

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

BULLETIN 1229

JULY 1, 1958.

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

BULLETIN 1229

JULY 1, 1958.

1. APPELLATE DECISIONS - PROCTOR v. GLEN ROCK AND GRAND UNION CO.

HERBERT L. PROCTOR, )

Appellant, )

v. )

MAYOR AND COUNCIL OF THE BOROUGH )  
OF GLEN ROCK, AND THE GRAND UNION CO., )

Respondents. )

ON APPEAL  
CONCLUSIONS AND ORDER

-----  
Herbert L. Proctor, Appellant, Pro se.  
George Winne, Esq., Attorney for Respondent Mayor and Council.  
John D. Leslie, Jr., Esq., Attorney for Respondent The Grand  
Union Co.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the Mayor and Council of the Borough of Glen Rock whereby, on January 13, 1958, it granted an application filed by respondent The Grand Union Co. to transfer its limited retail distribution license from 191 Rock Road to 179 Rock Road, Borough of Glen Rock.

"The petition of appeal alleges in effect that the premises to which transfer is sought were improperly described in the notice of application because there is no such street number as 179 Rock Road; that the transfer brought a liquor license in too close proximity to a long established residential section; that appellant's premises are deprived of the full benefits and intent of the local zoning ordinances, and that the use of a rear driveway at 167 Rock Road is illegal. It appears from a letter sent by appellant to the Director prior to the institution of the appeal, and which letter is referred to in the petition of appeal, that appellant also contends that he was not granted a proper hearing before the Mayor and Council and that the granting of the transfer may result in unsatisfactory conditions if patrons of The Grand Union Co. are permitted to consume alcoholic beverages in the parking lot adjoining its premises.

"Appellant is the owner of premises at 571 Doremus Avenue and has resided there for more than forty years. He testified at the hearing that there are eighteen other homes in the same section of the Borough. Immediately to the rear of appellant's property there formerly was a large plot of undeveloped land which was owned by the Erie Railroad Company. This plot has been recently sold to an individual who owned the adjoining property facing on Rock Road, with the result that this individual thus became the owner of a strip of land between Rock Road and the main line of the Erie Railroad. The building now occupied by The Grand Union Co. was erected on part of the land recently acquired from the railroad. While the building does not face on Rock Road, access to the building from Rock Road has been provided for by means of two driveways. One driveway, used principally by patrons of the store, adjoins a store numbered 175 Rock Road, and the other driveway, used

principally for deliveries, has been designated above as the rear driveway at 167 Rock Road. In its notice of application for transfer The Grand Union Co. described the premises to be licensed as 179 Rock Road. Under the circumstances of this case, it appears that this address is sufficient to identify the premises sought to be licensed. It is difficult to see how this rear property could be otherwise described, particularly in view of the fact that the public driveway from Rock Road is located next to the property numbered as 175 and, hence, would be normally numbered as 177 or 179. It does not appear that the appellant or any other person was misled in any way by the address which appeared in the published notice of application.

"The section of the Borough in which the premises of The Grand Union Co. are located appears to be zoned for wholesale and commercial use. Appellant's premises are in a residential zone and separated from the aforesaid zone by a five-foot 'buffer.' If the licensed premises are properly conducted, they should not result in the depreciation of property located in the residential zone. DeLotto v. West Paterson, Bulletin 1172, Item 1.

"There is nothing in the record to show that the use of the rear driveway at 167 Rock Road is illegal. It is not necessary, as appellant apparently contends, that this driveway must be included in the description of the licensed premises.

"As to the contention that appellant was not granted a proper hearing, he testified that he appeared on other business at the meeting of the Mayor and Council held on January 13, 1958; that the Mayor held his letter of objection and addressed him and that he replied he was there on another matter. It might have been better practice to schedule a hearing in accordance with Rules 8 and 9 of State Regulation No. 6, but it does not appear that any other person filed a written objection and appellants written objection was before the Mayor and Council when it granted the application for transfer. In any event, appellant has had a full opportunity to be heard at the hearing held herein. Ashton v. Hopewell et al., Bulletin 782, Item 11.

"As to the remaining contention of appellant, the holder of a limited retail distribution license is entitled to sell un-chilled, brewed, malt alcoholic beverages in quantities of not less than 72 fluid ounces in original containers for off-premises consumption. Such purchases are usually made for home consumption, and it is doubtful that anyone would desire to consume warm beer in the adjoining parking lot.

"After considering all the evidence herein, I conclude that appellant has not sustained the burden of proof in establishing that the action of respondent Mayor and Council was erroneous and I, therefore, recommend that an order be entered affirming the action of respondent Mayor and Council and dismissing the appeal."

Written exceptions to the Hearer's Report and written argument thereto were filed with me by appellant, pursuant to Rule 14 of State Regulation No. 15.

After carefully considering the entire record, including the transcript of testimony, the exhibits in the case and the exceptions and written argument of appellant, I concur in and adopt the conclusions set forth in the Hearer's Report as my conclusions herein. Hence I shall affirm the action of respondent Mayor and Council of the Borough of Glen Rock.

Accordingly, it is, on this 7th day of May, 1958,

ORDERED that the action of respondent Mayor and Council of the Borough of Glen Rock be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
Director.

2. APPELLATE DECISIONS - NEW BRUNSWICK BOAT CLUB, INC. v. HIGHLAND PARK.

NEW BRUNSWICK BOAT CLUB, INC.,	)	
Appellant,	)	
v.	)	ON APPEAL
	)	CONCLUSIONS AND ORDER
BOROUGH COUNCIL OF THE BOROUGH	)	
OF HIGHLAND PARK,	)	
Respondent.	)	

-----  
Rafferty and Blacher, Esqs., by Philip Blacher, Esq., Attorneys  
for Appellant.

Herman B. Hoffman, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

"This is an appeal from respondent's action whereby on December 17, 1957 it denied by resolution appellant's application for a club license for the following stated reasons:

- A. The voters of Highland Park at a referendum held at the general election in 1955 opposed the issuance of any additional liquor licenses.
- B. The membership of said boat club consists primarily of people who are not residents of the Borough of Highland Park and therefore the issuance of a license would not be serving the interests of the residents of the Borough of Highland Park.
- C. The location of said premises is in a residential zone and therefore would adversely affect the residential character of said neighborhood to the detriment of the Borough of Highland Park.

"Appellant in its petition of appeal alleges that respondent's action was erroneous in that reasons A and B are not controlling; that, as to reason C, it was in possession of its club quarters prior to the adoption of the Zoning Ordinance; its club house is adjacent to two other commercial enterprises and is legally deemed a non-conforming use. Respondent in its answer denies appellant's allegations.

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

"The material facts adduced at the hearing herein show that appellant club was incorporated on July 22, 1892 and is, in all respects, a bona fide club in accordance with Rule 1 of State Regulation No. 7. The section of the Borough in which appellant's

club house is located is now zoned as 'Residence A' but the club house was erected at its present site prior to the adoption of the Zoning Ordinance in 1923. A Borough Ordinance regulating the sale of alcoholic beverages provides for the issuance of club licenses without numerical limitation. On November 8, 1955 the legal voters of the Borough voted 'No' on 'Public Question #1' which reads: 'Shall the Highland Park Ordinance regulating the sale of alcoholic beverages be amended to permit the issuance of new plenary retail consumption licenses in accordance with New Jersey Statute R. S. 33:1-12.14?' Appellant, thereafter, filed its application for a club license which was denied for the reasons hereinabove stated.

"Considering respondent's reasons as set forth in its resolution, there is no merit to reason A. The negative vote on 'Public Question #1' was a mandate to the Mayor and Borough Council to maintain the numerical limitation of plenary retail consumption licenses as provided by Section 5(a) of the Ordinance pertaining to the sale of alcoholic beverages. It in no way restricts respondent from issuing club licenses as provided by said Ordinance. The distinction between a club license and a plenary retail consumption license, is that the former is not issued to supply the needs of the neighborhood. The holder of a club license cannot lawfully sell alcoholic beverages to the general public but must confine such sales to bona fide members and their bona fide guests. Ocean County Tavern Association v. Beach Haven, et al., Bulletin 954, Item 2; Italy Blooming Society v. Belleville, Bulletin 1215, Item 2. As to reason B: There is no requirement under the Statute or Rules and Regulations pertaining to club licenses that the membership of a bona fide club be residents of the municipality in which the club quarters are located. As to reason C: The evidence herein indicates that the section in which appellant's club house is located is predominantly residential. Mayor Martin testified: 'I felt that the issuance of a license in the area or in any other area, particularly Class A or Class B residential areas, would be detrimental. The other members of Council thought likewise.' Reason C for denying appellant's application is valid and sufficient. See Iacovone v. Gloucester, Bulletin 644, Item 4; Michael A. Kelly Post 2433 v. Union, Bulletin 919, Item 2.

"Appellant, however, contends that by reason of the non-conforming use its premises are exempted from the effect of the Zoning Ordinance. While it is clear that appellant's premises may be continued in use as a boat club notwithstanding the subsequent adoption of the Zoning Ordinance, it is equally clear that the non-conforming use may not be extended. DeVito v. Pearsall, 115 N.J.L. 323 (Sup. Ct. 1935); Kensington Realty, etc. Corp. v. Jersey City, 118 N.J.L. 114 (Sup. Ct. 1937), Affd. 119 N.J.L. 338 (Ena. 1938); Dubin v. Wich, 120 N.J.L. 469 (Sup. Ct. 1938); Vogel v. Bridgewater, 121 N.J.L. 236 (Sup. Ct. 1938); Simone v. Peters, 135 N.J.L. 495 (Sup. Ct. 1947); Scerbo v. Jersey City, 4 N.J. Super. 409 (App. Div. 1949); Struyk v. Samuel Braen's Sons, 17 N.J. Super. 1 (App. Div. 1951), Affd. 9 N.J. 294 (Sup. Ct. 1952); Gerkin v. Ridgewood, 17 N.J. Super. 472 (App. Div. 1952). The sale of liquor would constitute a new use in the zoned area and would not be permissible under the non-conforming use which existed at the time of the adoption of the Zoning Ordinance, as amended. Talbot v. Keppler and Mendham, Bulletin 117, Item 1 and cases therein cited; Marrinaccio v. Ocean, Bulletin 264, Item 11; Nasso v. Bridgewater, Bulletin 774, Item 10; Cornelius, et al. v. Elizabeth, et al., Bulletin 997, Item 4.

"Considering all the facts and circumstances of this case, I find that appellant has not sustained the burden of establishing that the action of the respondent issuing authority was erroneous.

I recommend, therefore, that an order be entered affirming respondent's action and dismissing the appeal."

Written exceptions to the Hearer's Report together with written argument in substantiation thereof and answering argument were filed with me by the attorneys for the respective parties, pursuant to Rule 14 of State Regulation No. 15.

I agree with the recommendation in the Hearer's Report and with the statement of facts and conclusions of law with respect to Reason C. I must, however, comment upon the Report's statements with respect to Reasons A and B.

As to Reason A: The 1955 referendum on the Question whether new plenary retail consumption licenses shall be issued was held pursuant to R. S. 19:37-1 et seq. The majority of negative votes on that Question was not a mandate. To the contrary, R. S. 19:37-4 provides that the result (the number of "Yes" and the number of "No" votes at such an election) "shall not bind the governing body..., nor be taken or construed as other than an expression of sentiment by the voters, to be followed or disregarded by the governing body in its discretion."

As to Reason B: It does not follow, from the absence of a legal requirement that the members, or most of the members, of an organization seeking a club license must be residents of the municipality wherein the club premises are located, that a municipal issuing authority may not take local non-residence into consideration in arriving at its determination to grant or deny an application for a club license. In a given situation, such non-residence as a ground of denial need not be without merit.

On full consideration, I shall affirm the action of the respondent Council.

Accordingly, it is, on this 19th day of May 1958,

ORDERED that the action of the respondent Borough Council of the Borough of Highland Park 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 - SALE TO MINORS - CHARGE ALLEGING HINDERING DISMISSED - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 )  
 HUBERT THOMAS BOURNIQUE, )  
 t/a The Cave, )  
 Route #22, )  
 Union (Union County), N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-33, issued by the Township Committee of Union Township (Union County). )

-----  
Frank Metro, 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:

"Charges were preferred against defendant alleging that (1) he sold, served and delivered alcoholic beverages to four minors in an upon his licensed premises, in violation of Rule 1 of State Regulation No. 20, and (2) he hindered and delayed ABC agents in their investigation, inspection and examination of his licensed premises, in violation of R. S. 33:1-35.

"Defendant entered a plea of non vult as to Charge 1 and a plea of not guilty as to Charge 2.

"With respect to Charge 1, the file discloses that on Friday night, November 22, 1957, ABC agents conducting an investigation of defendant's licensed premises observed therein five apparent minors consuming alcoholic beverages which had been served to them by defendant's waitress at tables in the dining area. They also observed the licensee serve a whiskey and soda to one of the group who consumed the drink at the bar. After the agents made their identities known to the youths and ascertained that they were in fact minors, they seized the remaining portion of four of the minors' drinks for evidential purposes. The minors identified themselves as Max --- (age 17); Ronald --- (age 17); Cornelius --- (age 19) and Daniel --- (age 20), and each stated that he was served alcoholic beverages without being required to produce written proof of his age. The other minor (a female) ran from the premises after the agents identified themselves to the minors.

"With respect to Charge 2, the Division called as its witnesses the three ABC agents (hereinafter identified as Agents C, G and M) who participated in the aforesaid investigation. Agent C testified that, after Agent M left the premises to contact Agent G, and while he was questioning the minors, the licensee grabbed his arm. He alleges that, by so doing, the licensee permitted the female minor to escape. Agent G testified that, when he later entered the premises, the licensee blocked with his outstretched arms a door through which Daniel had fled and held the agent's arms, thereby preventing, temporarily, the apprehension of the minor. It is clear that Agent G left the premises and brought Daniel back. The agents testified that later, when two of them were attempting to separate Daniel and the other agent who had been thrown to the floor of the licensed premises by the minor, the licensee exclaimed, 'Leave them alone! Leave them along!', and that when, at the agents' request, the police arrived to arrest the waitress who had served the minors, the licensee said, 'You can't arrest her. You can't take her from me.'

"The licensee testified that he was in the kitchen preparing sandwiches when he heard 'a commotion outside;' that he ran out and saw three men on the floor and asked, 'What's going on here?', and that a man (who later identified himself as an agent) told him to 'leave them alone;' that he ran toward the cash register to get a dime to 'phone the police and, before he could do so, he saw someone running out the door; that he ran to the door and put his arms across it to prevent others from leaving; that he didn't know at the time that the men in pursuit were ABC agents; that, when the agents showed their credentials, he stepped aside and allowed them to pass, and that he then called the police. He denied that he put his hands on the agents or tried to impede their investigation and he testified that his main concern was 'to find out what is going on in my own place of business.'

"Considering the testimony of Agent C on cross-examination, it is apparent that his arm was grabbed before he identified himself to the licensee. Moreover, it is unlikely that he would have followed the female minor who left the premises since he was the only agent on the premises at the time and it was his duty to remain with the other minors and to protect the seized drinks. It is also apparent that the

brief blocking of the door did not prevent Agent G from apprehending the minor Daniel.

"The licensee herein has conducted his licensed business for twenty years and has a clear record for the past twelve years. Although some of his actions on the date alleged came perilously close to conduct constituting hindrance of an investigation, there is some doubt that he deliberately interfered with the agents. I conclude, therefore, that defendant should be given the benefit of that doubt and that it should be determined that the Division has not established the guilt of defendant as to Charge 2 by a fair preponderance of the evidence. Considering all the circumstances herein, I recommend that Charge 2 be dismissed.

"Defendant has a prior adjudicated record. Effective July 3, 1945, his license was suspended for ten days by the then Commissioner for possession of illicit liquor. See Bulletin 672, Item 11. Since the prior violation occurred more than ten years ago, it will not be considered in fixing the recommended penalty for the violation set forth in Charge 1 to which a confessional plea was entered. The minimum penalty imposed for an unaggravated sale of alcoholic beverages to a seventeen-year-old minor is twenty days (Re Mordell, Bulletin 1160, Item 4). However, in view of the number of minors involved, I recommend that an order be entered suspending defendant's license for a period of twenty-five days (Re Hardemal, Inc., Bulletin 1210, Item 8) and that five days be remitted for the confessional plea entered herein, leaving a net suspension of twenty days (Re Koper, Bulletin 962, Item 8)."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by the attorney representing the Division and a written answer was filed by defendant's attorney, pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record including the transcript of the testimony, the Hearer's Report, the exceptions, argument and answering argument filed herein, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 29th day of April 1958,

ORDERED that Plenary Retail Consumption License C-33 issued by the Township Committee of Union Township to Hubert Thomas Bournique, t/a The Cave, for premises Route #22, Union (Union County), be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m., May 6, 1958 and terminating at 2:00 a.m., May 26, 1958.

WILLIAM HOWE DAVIS  
Director.

4. STATE BEVERAGE DISTRIBUTOR'S LICENSE - OBJECTIONS TO TRANSFER HELD TO BE NOT MERITORIOUS - TRANSFER GRANTED ON CONDITION THAT NO DELIVERIES OF ALCOHOLIC BEVERAGES TO CONSUMERS BE MADE ON LICENSED PREMISES.

In the Matter of Objections to the Transfer of State Beverage Distributor's License held by

Phillips Distributing Company, Inc.

from

Canal Road, Griggstown Franklin Township, New Jersey

to

Rear 700 Somerset Street New Brunswick, New Jersey

CONCLUSIONS

- Leo J. Berg, Esq., Attorney for Applicant.
Ray Boardman, Objector, individually and for North Central Counties Retail Liquor Stores Association.
Joseph E. Zimmerman, Objector, individually and for Mid State Tavern Association.
Anthony Barzda, Objector, individually and for Lincoln Gardens Civic Association, Inc.
Lloyd Gehman, Objector, Appearing for the Lincoln Gardens Civic Association, Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Written objections were filed with the Director of the Division of Alcoholic Beverage Control to the application of Phillips Distributing Company, Inc., for a place-to-place transfer of its state beverage distributor's license from its present premises on Canal Road, Griggstown, Franklin Township, Somerset County, N. J., to premises Rear of property known as 700 Somerset Street, New Brunswick, Middlesex County, N. J.

"Although notice of the proposed transfer was sent to the City Clerk of New Brunswick, no objections were received from and no appearance was entered by the municipality at the time of the hearing on February 21, 1958.

"Four objectors appeared at the hearing and voiced their objections to the transfer in question. Joseph E. Zimmerman, holder of a plenary retail consumption license for premises located, according to his testimony, 'about a mile' from the proposed premises, testified that there are presently more than enough retail liquor establishments to meet the needs of those desiring alcoholic beverages 'in and around New Brunswick'. Ray Boardman, holder of a plenary retail distribution license for premises located about a mile or a mile and a half from the proposed licensed premises, testified that he was also of the opinion that there was no need or necessity for another liquor outlet in the municipality. Both of the aforesaid witnesses testified that they appeared not only as individuals, but as officers of liquor dealers' associations, to enter objections to the application for transfer. Anthony Barzda, also interested as a stockholder in a corporation which holds a plenary retail consumption license in New Brunswick for premises

located about five blocks away from the proposed premises, testified that he opposed the transfer because the proposed premises are too close to a school, a federal housing project and a church. He approximated the distances from the church and school, respectively, and that of the proposed premises, to be about 700 feet. Furthermore, he contended that in the neighborhood of the proposed location, there are other types of business establishments located which are frequented by children. A fourth objector, one Lloyd Gehman, testified that he represented a civic association composed of members of a housing project which was located, in his opinion, two blocks away from the proposed premises. He testified that it was the considered opinion of the members of the association that the site sought for applicant's licensed premises would have an adverse effect on the tenants in the housing project wherein he lives and those living in another project in the vicinity.

"Ladislaus M. Gerencser, President of the corporate-applicant, testified that he is being compelled to vacate the premises where he is located at the present time which made it necessary for him to obtain new premises in order to remain in business. He presented a petition signed by representatives of various business establishments situated in the vicinity of the proposed premises wherein it was indicated that they had no objection to the transfer because they were of the opinion it would in no way affect the character of the neighborhood nor would it be injurious in any manner whatsoever. He further testified that at the present time, 90% of his customers reside in the City of New Brunswick and that, in the main, he supplies retail licensees; rather than individuals, with alcoholic beverages.

"I have carefully examined and considered the testimony presented herein and I am satisfied that the objections of those who oppose the transfer in question are not of sufficient weight to deny the place-to-place transfer requested herein. I am mindful of the fact that three of the four objectors are holders of retail liquor licenses and were apparently prompted to object for economic reasons. Under the circumstances, I recommend that the application filed by the applicant for the transfer of the license to the proposed premises be granted."

I agree with the recommendation contained in the Report of the Hearer that the transfer of the license in question be granted. However, in approving the transfer, I have decided, under the circumstances appearing herein, that the license as transferred shall be subject to the condition that no deliveries of alcoholic beverages to consumers be made on the licensed premises.

WILLIAM HOWE DAVIS  
Director

Dated: April 29, 1958

5. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY OPERATED UNDER GUISE OF "CLUB" - APPLICATION FOR RETURN OF PROPERTY BY SPEAKEASY OPERATOR DENIED - STOCK OF ALCOHOLIC BEVERAGES AND EQUIPMENT OF THE ESTABLISHMENT ORDERED FORFEITED.

In the Matter of the Seizure on )  
 October 5, 1957 of a quantity of )  
 alcoholic beverages, fixtures, ) Case No. 9586  
 furniture, and equipment, and )  
 \$54.35 in cash at premises ) ON HEARING  
 occupied by Edward Jones located ) CONCLUSIONS and ORDER  
 on Texas Road, Morganville, in )  
 the County of Monmouth and State )  
 of New Jersey. )

Edward Farry, Jr., Esq., Attorney for Edward Jones and Mary Jones.  
 I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R.S. 33:1-66 to determine whether a quantity of alcoholic beverages, \$54.35 in cash, and various fixtures, furniture, and equipment, described in a schedule attached hereto, seized on October 5, 1957 at premises occupied by Edward Jones, located on Texas Road, Morganville, New Jersey, constitute unlawful property and should be forfeited.

"Edward Jones and Mary Jones, his wife, appeared at the hearing and sought return of the seized property, excepting the alcoholic beverages. Edward Jones claimed that such beverages were the property of the Greenleaf (Greenley) Social Club, also known as the Monmouth Social and Athletic Club, on whose behalf he sought their return.

"An ABC agent testified substantially as follows:

"He visited the premises in question on October 4, 1957 at about 5:00 P.M. When he entered Edward Jones was seated in the yard, where there was a barbeque pit and a number of tables. The agent asked Jones for a barbecue sandwich, whereupon Jones obtained meat for a sandwich from the pit. He told the agent to accompany him to a garage, where Jones went behind a counter or bar therein, obtained bread for the sandwich, and handed such sandwich to the agent. The agent then asked Jones for a bottle of beer. Jones obtained a bottle of beer from a refrigerator, handed it to the agent, and received seventy-five cents for the sandwich and thirty-five cents for the beer. A man came in and called Jones' attention to the fact that the State Police had been there about three weeks previous, and advised Jones not to let anyone in without a card. The agent asked for a card, and Jones gave him a card imprinted with the name of Monmouth Social and Athletic Club, Edward Jones, President, and at the same time the agent signed a membership book. The agent then left the premises.

"The agent returned at about 9:30 P.M. of the same day. He observed two men at the bar drinking beer. He ordered a bottle of beer from Jones, who served him with such beer, and received payment therefor of thirty-five cents, paid with a \$1.00 bill identified by serial number. The agent observed two couples dancing in the part of the premises where there were tables with empty beer bottles thereon. The agent left the premises at about 9:45 P.M.

"The agent again returned to the premises at about 1:30 A.M., which was then October 5th. There were about thirty-five or forty persons in the premises, some eating and some drinking beer at the bar. The agent ordered two bottles of beer from Jones, one for himself, and the other for a man called 'Texas' with whom he became acquainted at the bar. The agent paid Jones for the beer with a dollar bill identified by serial number. He then purchased two drinks of whiskey, for himself and 'Texas', for which he paid Jones with another \$1.00 bill similarly identified by serial number.

"At about 2:20 A.M. other ABC agents and State troopers entered the garage structure and identified themselves. The building is described as a two-car garage, subdivided into two rooms by a partition which did not extend fully to the ceiling or to the rear wall with an opening providing access between the rooms. There was a counter or bar with alcoholic beverages on display behind the bar, in the room on the left-hand side.

"Neither Edward Jones nor Monmouth Social and Athletic Club nor Greenleaf (Greenley) Social Club held any license authorizing any of them to sell alcoholic beverages and the premises were not licensed for that purpose.

"Accordingly, the officers arrested Edward Jones and seized a coca cola cooler, two phonographs, a radio, a camera, and an oil burner in the room on the right-hand side of the garage, and a refrigerator, 144 bottles of beer, five bottles of whiskey and 20 bottles of soda in the room on the left-hand side of the garage. Jones surrendered \$54.35 which he had on his person and which included the three \$1.00 marked bills. Jones placed receipts from the sales of food and alcoholic beverages in his pocket.

"The agents also found in the premises a Federal Special Tax Stamp, the federal tax on the business of a retail liquor dealer, issued to Greenley Social Club, 362 Texas Road, Morganville, expiring June 30, 1958, and three blank license certificates of this Division for the licensing year 1957-58, two for a State Beverage Distributor's License, and one for a Wine Wholesaler License.

"Jones gave the following account of his activities in and about the premises.

"He organized or attempted to organize the Greenleaf Social Club and when he discovered that such club would not be 'old enough' (to qualify for a retail liquor license) he decided to adopt the charter of the Monmouth Social and Athletic Club which had gone out of business and of which he formerly was a member. His wife endeavored to ascertain the necessary procedure to obtain a liquor license, during the course of which the Federal Tax Stamp was obtained.

"Describing the activities of the 'club' at the premises, Jones states that they commenced about five months previous, when the equipment and partition were installed in the garage, and he commenced his barbecue venture. The 'club' throughout was endeavoring to obtain a liquor license. Either the members contributed, or funds were taken from the treasury, given to him, and he purchased beer, whiskey, and soda, and such beverages were distributed to members without charge. No other member or officer of the so-called club appeared at the hearing to substantiate his account of its affairs.

"Concerning his background, Jones testified that he has

been steadily employed for about six years by an industrial concern, and his wife has been steadily employed for about seven years by another industrial concern. Additionally, he sold barbecue sandwiches to acquire funds to complete payments on his home, and to purchase other real estate.

"With regard to the particular events which occurred on October 4th and 5th, Jones stated that the agent, on his first visit, purchased a barbecue sandwich, which Jones completed in the garage, and received payment therefor. The agent then asked for a bottle of beer, and a bystander told the agent he would be required to be a member. The agent paid \$1.00 for a card, and Jones then said 'I will give you a bottle of beer because we can't sell it because it is for members only' and he gave the agent a bottle of beer; and that on his other visits that day the agent did not obtain any alcoholic beverages. However, on being reminded of the incident with 'Texas', he recollected that he had served the agent and 'Texas' each with a drink of whiskey, for which the agent placed a dollar on the bar, and he accepted the dollar when 'Texas' said 'Take it for the club.' Jones acknowledged that he had received in all three marked dollar bills from the agent; further, that when he sold barbecue sandwiches to persons there on that day, he gave some of them beer for which he made no charge.

"On a fair evaluation of all of the evidence, it appears obvious to me that Jones was operating a private business of selling barbecue sandwiches, alcoholic beverages and soda, under the guise of a club, hoping eventually to beguile those in authority to consider his ostensible 'club' qualified for a liquor license. In any event, whether it was a misguided attempt of a bona fide club to sell alcoholic beverages only to members (Seizure Case No. 8656, Bulletin 1044, Item 5), or the sale of food accompanied by a gift of alcoholic beverages (Seizure Case No. 7468, Bulletin 853, Item 12) or an out and out speakeasy operation by an individual, it is an unlawful sale of alcoholic beverages.

"It is implicit from the presence of the Federal retail liquor dealer's stamp (and the sheen of legality sought to be imparted by the possession of the blank liquor license forms) that it was the intention to sell alcoholic beverages at the premises, and not to give them away. Seizure Case No. 7594, Bulletin 888, Item 6.

"On the evidence presented, it is my opinion that a finding is warranted that the seized alcoholic beverages were intended for unlawful sale and hence are illicit. R.S. 33:1-1(i). Such illicit alcoholic beverages, together with all personal property seized therewith on the premises, are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

"I further conclude that the \$54.35 in cash found on the person of Edward Jones represents in large part receipts for the unlawful sale of alcoholic beverages, so commingled as to be indivisible from funds from any other possible source, and hence, the entire sum constitutes "fruits of the crime", not to be returned.

"Lastly, I conclude that aside from the imperfect evidence presented in an attempt to establish claims by other persons to ownership of specific articles, the normal presumption is that equipment in a commercial business establishment used in furtherance of the business is owned by the proprietor of such establishment, (Seizure Case No. 8410, Bulletin 1006, Item 3). Such presumption is buttressed where, as here, the articles are permitted by the alleged owner to remain on such premises for a long period of time.

Seizure Case No. 8424, Bulletin 1006, Item 4.

"Such is the situation in the instant case and hence no claim of ownership to any of the seized property has been established by any innocent claimant.

"I recommend that all of the seized property be declared forfeited and that the cash sum of \$54.35 be turned over to the State Treasurer."

No exceptions were taken to the Hearer's Report within the time limited by Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and I adopt them as my conclusions herein.

Accordingly, it is, on this 5th day of May, 1958,

DETERMINED and ORDERED that the sum of \$54.35 in cash and the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66 and R.S. 33:2-5, and shall be sold at public sale for the use of the State in accordance with State Regulation No. 29 or 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

SCHEDULE "A"

- 144 - bottles of beer
- 5 - 4/5 quart bottles of other  
alcoholic beverages
- 20 - bottles of soda
- 1 - coca cola cooler
- 2 - phonographs
- 1 - refrigerator
- 1 - radio
- 1 - camera
- 1 - oil burner
- \$54.35 in cash

6. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

JOHNSON AND HANNON, INC. )  
709-711 Communipaw Avenue )  
Jersey City 4, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-30, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )

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Johnson and Hannon, Inc., Defendant-licensee, by Herbert D. Johnson, President.  
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it sold during prohibited hours alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

The file herein discloses that on Thursday, April 3, 1958 at about 10:30 p.m., two ABC agents entered the licensed premises and took seats at the bar. At about 11:50 p.m., one of the agents asked the bartender for six cans of beer to take out. The bartender thereupon left the bar, returned with a bag containing six cans of Schaefer beer, placed the same on the bar and accepted \$1.10 in payment thereof. At about 11:55 p.m. both agents, one of them in possession of the alcoholic beverages, left the premises, returned immediately and identified themselves to the bartender who orally admitted aforesaid illegal sale.

By way of mitigation the licensee has submitted a statement which I have examined, together with the file in the case and the reports of the agents. I, however, do not find any extenuating circumstances in the case which would impel me to impose less than the established penalties in cases of this kind.

Defendant has no prior adjudicated record. I shall suspend its license for fifteen days. Re Szot, Bulletin 1213, Item 10. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 1st day of May 1958,

ORDERED that Plenary Retail Consumption License C-30 issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Johnson and Hannon, Inc., for premises 709-711 Communipaw Avenue, Jersey City, be and the same is hereby suspended for ten (1) days, commencing at 2:00 a.m., May 12, 1958, and terminating at 2:00 a.m., May 22, 1958.

WILLIAM HOWE DAVIS  
Director

7. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

500 COMMUNIPAW TAVERN, A CORP. )  
488 Communipaw Avenue )  
Jersey City 4, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-53, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )

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Defendant-licensee, by Helen Clarino, President.  
Dora P. Rothschild, Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that during prohibited hours it sold for off-premises consumption alcoholic beverages in their original containers, in violation of Rule 1 of State Regulation No. 38.

The file herein discloses that at 12:45 a.m. March 29, 1958, an ABC agent who had been in defendant's licensed premises purchased from "Jack" (the bartender) six cans of beer for off-premises consumption after the bartender had told him "There's two guys down there I don't know and the ABC is pretty hot around here." The agent departed with the merchandise, contacted another agent who had been stationed outside, and both returned to the licensed premises where they identified themselves to the bartender and Joseph A. Clarino (the manager), both of whom verbally admitted the after-hours violation.

Defendant has no prior adjudicated record. I shall suspend its license for the minimum period of fifteen days (Re Sada, Bulletin 1217, Item 4). Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 30th day of April, 1958.

ORDERED that plenary retail consumption license C-53, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to 500 Communipaw Tavern, A Corp., for premises 488 Communipaw Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. May 12, 1958, and terminating at 2 a.m. May 22, 1958.

WILLIAM HOWE DAVIS  
Director

8. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary Proceedings against

ORANGE SPORTSMEN'S CLUB, INC.  
647 Scotland Road  
Orange, New Jersey

ON PETITION  
ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange.

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James A. Palmieri, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

An order having been entered herein on April 28, 1958, suspending defendant's license for forty-five days commencing at 2 a.m. May 5, 1958, and terminating at 2 a.m. June 19, 1958, and

Application having been made to me by said defendant to postpone the effective date of said suspension because, prior to the entry of said order, arrangements had been made for various affairs to be held at defendant's premises between May 5 and May 13, and good cause appearing for the granting of said application,

It is, on this 30th day of April, 1958,

ORDERED that the suspension of forty-five days, instead of commencing at 2 a.m. May 5, 1958, shall, in lieu thereof, commence at 2 a.m. May 15, 1958, and terminate at 2 a.m. June 29, 1958.

WILLIAM HOWE DAVIS  
Director.

9. STATE LICENSES - NEW APPLICATIONS FILED.

"21" Brands, Inc.  
23 West 52nd Street  
New York, New York.

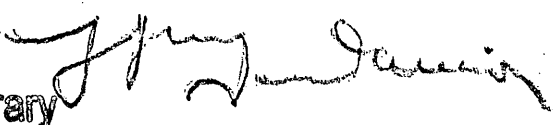
Application filed June 17, 1958 for Plenary Wholesale License.

Duggan's Distillers Products Corporation  
t/a Pristine Liquor Products, Dulcy Associates, Scotch Distillers Products, Ltd., Distillers Products, International, Royal Scott, Ltd., Kings Beam, Ltd., Blair-Atholl, Ltd., Imperial Distillers Products, Ltd., H & S Liquor Company, Jollivet et Cie, The Hoxley-Warner Company, Rectors Distillers Products, Royal Ross, Ltd., Sheffield Distillers Products, Ltd., Rum Co. and Bonhomme et Cie.

7-11 Paris Street  
Newark, N. J.

Application filed June 26, 1958 for Plenary Wholesale License.

New Jersey State Library



William Howe Davis  
Director.