBernard came to take their orders. Emma said that both she and Alexandra ordered V.O. whiskey and coke. To the surprise of the prosecutor, Alexandra said that she then ordered a coke, but that Emma ordered V.O. and coke. Solely for the purpose of neutralizing her testimony as to what she then ordered, the prosecutor introduced into evidence a statement previously signed by Alexandra in which she said that both she and Emma had then ordered V.O. and coke. Lyle testified that he ordered beer; that he believes Emma ordered V.O. and coke, and that Alexandra ordered a plain coke. The testimony discloses that Joseph DiBernard returned to the booth with three drinks. Alexandra said that the drink served to Emma 'looked just like mine. I cannot tell you if there was whiskey in it or not. I don't know.' Lyle --- testified that he and the two girls each had one drink; that he had beer; that one of the girls had coke, and that he doesn't know what the other had. All three admitted that, when they entered the premises, Joseph DiBernard had asked Emma if she was twenty-one years of age and that Emma answered in the affirmative.

"As to what allegedly occurred in Harry & Mac's, the two girls testified that they had arrived at the premises with their male companion about 10:30 p.m., and their male companion alleges that they arrived about 11:00 p.m. In any event, all three testified that they took seats at the bar and that Enrico Bencivenga (president of the corporation licensee) was tending bar. Emma --- testified that she asked the bartender for V.O. and coke but didn't remember what the others ordered. She further testified that thereafter she ordered one plain coke, and that these were the only drinks she had at the premises. Alexandra testified that she ordered Vodka and orange juice from the bartender and thereafter ordered a second similar drink. (In her statement previously given to the local police Alexandra said that she had a V.O. and coke at Harry & Mac's, and in her statement previously given to ABC agents she said that she had two Vodka and orange juice drinks in said premises.) Lyle testified that he ordered beer; that he does not recall what Emma ordered, and that Alexandra ordered Vodka and orange juice.

"The evidence further shows that the two girls and their male companion, accompanied by ABC agents, visited each of the licensed premises on December 20, 1956. When they entered DiBernard's premises Joseph DiBernard told the ABC agents that, on the evening of November 23, both girls had ordered V.O. and coke, at which time he questioned Emma as to her age, and Emma then said she would have a coke and Alexandra said 'Give me a coke too;' that he served a bottle of beer to Lyle, a coke to each of the girls, and also a second round of the same drinks at the booth. At the hearing herein Joseph DiBernard's testimony was substantially the same as his statement then made to the ABC agents. When they entered Harry & Mac's, Enrico Bencivenga told the ABC agents that he was tending bar from 6:00 p.m. on November 23 until 2:00 am. the

following morning; that Lyle had been in the premises on one occasion but that he did not remember either of the girls being there that night. At the hearing herein, Enrico Bencivenga, Ruth Bencivenga (his wife) and five patrons testified that they were in Harry & Mac's on the evening of November 23 between 10:30 p.m. and 1:00 a.m. the following morning and denied that the girls or their male companion were in the licensed premises at any time on that evening.

"In these cases it is necessary to determine whether the witnesses produced by the Division or the witnesses produced by the respective defendants are telling the truth. It is understandable that Emma might have deemed it expedient to tell her mother an untruth on the morning of November 24. However, at the hearing herein she stated that the only time she had alcoholic beverages was on the evening in question and specifically denied that she had any alcoholic beverages to drink on New Year's Day 1957. However, after another witness had testified that Emma was intoxicated in the witness' home on New Year's Day, Emma was recalled to the stand and admitted that she was intoxicated at that time. It thus appears that she gave false testimony at the hearing herein. Alexandra had given a statement to ABC agents wherein she said that she had alcoholic beverages at DiBernard's, but at the hearing herein she changed her testimony and testified that she had nothing but plain coke at said premises. In a statement previously given by Lyle he said that Emma had six or seven drinks of alcoholic beverages and that Alexandra had three or four drinks of alcoholic beverages at Harry & Mac's, whereas at the hearing held herein in said case he testified that he didn't recall what Emma ordered.

"Weighing the evidence of the two girls and their male companion against the positive evidence of Joseph DiBernard in one case (that he served only a plain coke to Emma) and the evidence of seven witnesses in the other case (that the girls and their male companion were not on the premises on the evening of November 23), I conclude that the Division has failed to establish the guilt of the defendant in either case by a fair preponderance of the evidence. I recommend, therefore, that the charge in each case be dismissed."

No exceptions to the Hearer's Report were filed as to either of the above cases pursuant to Rule 6 of State Regulation No. 16.

After careful examination of all the evidence presented herein, I have decided to adopt the conclusions of the Hearer as my conclusions in these cases. Hence I shall dismiss the charges.

Accordingly, it is, on this 20th day of June, 1957,

ORDERED that the charge in each of the above cases be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
Director.

7. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (OBSCENE LANGUAGE AND CONDUCT - STRIP TEASE) - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against ENTERTAINMENT ENTERPRISES, INC. Route 46 & Sprofera St. South Hackensack, N. J., Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of South Hackensack.

CONCLUSIONS AND ORDER

Schapira and Farkas, Esqs., by Maurice Schapira, Esq., Attorneys for Defendant-licensee. Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On Friday night, February 15, Saturday night, February 16 and early Sunday morning, February 17, 1957, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises, in that a female entertainer performed in a lewd, indecent and immoral manner, including in her routine what is commonly known as the 'strip-tease'; in violation of Rule 5 of State Regulation No. 20."

The file herein discloses that ABC agents visited defendant's licensed premises at 9:15 p.m. on Friday, February 15, 1957, and that some of the agents remained there until 2:35 a.m., February 16, 1957. It further discloses that several agents again visited the said premises on Saturday evening, February 16, 1957, arriving there at 10:25 p.m. and remaining in the premises until 3:10 a.m. on Sunday, February 17, 1957. At various times during the period that the agents were in the defendant's premises a female entertainer, introduced as Sherry, the "Star of the Show", informed the patrons that she was a "Doctor of Happiness". After Sherry sang a song she began to answer patrons' problems which were allegedly submitted to her, which answers had double-entendre meanings. She walked about with a hand microphone and spoke to various patrons seated at tables near the stage, making suggestive remarks for the entertainment of the audience. After Sherry returned to the center of the stage, she performed a modified form of a strip tease and then turned her back to the audience and slowly rotated her buttocks.

The type of entertainment hereinabove mentioned has no place on licensed premises. Re Bajewicz, Bulletin 902, Item 4.

Defendant alleges in attempted mitigation of penalty that Sherry had been highly recommended as an entertainer by its booking agent and on the strength of said recommendation defendant had employed her for a two-day period. Defendant further alleges that because of the large scale on which it operates a penalty of any duration will cause a great

financial burden upon it. Regardless thereof, it is the duty of a licensee to present only wholesome entertainment and if it chooses to do otherwise, it does so at its peril.

Defendant has no prior adjudicated record.

Under the circumstances appearing herein, I shall suspend defendant's license for a period of twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 27th day of June, 1957,

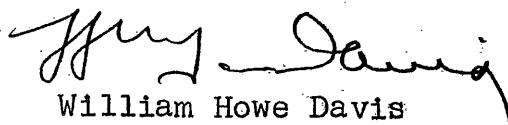
ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of South Hackensack to Entertainment Enterprises, Inc., for premises Route 46 & Sprofera St., South Hackensack, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. July 1, 1957 and terminating at 3:00 a.m. July 16, 1957.

WILLIAM HOWE DAVIS  
Director.

8. STATE LICENSES - NEW APPLICATION FILED.

Michael Kostic  
t/a Kostic Beverage Co.  
Black Horse Pike  
Williamstown, N. J.

Application filed August 9, 1957 for person-to-person, place-to-place transfer of State Beverage Distributor's License SBD-12 from Carmine Cocco and Annette Cocco, t/a Millville Beverage, Snyder Avenue, Vineland, N. J.

  
William Howe Davis  
Director.