

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

BULLETIN 1072

JULY 5, 1955.

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - BRANDT v. LAKEWOOD.
BACHMAN v. LAKEWOOD.
2. APPELLATE DECISIONS - PRIOR AND KESSE v. CLIFTON AND
GUILIANO.
3. DISCIPLINARY PROCEEDINGS (Newark) - FALSE ANSWER IN
APPLICATION - AIDING AND ABETTING NON-LICENSEE TO
EXERCISE PRIVILEGES OF LICENSE - FAILURE TO NOTIFY
ISSUING AUTHORITY OF CHANGE IN FACTS IN VIOLATION OF
R. S. 33:1-34 - EMPLOYING UNQUALIFIED PERSON - LICENSE
SUSPENDED FOR 90 DAYS - RENEWAL LICENSE UNDER SUSPENSION
UNTIL SITUATION CORRECTED.
4. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF
ILLICIT ALCOHOL - ALCOHOL AND OTHER ARTICLES FORFEITED -
MOTOR VEHICLE RETURNED TO INNOCENT OWNER.
5. DISCIPLINARY PROCEEDINGS (Newark) - FAILURE TO NOTIFY
ISSUING AUTHORITY OF CHANGE OF FACTS, IN VIOLATION OF
R. S. 33:1-34.

CANCELLATION PROCEEDINGS (Newark) - HOLDER OF LICENSE
CEASED TO BE A BONA FIDE CLUB - LICENSE CANCELLED.
6. DISCIPLINARY PROCEEDINGS (Montville) - CHARGE ALLEGING
SALES TO MINOR DISMISSED.
7. DISCIPLINARY PROCEEDINGS (Hamilton, Mercer County) -
SUSPENSION REIMPOSED AFTER TERMINATION OF PROCEEDINGS
IN APPELLATE DIVISION.
8. DISCIPLINARY PROCEEDINGS (Hamilton, Mercer County) -
SALES TO MINOR - PRIOR RECORD - LICENSE SUSPENDED FOR
15 DAYS, LESS 5 FOR PLEA.
9. STATE LICENSES - NEW APPLICATIONS FILED.

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

BULLETIN 1072

JULY 5, 1955.

1. APPELLATE DECISIONS - BRANDT v. LAKEWOOD.
BACHMAN v. LAKEWOOD.

JOSEPH BRANDT and MARJORIE)
BRANDT,)

Appellants,)

v.)

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF LAKEWOOD,)

Respondent.)

On Appeal

-----)
WILSON O. BACHMAN,)

Appellant,)

v.)

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF LAKEWOOD,)

Respondent.)

CONCLUSIONS AND ORDERS

Mark Addison, Esq., Attorney for Appellants Joseph Brandt and Marjorie Brandt.
Stewart and Leventhal, Esqs., by Samuel Leventhal, Esq., Attorneys for Appellant Wilson O. Bachman.
Julius Cohn, Esq., Attorney for Respondent Township Committee.
J. Elmer Matthews, Esq., Attorney for Objectors.

BY THE DIRECTOR:

This is an appeal from the denial of an application for transfer to appellants Joseph Brandt and Marjorie Brandt of Plenary Retail Consumption License C-11, now held by Wilson O. Bachman, and from premises on Speedway Boulevard and Madison Avenue to premises on the South Side of Ocean Avenue in the Township of Lakewood. Wilson O. Bachman, who filed the appeal in the companion case herein, is not a necessary party to a determination of the issue herein. Hence, his appeal will be dismissed.

On February 10, 1955, appellants Joseph Brandt and Marjorie Brandt filed an application for transfer of the license in question, which, at a special hearing on March 1, 1955, was unanimously denied by respondent because "it does not appear that there is a clear need for the transfer of said license to the location where sought, and that the convenience of the public does not require such transfer." Appellants Joseph Brandt and Marjorie Brandt in their petition of appeal maintain, inter alia, that respondent's action was arbitrary and capricious.

At the outset, it may not be amiss to state the guiding principles upon which a determination on appeal of like issues is predicated: There is no inherent right to the transfer of a liquor license and the issuing authority may grant or deny a

transfer if its action is based upon an exercise of reasonable discretion. On the other hand, where there is an unreasonable or arbitrary refusal to transfer a license, the action of the authority will be reversed. Cf. Leonia Liquors, Inc. v. Leonia, Bulletin 766, Item 1. Respecting the latter, it has long been established that it is unreasonable for an issuing authority to deny a person-to-person or place-to-place transfer merely as a means of effecting its general desire to reduce the number of existing licenses in a municipality. Kirschhoff v. Millville, et al., Bulletin 254, Item 8.

The record herein shows that the license in question has been inoperative for a period of two years; that the holder thereof received notice that it will not be renewed for the 1955-56 licensing year; that on February 10, 1955, appellants Joseph Brandt and Marjorie Brandt filed an application for a person-to-person transfer of the license to them at a site in an industrial zone; that the area surrounding the proposed location is woodland; that the site is 2 miles from the nearest church, 2.2 miles from a school, 4 miles from the transferor's licensed premises; about 2-1/2 miles from the nearest tavern; that it is a more convenient location for occupants of several finished housing projects and other developments in the course of construction; and that members of the Township Committee before, at, and after the hearing on the application on March 1, 1955, expressed their disapproval of transfer of the license to appellants Joseph Brandt and Marjorie Brandt, or to anyone else, stating that there were enough licensed establishments in the Township.

The above facts were, in substance, testified to by appellant Joseph Brandt and his witnesses, and their testimony respecting the statements of members of the Township Committee as to the reasons for the denial of the transfer were corroborated by respondent's own witnesses. No objectors appeared at the hearing, although an attorney participated in the proceedings as counsel for objectors, and no written objections to the transfer were submitted in evidence at the hearing herein.

Having carefully examined the entire record, I find that respondent's grounds for refusing the transfer are insufficient in that no valid objection to the transfer appears to exist. I find, further, that in denying the transfer, the Township Committee was motivated primarily in its decision by a desire to have the license "die." Gianfortuno v. Bellmawr, et al., Bulletin 908, Item 5; McCollum v. Egg Harbor, Bulletin 1026, Item 1.

Accordingly, it is, on this 13th day of June 1955,

ORDERED that the appeal of Wilson O. Bachman be and the same is hereby dismissed; and it is further

ORDERED that the action of the respondent Township Committee of the Township of Lakewood in refusing transfer of Plenary Retail Consumption License C-11, held by Wilson O. Bachman, for premises at Speedway Boulevard and Madison Avenue, to appellants Joseph Brandt and Marjorie Brandt, for premises at a location on the South Side of Ocean Avenue, 1410 feet west of Estelle's Corner in the Township of Lakewood, be and the same is hereby reversed, and respondent Township Committee of the Township of Lakewood is directed to grant forthwith the transfer for which application was made by appellants Joseph Brandt and Marjorie Brandt, subject to the completion of the building in accordance with the plans and specifications filed by appellants Joseph Brandt and Marjorie Brandt.

William Howe Davis,
Director.

2. APPELLATE DECISIONS - PRIOR AND KESSE v. CLIFTON AND
GUILIANO.

IRENE K. PRIOR and HANNAH A.)
KESSE,)
Appellants,)

v.

On Appeal

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
CLIFTON, AND MICHAEL GUILIANO,)
trading as GUILIANO'S BAR AND)
GRILL,)
Respondents.)

CONCLUSIONS AND ORDER

Louis Adler, Esq., Attorney for Appellants.
John C. Barbour, Esq., by Manfred Triebel, Esq., Attorney for
Respondent Municipal Board of Alcoholic Beverage Control.
Joseph N. Donatelli, Esq., Attorney for Respondent Michael
Guiliano, trading as Guiliano's Bar and Grill.

BY THE DIRECTOR:

This is an appeal from the action of respondent Board on March 28, 1955, whereby it approved by a two-to-one vote an application for a place-to-place transfer of the plenary retail consumption license of respondent Michael Guiliano, for the 1954-55 licensing period, from premises 171 River Road to premises 934-940 VanHouten Avenue, Clifton. The license was to be issued at a subsequent date by respondent Board after the completion of a building to be constructed in accordance with plans and specifications allegedly furnished by respondent licensee.

The grounds set forth by appellants in their petition of appeal for reversal of the action of the respondent Board are as follows:

- (a) Appellants were denied the right to appear and object to the transfer.
- (b) No evidence or testimony was adduced or taken by the respondent Board justifying the granting of the transfer application.
- (c) There is no public need or necessity for an additional plenary retail consumption tavern in the immediate neighborhood. The general welfare of the public and residents in the neighborhood will be endangered and not served by this tavern.
- (d) The needs of the public and neighborhood are amply provided for by 12 plenary retail consumption taverns on VanHouten Avenue, Clifton, New Jersey and 1 on Clifton Avenue, in said City, all within approximately one half mile from the situs of the respondent Michael Guiliano's VanHouten Avenue new location.

The testimony of the appellants and two objectors to the transfer of the license was, in substance, that there was no need for a license of the type in question in the area and that a licensed premises would aggravate the existing traffic conditions on VanHouten Avenue.

Philip Rubin, a member of respondent Board, testified

that he voted against the transfer of the license to the proposed location because he was of the opinion that at present there are sufficient plenary retail consumption licenses on VanHouten Avenue. He further testified that he was satisfied that "This tavern complied with the rule. It was outside the thousand foot limit."

Joseph S. Stufko, a member of respondent Board, testified that he voted to approve the application for the transfer in question. It was his opinion that it complied with the law as far as distance was concerned, and after considering the area and the type of businesses located in the vicinity there was "absolutely no objection." Furthermore, he testified that the report received by the respondent Board from the Chief of Police of the municipality indicated that "there would be absolutely no traffic hazard whatsoever."

The uncontradicted evidence in this case tends to disclose that, in addition to residences in the neighborhood, there are businesses of various kinds located nearby or within a comparatively short distance from the proposed location. These businesses include a food store, a cleaning establishment, a junk yard, a plumbing supply business, a sheet metal factory, a gasoline service station, a coal yard, a barber shop and a carpenter shop. There are no licensed premises within 1,000 feet of the proposed premises.

Appellant Irene K. Prior complained that she did not observe the notice in the local paper that a hearing was to be held on the transfer in question before the respondent Board on March 28, 1955, and as a result thereof did not appear as an objector at that time. It was stipulated by the attorneys for the respective parties that all the statutory requirements had been complied with by the respondent licensee when the application for transfer was considered. In view of the fact that the present appeal constituted a trial de novo, all persons wishing to be heard were afforded such opportunity.

The evidence presented regarding the likelihood of a traffic hazard in the vicinity of the proposed premises, should the licensed business be permitted to operate there, is not convincing. The Chief of Police, who submitted his report to the respondent Board prior to its decision, was of the opinion that no traffic hazard would be created.

The decision as to whether or not a transfer will be granted rests within the sound discretion of the local issuing authority in the first instance. Tolen v. Kearny, et al., Bulletin 880, Item 1; Nichols, et al. v. Mantua, et al., Bulletin 852, Item 2; Byrne v. Belleville, et al., Bulletin 851, Item 4.

"The question as to whether licensed premises should be permitted in a section of a mixed residential and business character, as this appears to be, is primarily to be determined in the sound discretion of the local issuing authority. So also is this true of the question of the number of licensed premises which should be permitted in such a section." Londa v. Elizabeth, et al., Bulletin 901, Item 1.

After considering all of the evidence presented in the instant case, there is no indication that the action of the respondent Board was improper, arbitrary, or so unreasonable as to amount to an abuse of discretion warranting the reversal of its action.

The burden of establishing that the respondent's action was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulations No. 15. Under all the facts and circumstances in this case, I find that appellants have failed to sustain this burden.

Accordingly, it is, on this 13th day of June 1955,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Clifton be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

William Howe Davis,
Director.

3. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE PRIVILEGES OF LICENSE - FAILURE TO NOTIFY ISSUING AUTHORITY OF CHANGE IN FACTS IN VIOLATION OF R.S. 33:1-34 - EMPLOYING UNQUALIFIED PERSON - LICENSE SUSPENDED FOR 90 DAYS - RENEWAL LICENSE UNDER SUSPENSION UNTIL SITUATION CORRECTED.

In the Matter of Disciplinary Proceedings against

THE BRASS RAIL TAVERN, INC.,
133 Plane Street,
Newark 2, N. J.,

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-151, issued by the Municipal Board of Alcoholic Beverage Control and thereafter extended to William M. Becker, Receiver for The Brass Rail Tavern, Inc.

ORDERS

I. Robert Scheffrin, Esq., Attorney for William M. Becker, Receiver.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

A plea of not guilty was entered for defendant-licensee to the following charges:

"1. In your application dated June 7, 1954, as amended August 4, 1954 and December 17, 1954, filed with the Municipal Board of Alcoholic Beverage Control of Newark, upon which you obtained your current plenary retail consumption license, wherein you listed your shareholders as Gail Pierson (4 shares or 40%), James F. Russell (5 shares or 50%) and James L. Pierson (1 share or 10%), you falsely stated 'No' in answer to Question 23, which asks: 'Has any ... individual other than the stockholders hereinbefore set forth any beneficial interest, directly or indirectly, in the stock held by said stockholders?', whereas in truth and fact Ernest Pierson (not mentioned in the application as a stockholder or as beneficially interested in any of your stock) had such an interest in that he and Gail Pierson were the real and beneficial owners of all of your stock; said false statement being in violation of R.S. 33:1-25.

"2. From about August 3, 1954 until the present time, you knowingly aided and abetted Ernest Pierson to exercise, contrary to R.S. 33:1-26, the rights and privileges of your plenary retail consumption license; thereby yourself violating R.S. 33:1-52.

"3. You failed to file with the Municipal Board of Alcoholic Beverage Control of Newark, within 10 days after the occurrence thereof, written notices of changes in facts set forth in answer to Question 32 of your aforesaid application and in answer to Questions 20, 21 and 22 of said application as amended December 17, 1954, the change in facts stated in answer to Question 32 being that on or about January 4, 1955 you gave a chattel mortgage on your tavern furniture, fixtures and equipment to Essex Finance & Factors Corporation, replacing a chattel mortgage mentioned in the application as held by Nat Kleinwaks, and the changes in facts stated in the amended answers to Questions 20, 21 and 22 being that sometime between the date of said amendment and March 29, 1955 Gail Pierson and James L. Pierson (two of your officers, directors and stockholders) moved their residences from 133 Plane Street, Newark to 75 Bleecker Street, Newark and Rehobeth Beach, Delaware, respectively; your failure to file such notices being in violation of R.S. 33:1-34.

"4. From about August 3, 1954 to about April 1, 1955, you knowingly employed and had connected with you in a business capacity the aforesaid Ernest Pierson, a person who had been convicted in Essex Court on or about June 28, 1950 of a crime involving moral turpitude, viz., the crime of atrocious assault and battery; in violation of Rule 1 of State Regulations No. 13."

There was no appearance at the hearing on the part of the defendant-licensee, a corporation, the plea having been entered pro forma by the Receiver of the bankrupt corporation in his capacity both as Receiver in state insolvency proceedings, and as Receiver appointed subsequently in Federal bankruptcy proceedings. Such plea was entered although the Receiver was unable to controvert the facts developed by the agents of the Division.

The evidence presented includes sworn and signed statements of Gail Pierson; her husband, Ernest Pierson; and James F. Russell, concerning their interest in the corporate license. It appears therefrom that in August 1954, Ernest Pierson became a partner with Thomas Smart in the licensed business by purchasing five of the ten shares of the corporate stock which had been issued. Pierson and his wife, Gail Pierson, paid for the stock, which was transferred to James F. Russell, a cousin of Ernest Pierson, because the latter understood that he was not qualified to hold the shares by reason of his conviction of a crime. The business was not prosperous and its income was insufficient to support two partners. Hence, in December 1954, Gail Pierson and Ernest Pierson purchased the remaining five shares from Thomas Smart, executing a note for the purchase price. Gail Pierson and James F. Russell signed this note. Four of these five shares were transferred to Gail Pierson and one share was transferred to James L. Pierson as a qualifying stockholder.

Ernest Pierson and Gail Pierson are the actual owners of the stock of the corporate-licensee and the business conducted thereunder, and Ernest Pierson was employed from about August 3, 1954 in the licensed premises as manager and bartender. The interest of Ernest Pierson in such corporate stock and business was never disclosed to the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Ernest Pierson was convicted in the Essex County Court on June 28, 1950 of the crime of atrocious assault and battery and sentenced to the County Penitentiary for the term of 12 months. According to his wife, Pierson was convicted because he shot a man. The crime of atrocious assault and battery, wherein a weapon is used likely to cause serious injury, is one that involves the element of moral turpitude. Re Case No. 545, Bulletin 638, Item 2, Re Case No. 791, Bulletin 858, Item 5. By reason of this conviction,

Ernest Pierson is precluded from engaging in the alcoholic beverage industry in this State.

The defendant-licensee executed a chattel mortgage to Essex Finance and Factors Corporation dated January 4, 1955, and recorded in the Essex County Register's Office. James F. Russell moved to Rehobeth Beach, Delaware from the address listed in the amended application for license. Gail Pierson moved to 75 Bleeker Street, Newark from the address listed in the amended application for license. The Municipal Board of Alcoholic Beverage Control of the City of Newark did not receive written notice of the execution of the aforesaid chattel mortgage nor the aforesaid changes of addresses within ten days after the occurrence thereof as required by R.S. 33:1-34.

The evidence presented clearly establishes that the defendant-licensee is guilty of all the aforesaid charges and I so find.

With respect to penalty, counsel for the Receiver stated that he had not been able to contest the charges and that he does not doubt for a moment that they are true and have been established. However, he urges that in marshalling the assets of the bankrupt corporation, he is of the opinion that a great deal of leniency should be exercised in imposing penalty since a penalty will not only affect former stockholders but will also work to the disadvantage of creditors who extended credit to the corporate-licensee.

An exactly similar contention was urged and rejected in Re Tivoli Delicatessen, Inc., Bulletin 533, Item 1, wherein Alfred E. Driscoll, then Commissioner of the Department of Alcoholic Beverage Control said:

"The Alcoholic Beverage Law puts all creditors on notice that, when extending credit, they take the risk of dealing with a debtor who will abide by the rules, and that they may not look to the license as a reachable asset. R.S. 33:1-26 specifically provides that under no circumstances shall a license, or rights thereunder, be deemed property, subject to *** lien, levy, attachment, execution, seizure for debts ***."

Defendant has no prior adjudicated record. All of the offenses which are the subject of the charges appear to be interrelated and represent violations committed in the course of the illegal acquisition and conduct of the corporate-licensee's business by Ernest L. Pierson. Under all the circumstances the license will be suspended for ninety days. Re Holiday Inn, Inc., Bulletin 944, Item 1. However, since Ernest Pierson remains disqualified from having any interest in the licensed business, I shall suspend defendant's license for the balance of its term, effective immediately. Any license issued in renewal thereof shall be under suspension until the entry of a further Order herein. In the event that the license is transferred to a duly qualified person or in the event that it is established by sufficient proof that said Ernest Pierson no longer has any interest in the corporate license or is connected with it in any business capacity, application may be made to me for lifting such suspension (as it affects the renewed license) but in no event will an Order lifting the suspension be entered prior to ninety days from the effective date hereof.

Accordingly, it is, on this 14th day of June 1955,

ORDERED that Plenary Retail Consumption License C-151,

issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark heretofore to The Brass Rail Tavern, Inc. and thereafter extended to William M. Becker, Receiver for The Brass Rail Tavern, Inc., for premises 133 Plane Street, Newark, be and the same is hereby suspended for the balance of its term effective immediately, and that any license issued in renewal thereof shall be under suspension until the entry of a further Order herein; and it is further

ORDERED that in the event a correction of the illegal situation is effected in the manner hereinbefore set forth, leave will be given as aforesaid to make application to the Director for the lifting of the suspension (so far as it affects the renewed license), but in any event, no order shall be entered prior to the expiration of ninety days from the effective date of the suspension.

William Howe Davis,
Director.

4. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL AND OTHER ARTICLES FORFEITED -- MOTOR VEHICLE RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on)
March 23, 1955, of a quantity of)
alcohol, a steel drum, assorted)
patent medicines, drug supplies,)
and a Ford sedan on Route 22, in)
Branchburg Township, Somerset)
County and State of New Jersey.)

Case No. 8834

On Hearing

CONCLUSIONS and ORDER

Thompson & Convery, Esqs., by Vincent J. Convery, Esq.,
Attorneys for Andrew J. King.
I. Edward Amada, 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, and further pursuant to a stipulation dated March 29, 1955 signed by Andrew J. King, to determine whether a quantity of alcohol, a steel drum, assorted patent medicines, drug supplies, and a Ford sedan, described in a schedule attached hereto, seized on March 23, 1955 on Route No. 22, Branchburg Township, New Jersey, constitute unlawful property and should be forfeited.

The property above described was turned over to ABC agents by New Jersey State Police, after it had been taken into custody by a State Trooper while on routine traffic duty on the above highway on the day in question. The ford sedan, registered in the name of Andrew J. King, was being operated by his son, Lawrence C. King, when seized.

Pending hearing of the case, Andrew J. King deposited \$200.00 under protest pursuant to R.S. 33:1-66, with the Director of the Division of Alcoholic Beverage Control, representing the appraised retail value of the Ford sedan, and thereupon obtained return of such motor vehicle. Andrew J. King has stipulated that such Director should determine in the present

proceedings whether such sum should be forfeited, or returned to him.

When the matter came on for hearing pursuant to R.S. 33:1-66 and such stipulation, an appearance was entered by Andrew J. King, who sought return of his deposit of \$200.00.

The seized property included five one-gallon jugs of alcohol without any labels, or stamps indicating the payment of tax on alcoholic beverages thereon. A sample of this alcohol was analyzed by the Division's chemist, who reports that it has an alcoholic content of 95 per cent. by volume, and is fit for beverage purposes. It is high proof alcohol which, when diluted with water, may be used for beverage purposes.

The alcohol is illicit because of the absence of a label or tax stamp on any of the jugs. R.S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol, other articles, and the motor vehicle in which the illicit alcohol was transported and found, constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Lawrence King was a pharmacist, employed by a hospital located in Brooklyn, New York. He offered the explanation that he was transporting the alcohol, and a 55-gallon drum, to a farm in Pennsylvania, where he intended to manufacture cordials with the alcohol.

While there is no direct evidence as to the source of the alcohol, there is a justifiable inference that Lawrence King obtained such alcohol from the hospital, legally or otherwise. In any event, the likelihood that Lawrence King was engaged in a lawful enterprise appeared to be so dubious that he waived any claim to the return of such alcohol and other articles being transported in the motor vehicle.

Andrew J. King claims to be wholly innocent in the matter. He testified that he is a retired post office employee, with a record of 41 years of service; that he purchased the Ford sedan in 1947 and drives it frequently; that his wife is employed as a teacher; that his son, Lawrence, and his wife and three children, reside with him; that his son borrowed the car to drive to the farm in Pennsylvania; that he was not present when his son loaded the car and did not know or suspect that Lawrence would transport alcohol therein.

Lawrence King has been employed as a pharmacist for about seven years. He was in the armed services for four years, and apparently has not previously been involved in any unlawful alcoholic beverage activity, or previously arrested. There does not appear to be anything in his background which should have led his father to suspect that he would be likely to engage in illegal liquor activities. I am satisfied that Andrew J. King acted in good faith, and did not know, or have any reason to suspect that Lawrence C. King would transport illicit alcohol in the motor vehicle. His request for return of the deposit of \$200.00, less the deduction of the costs of seizure and storage of the motor vehicle, will be granted.

Accordingly, it is DETERMINED and ORDERED that the costs of the seizure and storage of the motor vehicle described

in Schedule "A" attached hereto, be deducted from the deposit of \$200.00 and the balance returned to Andrew J. King; and it is further

DETERMINED and ORDERED that the balance of the seized property described in the aforesaid Schedule "A" 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 Director of the Division of Alcoholic Beverage Control.

William Howe Davis,
Director.

Dated: June 20, 1955.

SCHEDULE "A"

- 5 - one-gallon glass jugs of alcohol
- 1 - 55-gallon steel drum
- Assorted patent medicines and drug supplies
- 1 - Ford sedan, Serial No. 799-A, Engine No. 1467671, 1955 New York Registration L25-19.

5. DISCIPLINARY PROCEEDINGS - FAILURE TO NOTIFY ISSUING AUTHORITY OF CHANGE OF FACTS, IN VIOLATION OF R.S. 33:1-34.

CANCELLATION PROCEEDINGS - HOLDER OF LICENSE CEASED TO BE A BONA FIDE CLUB - LICENSE CANCELLED.

In the Matter of Disciplinary Proceedings against)
)
 EIGHT ACES,)
 39 River Street,)
 Newark 5, New Jersey,)
)
 Holder of Club License CB-10, issued)
 by the Municipal Board of Alcoholic)
 Beverage Control of the City of Newark.)
 -----)

CONCLUSIONS
AND
ORDER

Francis P. Meehan, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant originally pleaded not guilty to a charge alleging that it failed to file a written notice with the Municipal Board of Alcoholic Beverage Control of the City of Newark within ten days after the change in various officers of defendant-club, in violation of R.S. 33:1-34.

At the same time as the above charge was served, defendant was also ordered to show cause why its current license should not be cancelled and declared null and void for the following stated reason:

"Said license was improvidently issued in violation of R. S. 33:1-12(5) and Rule 2 of State Regulations No. 7 in that, at the time of issuance of such license and prior thereto, you had ceased to be a bona fide club."

On June 6, 1955 the attorney for defendant advised in writing that said defendant wished to change its former

plea of not guilty to the charge preferred against it and desired to enter a plea of non vult as "it does not wish to contest the charges made in the same."

The file in the instant case discloses that defendant was duly incorporated in 1924, and the certificate of incorporation described defendant-club as a nonprofit organization whose purpose was "To provide for entertainment for its members according to the constitution and bylaws as adopted by said association." It further provided for the election of a president, a vice-president, a treasurer, a secretary and three trustees.

During the course of the investigation efforts were made by ABC agents to obtain a copy of the bylaws of defendant-club but, apparently, no copy was available for inspection. A writing, purporting to be the minutes of a special meeting held on August 30, 1954, disclosed that Joseph C. Jablonski and Walter Fetcho, vice-president and treasurer, respectively, submitted their resignations, effective as of that date. The said officers were allegedly replaced by Florenz Gilbert as vice-president, and Joseph Phillips as treasurer. No notification of such change in officers was given to the municipal issuing authority by defendant.

As a result of the investigation, it developed that practically all of the officers and trustees, with the exception of George Garrity, its president, did not know the names of their fellow officers of the defendant-club. It was ascertained from interrogation of the officers that, in most instances, they neither knew what their particular duties were in the offices they held nor had they actually performed any duties on behalf of the defendant-club. There was a wide divergence of opinion among the officers and trustees as to the regular meeting night of the club. George Garrity, president, collected all moneys received for dues and initiation fees and in payment for alcoholic beverages sold in the club. He paid himself a weekly salary in cash and also paid various bills and current expenses in the same manner. George Garrity stated that if there was any money left over after payment of expenses he deposited same in the club account in a neighborhood bank. The bank statements indicated that the amount on deposit at any time was comparatively small. George Garrity, according to his own statement, accounted to the club only when he so desired and he further stated that the treasurer had nothing to do as he (as president) took care of the financial matters of the association.

It can readily be seen that the club, which is alleged to have 165 members, was a personal operation of George Garrity. The social functions formerly conducted by the club, in which the members and their families participated, have practically ceased to exist. The evidence resulting from the investigation discloses conclusively that George Garrity maintains the defendant-club for his own purposes.

Defendant has held a liquor license since July 1, 1935. The investigation made in this case clearly indicates that, within the intendment of the Alcoholic Beverage Law, the club has not existed as such for several years. It is obvious that when the license was renewed for the 1954-55 licensing period, it had ceased to be a bona fide club. Therefore, I shall cancel the license now held by the defendant. Cf. Re Perth Amboy Colored Democratic Club, Bulletin 915, Item 10.

In view of the result herein, it is unnecessary to fix a penalty for the violation set forth in the charge to which defendant has pleaded non vult.

Accordingly, it is, on this 20th day of June 1955,

ORDERED that Club License CB-10, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Eight Aces, 39 River Street, Newark, be and the same is hereby cancelled and declared null and void, effective immediately.

William Howe Davis,
Director.

6. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALES TO MINOR DISMISSED.

In the Matter of Disciplinary Proceedings against)

MARGARET SIMMONS,)
t/a Pine Brook Diner & Kula Klub,)
Route #46, Montville Township,)
PO Pine Brook, New Jersey,)

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Montville.)

ORDER

Sidney Simandl, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On Saturday night, September 25, 1954, and early Sunday morning, September 26, 1954, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Ronald Lee ---, age 17, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

The basis for the charge, as developed at the hearing from the testimony of the minor, now 18 years of age, and corroborated by an adult companion, is that on Saturday night, September 25, 1954, at about midnight, they entered the defendant's tavern and were served a number of drinks of beer by Kirby Simmons, the bartender, and that the minor drank the beer served to him. The minor and his companion left the tavern about 1 a.m. and returned about 1:50 a.m. on Sunday morning, September 26, and at this time the minor was served with a glass of beer by Kirby Simmons. The minor was not asked to, and did not, sign any written statement as to his age.

This evidence, if unchallenged, adequately substantiates the charge. However, the defendant does challenge the veracity of this account. She asserts that it should not be accepted on

claim that the minor had an ulterior motive in unjustly accusing the defendant of serving alcoholic beverages to him, and on further claim that on cross-examination inconsistencies appeared in the evidence given by the minor and his companion; that therefore the contrary evidence of the defendant's witnesses that no alcoholic beverages were served to the minor is more worthy of belief. Oral argument was had before me at which the defendant's attorney urged dismissal of the charge on the above grounds.

The minor and his companion left defendant's tavern on Sunday at about 2 a.m. The minor, alone in his car, was picked up by a Caldwell police officer at about 4 a.m. According to the minor, the officer accused him of drinking and also found some indecent pictures in the car. The officer informed him that he could get into trouble on account of possessing such pictures and that he should tell the police where he had been drinking. Thereafter he named defendant's tavern as the place where he had obtained drinks of alcoholic beverages.

The minor and his companion, when they appeared before the local police magistrate shortly thereafter, were confused and not too certain as to the exact time when they first entered the defendant's licensed premises on September 25. They were likewise vague and inconsistent concerning certain other incidental details when testifying at the instant hearing. Normally this in itself would not cast a serious reflection on their veracity since they testified clearly on the primary facts -- the sale and service of beer to the minor -- and incidental details might well be forgotten after the long period which elapsed between the event and the hearing. However, the background of the accusation, as above set forth, cannot be overlooked as a possible explanation of the reason for such confusion and vagueness.

On defendant's behalf two patrons, and the bartender alleged to have served the beer to the minor on the evening in question, testified under oath that to their knowledge the minor and his companion entered the tavern on only one occasion, at about 1:50 a.m. on September 26. The bartender and one of the patrons testified that the minor was served 7-Up and not beer. The other patron testified that he heard 7-Up ordered but did not actually see what was served to the minor.

I am not impressed with the testimony of the minor, which is evasive and uncertain and in certain respects also contradicts testimony he admitted giving in police court several days after the occurrence.

On the other hand, defendant's witnesses by the greater weight of the evidence have raised such a doubt in my mind that the minor was served an alcoholic beverage on the premises that I must resolve the doubt in favor of the defendant.

After carefully considering all the testimony I conclude that defendant's guilt has not been established by the necessary preponderance of the evidence. I therefore find defendant not guilty.

Accordingly, it is, on this 20th day of June, 1955,

ORDERED that the charge herein be and the same is hereby dismissed.

William Howe Davis,
Director.

8. DISCIPLINARY PROCEEDINGS - SALES TO MINOR - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 CADILLAC BAR CORPORATION,)
 1320 East State Street,)
 Hamilton Township,)
 PO Trenton, New Jersey,)
 Holder of Plenary Retail Consumption License C-41, issued by the Township Committee of Hamilton Township.)
 -----)

CONCLUSIONS
 AND
 ORDER

Theodore G. Fitzgeorge, Esq., Attorney for Defendant-licensee.
 William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on March 19, 1955, it sold, served and delivered alcoholic beverages to a minor and permitted the consumption of such beverages by said minor in and upon its licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on March 30, 1955, ABC agents, acting upon information transmitted to this Division by the Hamilton Township Police, obtained a signed sworn statement from Henry --- (age 19) relating that at or about 10:45 p.m. Saturday, March 19, 1955, he and an adult entered defendant's licensed premises, wherein he was served three whiskey highballs by different bartenders who made no inquiry as to his age. He further stated that he and his companion left the licensed premises about 12:30 a.m. Sunday. The adult corroborated Henry's statement and, together with Henry, on April 1, 1955, directed the agents and local detectives to defendant's licensed premises and pointed it out as the tavern wherein the violation occurred.

Defendant has a prior adjudicated record. Its license was suspended by me for thirty-five days, effective April 4, 1955, for (1) immoral activity, (2) hostess activity and (3) unqualified employees (Re Cadillac Bar Corp., Bulletin 1059, Item 2). Defendant appealed that suspension to the Superior Court and subsequently an order of that Court was entered permitting the withdrawal of the appeal. On June 22, 1955, I entered an Order reimposing the thirty-five-day suspension, effective June 28, 1955. The minimum penalty for a violation involving a nineteen-year-old minor is ten days (Re Lou Vin Bar, Inc., Bulletin 1059, Item 6). However, since the prior dissimilar violations occurred within a five-year period, I shall suspend defendant's license for fifteen days (Re Weiner, Bulletin 1021, Item 4). Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

The license now held by defendant and presently under suspension will expire at midnight June 30. The Order entered herein will affect any renewal of said license.

Accordingly, it is, on this 27th day of June, 1955,

ORDERED that, if any license be issued for the 1955-56 licensing year by the Township Committee of Hamilton Township to Cadillac Bar Corporation, or to any other person, for premises 1320 East State Street, Hamilton Township, such license shall be under suspension for ten (10) days, commencing at 2 a.m. August 2, 1955, and terminating at 2 a.m. August 12, 1955.

William Howe Davis,
Director.

9. STATE LICENSES - NEW APPLICATIONS FILED.

Alfred Patetta & Joseph Dacunzo,
2165 Vaux Hall Road,
Union, New Jersey
Application filed June 28, 1955, for Transportation License.

Calhoun Trucking Corporation,
161 Delancy Street,
Newark, New Jersey
Application filed June 28, 1955, for Transportation License.

Jacob Landsberg & Julius Nussenblatt,
t/a Jacobson Beverages,
365 Bergen Avenue,
Lakewood, New Jersey
Application filed June 28, 1955, for transfer of State Beverage Distributor's License SBD-38, from Rose Jacobson, t/a Jacobson Beverages, 365 Bergen Ave., Lakewood, N. J.

Fred Metzger, t/a Fred Metzger Co.,
60 Park Place,
Newark, New Jersey
Application filed June 29, 1955, for Broker License.

William Ross,
26 East Madison Avenue,
Dumont, New Jersey
Application filed June 30, 1955, for transfer of State Beverage Distributor's License SBD-14 from Charles H. Rubens, Jr., 26 East Madison Avenue, Dumont, New Jersey.



William Howe Davis,
Director.