

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

BULLETIN 1753

September 20, 1967

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

BULLETIN 1753

September 20, 1967

I. APPELLATE DECISIONS - DOMWILARN, INC. v. MIDDLETOWN AND TWINLEE, INC.

Domwilarn, Inc., t/a Towne)	
Liquors,)	On Appeal
)	
Appellant,)	CONCLUSIONS
)	AND ORDER
v.)	
)	
Township Committee of the)	
Township of Middletown, and)	
Twinlee, Inc.,)	
)	
Respondents.)	

Howard A. Roberts, Esq., Attorney for Appellant.
Whitney Crowell, Esq., by Robert H. Otten, Esq., Attorney for
Respondent Township Committee.
Pillsbury, Barnacle, Russell & Carton, Esqs., by Michael J.
Barnacle, Esq., Attorneys for Respondent Twinlee, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the action of the respondent Township Committee (hereinafter Committee) whereby by a three-to-two vote of its members it approved an application for a person-to-person and place-to-place transfer of a plenary retail consumption license from Joseph N. DePierro, t/a J & N Liquors, to respondent Twinlee, Inc. from premises located at Route 36 and Fairfield Avenue, Leonardo, to premises at 429 State Highway #35, Middletown.

The pertinent part of the resolution of the Committee adopted December 28, 1966 on said application is as follows:

"Whereas, public hearing has been held upon the said application for transfer; Now, Therefore,

"BE IT RESOLVED that the transfer of plenary retail consumption license No. 24, heretofore issued to Joseph N. DePierro, trading as J & N Liquors, for premises at Route 36 and Fairfield Avenue, Leonardo, be and the same is hereby transferred to Twinlee, Inc., for premises at 429 State Highway Route #35, Middletown Township; and

"BE IT FURTHER RESOLVED that the transfer shall not be endorsed and effective unless and until the exterior changes shall have been duly completed on said building."

Appellant's petition of appeal alleges that the action of the Committee was erroneous and should be reversed for the

following reasons:

"(a) No adequate and sufficient reason was demonstrated for the necessity of such transfer.

"(b) The area from which the license was to be transferred is in need of this license, and the area to which the license is to be transferred is already over-populated with licenses.

"(c) The transfer of the license in question will present undue competition to the licenses already in existence at the proposed new site.

"(d) The proposed location is at an intersection which will result in an increased hazard as a result of traffic entering and exiting from the proposed restaurant facility.

"(e) The transfer of the license to this site was denied unanimously by the Middletown Township government two years previous to this application and no new facts have been set forth from those which existed at the time of the previous application.

"(f) The increased use of the facility will create a health hazard inasmuch as the septic tank presently is inadequate and will not function properly when burdened with the increased use.

"(g) The granting of this transfer violates Sections 1 and 3 of an ordinance to regulate and control the distance between premises licensed to sell at retail, alcoholic beverages for consumption on or off the licensed premises within the Township of Middletown."

The respective answers of the respondents deny the aforesaid allegations and contend that the Committee exercised reasonable and sound discretion in approving the application for transfer and that the public interest would best be served thereby.

This appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. Appellant produced as witnesses to substantiate its contention that the action of the Committee was erroneous William M. Isaksen, vice president of appellant corporation, and Committeeman Douglas R. Burke.

Mr. Isaksen testified that appellant operates a plenary retail distribution license at premises on the corner of Chapel Hill Road and Route 35, about fifty feet from the proposed premises; that his objection to the transfer is for "financial reasons mostly" because the sale of alcoholic beverages for off-premises consumption would be detrimental to appellant's business; that the site of the premises in which appellant's business is now conducted is to be acquired by the State Highway Department, whereon a "jughandle" is to be constructed for use of vehicular traffic at the corner of Chapel Hill Road and Route 35; that the owner of appellant's premises owns property on Route 35 within 400 feet of the location of appellant's licensed premises and it is the intention to apply for a place-to-place transfer of said license to

the new location; that for the reason that other liquor licensed premises are located in the general area on Route 35, some of which also operate restaurants, he sees no need for another liquor establishment in the area.

Committeeman Burke testified that in February 1965, when respondent licensee filed the initial application for transfer of a liquor license to its present premises, the application was unanimously denied by the Committee and, on appeal, the determination of denial was sustained by the State Director. Twinlee v. Middletown, Bulletin 1635, Item 1.

Committeeman Burke further testified that in his opinion, there was no change in conditions since the first hearing, and thus he again voted to deny the within application for transfer of a license. Committeeman Burke stated that after examination of the map submitted by the respondent licensee concerning the layout of the grounds surrounding the licensed premises to be used for parking purposes, it would in his opinion create traffic congestion as "the parking as depicted provides for almost no flow of traffic off 35 or onto the entrance to the jughandle. In fact that entrance onto the jughandle from the property with clearances as shown on this map I think is outright dangerous." When questioned concerning the minutes of one of the hearings on the present application for transfer that it would adequately provide for sixty cars in the area, Committeeman Burke said, "To be honest with you I don't recall that being said although it might have been." Committeeman Burke further stated that it was his impression that the proposal of respondent licensee in 1965 and that in 1966 differed only in the outward appearance of the premises.

Leo P. Grazide, president of the respondent licensee, testified that he proposed "to change the complete exterior of the building to an early American type structure with a brick facing, to change the complete interior of the building to remove the luncheonette counter section, to incorporate a cocktail lounge and two dining rooms, to upgrade the entire operation as to facilities and equipment of captain's chairs, rugs; to change the hours of operation from 11 o'clock till closing instead of 6 till 2; to hire a different type of personnel, a French chef, higher caliber waitresses, more qualified, a maitre d', a manager and cocktailmen for the bar, for the cocktail license." Furthermore, he intended to cater to family trade and eliminate the present operation of a luncheonette and a fast operation (a pizza operation) and generally just light lunches. Furthermore, Mr. Grazide stated that he never had any difficulty with respect to parking, and it was his opinion that by a change of operation to a restaurant rather than what he had conducted in the past, there would be less people patronizing his establishment. It appears from the testimony of Mr. Grazide that he made a check of distances between various licensed premises on Route 35 and found, with the exception of appellant's establishment, the Cobblestone restaurant, 1,205 feet distant, to be nearest to his premises.

Ensley R. Bennett, Jr., a traffic consultant, testified that he is familiar with the area on Route 35 where the premises of respondent licensee are situated, and that the corner of Chapel Hill Road and Route 35 is controlled by a traffic signal. He further stated that if there were a license

issued to respondent licensee at the proposed site, the stay of the patrons from the proposed operation would be of longer duration than at the present time.

Ernest G. Kavalek, chairman of the Committee, testified that at the time of the first application in 1965, he voted to deny the transfer of a liquor license to the present premises. He stated that in this application, because of changed conditions, he was of the opinion that the transfer of the license in question should be approved. Committeeman Kavalek, when questioned why he changed his mind, stated that the first application for the transfer was submitted without plans, and the information received was limited in his opinion; that it did not support a need for a liquor license to that establishment under conditions prevailing at that time. He further testified that, with the exception of the deletion of an ice cream vending machine at the establishment, he did not personally feel that the sale of hot dogs and hamburgers went hand-in-hand with the purveyance of alcoholic beverages. However, when the present application for transfer was heard, he understood that there would be a complete remodeling of the building, a complete transition of the former business which would be conducted there despite the fact that, in the definition of a restaurant, they were both eating houses. Moreover, it is his understanding that the contemplated restaurant will be one of the better type, and that he personally feels a benefit will result to the municipality by the establishment of a place of business such as contemplated by the respondent licensee.

Committeeman Kavalek further said that the growth in the area has continued and, in his opinion, "a higher-type restaurant is something that Middletown can very well support." Furthermore, Committeeman Kavalek also stated that, to his knowledge, there never was any problem concerning parking at the proposed site.

It appears from the record herein that, since the first application for transfer of a license to the proposed premises was made in February 1965, there has been a change in membership of the Committee. Three of the members at the time of the first application who voted to deny the license application previously filed are still on the Committee, and two became members of the Committee subsequent thereto. Committeeman Burke and Committeeman Makely (one of the new members on the Committee) voted to deny the application for transfer in question, whereas Committeeman Kavalek and Committeeman Foulks, who were on the Committee at the time of the first application, and Committeeman Malanet (a new member thereof) voted to approve the application for transfer herein.

In Northend Tavern, Inc. v. Northvale and Payne, Bulletin 493, Item 5, it was stated:

"While, in the interest of uniformity, it might be desirable that a succeeding governing body adhere as closely as possible to the policies theretofore enunciated by a former body, it cannot be said that a deviation from those policies is necessarily arbitrary or unreasonable. On the contrary, the general rule of law is that no governing body may tie the hands of its successors in matters involving the exercise of discretion. Cf. Rafalowski v. Trenton, supra; Lewis v. Phillipsburg, Bulletin 232, Item 13."

Where, as here, there is room for difference of opinion concerning the desirability of transferring a license, the successor committee is free to exercise its own discretion. Each application is a separate one and must be decided in the sound discretion of the local issuing authority as constituted at the time the application is considered. Whalan v. Mount Olive and Thompson, Bulletin 1103, Item 2.

In Tozzi's Tavern, Inc. v. Plainfield Common Council, 65 N.J. Super. 286, 289, the court stated:

"The statute entrusts the licensing authority to the discretion of the common council, an elective body. As we have seen, the 'new' council was at liberty to vote differently from the previous one, and the Legislature has not required the members of the governing body to state their reasons for their votes. Borough of Fanwood v. Rocco, 59 N.J. Super. 306, 320 (App. Div. 1960), affirmed 33 N.J. 404 (1960); Lublner, supra, 59 N.J. Super., at pp. 429-430. We know of no authority to support the proposition that a member of the governing body who changes his vote must show good cause for doing so."

I am satisfied that conditions have changed and will change in the future in the area of the respondent licensee's premises, as expressed in the testimony of Committeeman Kavalek, to warrant the change in vote of the two members of the Committee for approval of the transfer of the license in question to the proposed premises.

It is apparent that the appeal herein to seek reversal of the Committee's action was based mainly on economic reasons. Mr. Isaksen, testifying on behalf of appellant, indicated, when answering "most certainly" to a question whether or not he felt it would present competition detrimental to appellant's business, that the fundamental reason for objection was because of expected loss of business. With reference to such contention by another liquor licensee, it was stated by former Commissioner Driscoll in Kelley v. Manalapan and Forman, Bulletin 531, Item 2:

"An issuing authority is not obligated to consider, when reaching a determination of whether to grant a liquor application, whether the financial interests of any pre-existing licensee will be promoted or harmed. The test in the issuance of liquor licenses is the welfare of the entire community and not the interference with the private rights of any individual."

See also Knast et al. v. Camden et al., Bulletin 810, Item 2.

Appellant further contends that the footage ordinance which provides, among other things, that no transfer of a plenary retail consumption license or plenary retail distribution license shall be granted within 2,000 feet of an existing licensed premises, in the instant case had been violated. However, the ordinance contains an exception to the 2,000 foot rule as it states that the distance limitation

"shall not apply to a motel, hotel or restaurant serving alcoholic beverages for consumption on its premises." The appellant insists that the transfer of the license in question, being within the 2,000 feet of other licensed premises, shall permit only the service of alcoholic beverages for consumption on its premises. However, under the circumstances in the instant case, I cannot agree with such contention to limit the privileges granted to the holder of the plenary retail consumption license in this regard. See Common Council of the City of Englewood v. Lacqua et al., 92 N.J. Super. 493 (App. Div. 1966).

The number of licensed premises to be permitted in a particular area has been held to be a matter confided to the sound discretion of the local issuing authority. DiGiacchino v. Atlantic City, Bulletin 1030, Item 3. In cases such as that now under consideration, the Director's function is to determine whether reasonable cause exists for the issuing authority's opinion and, if so, to affirm its action. Curry v. Margate City, Bulletin 460, Item 9; Mulcahy v. Maplewood and Topf, Bulletin 658, Item 4; Krogh's Restaurant, Inc. v. Sparta et al., Bulletin 1258, Item 1; Helms v. Newark et al., Bulletin 1398, Item 3; Jacobs v. Newark et al., Bulletin 1398, Item 4. The action of the municipal issuing authority will not be reversed by the Director unless he finds "the act of the board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Association et al. v. Hoboken et als., 135 N.J.L. 502, 511.

I am satisfied that there has been no improper motivation on the part of any of the members of the Committee but merely a difference of opinion by some of the members thereof. Neither has there been any evidence presented to indicate that the Committee acted arbitrarily or abused the discretion vested in it by approving the grant of the transfer of the license in question.

I have carefully examined the entire record presented herein and the memoranda filed by the attorneys for the respective parties. I have also given proper consideration to the grounds of appeal urged by the appellant herein. I conclude that appellant has failed to sustain the burden of proof in showing that the action of the Committee was erroneous. Rule 6 of State Regulation No. 15.

For the reasons aforementioned, it is recommended that an order be entered affirming the action of the Committee herein and dismissing the appeal.

Conclusions and Order

Aside from the issues raised in its petition of appeal, appellant argues that further reason exists for reversal of the Township Committee's action in approving the transfer at its meeting on December 28, 1966, in that the Committee was not then aware that respondent Twinlee, in order to obtain a zoning variance, would be required to make substantial additions in enlargement of the building sought to be licensed with a resultant diminution of the parking area and change in the traffic flow entering and leaving the premises. Appellant stresses that the parking and traffic conditions were of great concern to the Committee and conjectures that a majority of

the Committeemen would have voted to deny the application if they then had knowledge that a variance would be required which would create a material change in the parking and traffic pattern. Appellant urges that, in light of this subsequent development, the decision of the Committee be reversed or, at the very least, that the matter be remanded for new hearing by the Committee.

The subject matter of this appeal concerns itself only with the propriety of the Committee's decision, expressed by majority of its members in its resolution of December 28, to grant the transfer upon the basis of the building plan and ground area layout then before the Committee with the effective date of transfer to await completion of certain building changes as were then in contemplation. Assuming, arguendo, that such changes would be insufficient to satisfy requirements of the municipal zoning ordinance, approval of the transfer by the Committee and affirmance thereof by the State Director would, nevertheless, not be improper or in error. As stated in Lubliner v. Paterson, 59 N.J. Super. 419 (App. Div. 1960):

"Appellants argue that the approval of the transfer was illegal and erroneous because the Paterson zoning ordinance prohibits a tavern at this location. It is not clear from the evidence that the ordinance does so provide, but even if it does that does not make the grant of the transfer improper or its approval by the Director error. The issuance of a license or the grant of a transfer does not permit the licensee to operate without complying with all applicable statutes and ordinances, including zoning ordinances, building codes, health codes and the like. It may be that Hutchins will need a variance or other relief before he can operate a tavern at 39 Carroll Street, but he is not required to obtain it before the grant of the transfer. Cf. Passarella v. Board of Comm., 1 N.J. Super. 313 (App. Div. 1949)."

Moreover, the record discloses that respondent Twinlee, in attempting satisfaction of the requirements entailed in seeking the zoning variance, plans to enlarge the building substantially beyond its confines as shown in the plan originally submitted to the Committee and upon which the Committee based its decision to grant the transfer. In order to license the enlarged building, however, Twinlee would be required to file further application for place-to-place transfer with the determination to grant or deny such application resting initially within the sound discretion of the Township Committee, subject to further appeal to the State Director pursuant to R.S. 33:1-26. See Dorf v. Metuchen, Bulletin 1004, Item 7, and Re Johnson, Bulletin 170, Item 14. Hence the contention of appellant that the Committee would not be afforded the opportunity of reviewing the matter in the light of the factual changes occurring subsequent to its grant of the transfer application presently the subject of the instant appeal is not well founded.

Accordingly, after careful reading and consideration of the entire record herein, including the transcript of the testimony, the matters introduced and received in evidence,

written arguments by the attorneys for the appellant and respondents, the Hearer's report and the exceptions to the Hearer's report, I concur in the conclusions and the recommendation of the Hearer for affirmance of the Township Committee's action. However, since the condition imposed by the Committee in its resolution granting the application has not been complied with during the course of the 1966-67 licensing period, I shall make appropriate order to effectuate the transfer during such licensing period for the sole purpose of permitting the grant of conditional 1967-68 renewal to Twinlee.

Accordingly, it is, on this 14th day of July, 1967,

ORDERED that the action of respondent Township Committee as expressed in resolution adopted December 28, 1966, be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the aforesaid resolution of the Township Committee shall be amended to provide that the transfer referred to therein shall be effective immediately for the sole purpose of permitting 1967-68 license renewal; and it is further

ORDERED that any application which may be made by Twinlee, Inc. for renewal shall be filed with the Middletown Township Clerk no later than July 31, 1967; that such renewal application shall be accompanied by the same building plan as presented to the Township Committee in connection with its 1966-67 transfer application; that such renewal application shall be duly advertised pursuant to R.S. 33:1-25 and State Regulation No. 6; and that grant of such renewal application by the Township Committee shall be by resolution which shall provide that the renewal is subject to the same condition with respect to changes in the building as expressed in the Township Committee's transfer resolution adopted December 28, 1966.

JOSEPH P. LORDI
DIRECTOR

2. APPELLATE DECISIONS - CUBANACAN CORP. v. NEWARK.

Cubanacan Corp.,)	
)	
Appellant,)	On Appeal
)	
v.)	
)	CONCLUSIONS
Municipal Board of Alcoholic)	AND ORDER
Beverage Control of the City)	
of Newark,)	
)	
Respondent.)	

Robert J. Jerome, Esq., Attorney for Appellant.
 Norman N. Schiff, Esq., by Anthony J. Iuliani, Esq., Attorney
 for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant, holder of plenary retail consumption license for premises 486 Market Street and 2-6 Madison Street, Newark, was found guilty by respondent (hereinafter Board) of the charge that appellant "did allow, permit and suffer, in and upon said licensed premises, persons of ill-repute," whereupon its license was suspended for thirty-five days, effective November 7, 1966.

Licensee filed this appeal challenging such action, and on November 4, 1966, an order was entered staying the Board's order of suspension until the further order of the Director.

In its petition of appeal, appellant alleges that the Board's action was erroneous in that there was insufficient proof to establish the charges and as a matter of law the charges should have been dismissed.

In its answer, the Board admitted the jurisdictional facts and denied the substantive allegations contained in the petition.

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

It appears from the testimony of Detective William J. Gately of the Newark Police Department that accompanied by Lieutenant Dougherty and Detectives Hefferman and Cattel he visited appellant's licensed premises (a tavern) on March 25, 1966 at 2:30 p.m. because "we had information that a known gambler with a lengthy record had been seen on these premises..." Upon being admitted by a male identified as Anthony De Pasque after knocking on the door which was locked, he saw a person known as Nathan "Newsie" Lipshitz and another person known as John Castellani, alias Gabriel Di Franco.

Lieutenant Thomas E. Dougherty of the Newark Police Department testified that accompanied by Detectives Gately, Cottel and Hefferman, he executed a search warrant at the licensed premises on March 25, 1966 at 2:30 p.m. The investigation was triggered by the finding of an abandoned automobile registered in the name of "Lipson", also known as Nathan Lipshitz, and further known as "Newsie" Lipshitz, who, according to the witness, was a well-known lottery man in New Jersey who had served time. He had information that Newsie Lipshitz could be found at the telephone number "642-9409". It was discovered that that telephone number was assigned to the appellant licensee at the above mentioned licensed premises. He corroborated Detective Gately's testimony as to finding the door to the tavern locked. Additionally, he testified that during the "two hours, or two hours and a half" that the officers were in the premises, there was no semblance of activity normally associated with a tavern being carried on.

Detective Bobbie Cottel of the Newark police force, who accompanied the other officers in executing the search warrant on March 25, 1966, testified that he had previously arrested Lipshitz on a lottery charge. Lipshitz had a "long history of violations of the Lottery Act."

Lastly, Detective Hefferman testified, "I had arrested him myself. He is very well known by the police department."

Rufino Leston, employed by the licensee as a bartender, testified that he opened the tavern on the morning of March 25, 1966. Later on he received a telephone call to take his baby to the doctor and requested "Newsie" who was in the tavern to "stay a few minutes" until he returned from the doctor. Newsie admitted De Pasque and Castellani into the tavern. Upon Leston's return from the doctor's office, Newsie advised him that the police were in the licensed premises. Additionally, he testified that he did not know that Lipshitz had been arrested for bookmaking and lottery and that he possessed a criminal record. Lipshitz had visited the tavern on several occasions prior to the date in question. On the date in question he told Lipshitz not to allow anyone to enter the tavern except a burglar alarm repair man whom he was expecting. He did not know anyone by the name of De Pasque or John Castellani or Gabriel Di Franco.

Bertram Davidov, the president of the licensee corporation, testified that he employed the previous witness, Ruffino Leston, as a bartender and manager. He never had in his employ anyone known as Anthony De Pasque, Newsie Lipshitz, John Castellani or Gabriel Di Franco. He was not acquainted with Newsie Lipshitz and never saw him in the tavern. When questioned as to what did he hear about Lipshitz, the witness responded "that he was involved in this particular trouble that we have now."

A stockholder of the licensee corporation, Anthony Garcia, testified that he had seen Newsie in the bar "a few times." He denied knowing about Newsie's past record until it was brought out to him. He was not acquainted with John Castellani. He saw Anthony De Pasque in the tavern "a few times."

Another stockholder, Robert Hege, testified that he was not acquainted with either Lipshitz, Castellani or De Pasque.

It is my view that this case falls squarely within the ambit of Sylvestri v. North Bergen, Bulletin 1513, Item 1, wherein a similar conviction was reversed and wherein it was held:

"Sgt. Sybel's opinion regarding the reputation of Konigsberg was based on the latter's name being mentioned by police authorities while he (Sgt. Sybel) attended lectures in another municipality. He admitted that he had never had any personal knowledge of Konigsberg. Officer Montemurro testified that his opinion concerning Konigsberg's reputation was formed from what he read in the papers.

"The proper method of pursuing the direct examination of a 'character' or 'reputation' witness is to ask the witness whether he knows the reputation of the subject in the neighborhood where the latter resides...

"Under the circumstances appearing herein, where Konigsberg's criminal record and reputation were essential elements of Charge 1, it is apparent that the evidence adduced relative thereto is insufficient to sustain a finding of guilt on said charge..."

Cf. Re Giaquinto, Bulletin 1605, Item 3, wherein the fact of "ill repute" was properly proved and conviction resulted.

As above indicated, in order to sustain the charge that the licensee did allow, permit and suffer in and upon the licensed premises persons of "ill repute" in violation of Rule 4, State Regulation No. 20, it was necessary for the Board to introduce evidence as to the reputation in their neighborhood of residence of the persons alleged to be of ill repute. Further as to proof of "reputation" see State v. Baldanzo, 106 N.J.L. 498 (E. & A. 1929); Ippolito v. Turp, 126 N.J.L. 403 (Sup. Ct. 1941).

Inasmuch as the record is completely devoid of proof of the essential element of reputation and there is no proof that the appellant violated any other allegation mentioned in this charge, I am compelled to recommend that the action of the Board be reversed and the charge be dismissed.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, exceptions to the Hearer's report and argument thereto were filed by respondent, wherein respondent contends that the record contains sufficient proof to establish that appellant (1) allowed, permitted and suffered in and upon its licensed premises a person of ill repute, namely, Nathan Lipshitz, and (2) allowed, permitted and suffered its licensed premises to be accessible "for the conducting of illegal activity or enterprise", all in violation of Rule 4 of State Regulation No. 20.

Initially, it is noted that respondent's resolution of October 19, 1966, in addition to finding appellant guilty of the above two violations, found it guilty of allowing "persons with known gambling activities to frequent and congregate upon the said licensed premises", in violation of Rule 4 of State Regulation No. 20. Since respondent's original Notice of Charges dated August 22, 1966, according to Division records of which I hereby take judicial notice, did not contain such specific allegation, and it is questionable whether said Rule 4 encompasses a proscription against the congregation on licensed premises of persons with "known gambling activities", as distinguished from persons of "ill repute", it is my finding that this portion of respondent's resolution cannot be sustained.

As to the other alleged violation (2) above, neither respondent's resolution nor the trial record supports a finding of any such infraction of Rule 4 of State Regulation No. 20. The resolution contains no requisite finding that the illegal activity or enterprise resulted in a conviction in a criminal prosecution, nor does the record contain any proof of such conviction. This charge likewise must fall.

As to the alleged violation (1) above, respondent argues that, under Rule 4, a person's reputation may be established by means other than the testimony of witnesses familiar with his reputation in the community in which he resides. In the present case, respondent contends that Lipshitz's reputation was properly established by the testimony of police officers of the municipality wherein the licensed premises in question are located (Lipshitz's home address at the time apparently was in East Orange) who related that to them he was known as a lottery law violator. Respondent further relies upon the criminal record of Lipshitz, although no court records reflecting any specific criminal conviction of Lipshitz were introduced in evidence in either the hearing before respondent or the Division. (A "record" of "Newsie Lipshitz" was marked for identification before respondent, but never introduced in evidence.)

The purpose of the pertinent section of Rule 4 "is to prohibit licensed premises from being used as a hang-out for persons generally known or known to the licensee or his agents to be undesirables." Re Silver, Bulletin 441, Item 12. A necessary element of proof is that the licensee or his agents knew or should have known of the person's bad reputation or that such reputation was of common knowledge in the community where the licensed premises are located. A contrary interpretation would require a licensee to investigate the reputation of every patron entering his premises. Cf. Re Silver, supra; Re Giaguinto, cited by the Hearer.

The record herein contains disclaimers from each of appellant's witnesses concerning his knowledge of Lipshitz's reputation or of any criminal offenses of which he may have been convicted. The testimony of respondent's witnesses that Lipshitz was "a well-known lottery man in New Jersey and had served time", that he was "known to me (Lt. Dougherty) to have lottery arrests", and that "He has a long history of violations of the Lottery Act" are not sufficient to meet the scienter criteria applicable to a licensee, hereinabove set forth, as distinguished from knowledge of Lipshitz's reputation by police officers.

It is commendable for respondent to wish to take action to prevent undesirables from frequenting licensed premises. However, all governmental punitive proceedings must be grounded upon general rules of law and must be within a framework of regulatory guidelines which give advance notice to those against whom they are directed of what are the responsibilities for which they will be held accountable.

Having carefully considered the entire record herein, I conclude that appellant has sustained the burden of establishing that the action of respondent was erroneous and should be reversed. Rule 6 of State Regulation No. 15. Under the circumstances, I shall adopt the Hearer's recommendation that the charges be dismissed.

Accordingly, it is, on this 14th day of July, 1967,

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

JOSEPH P. LORDI
DIRECTOR

3. APPELLATE DECISIONS - STRAUSS v. TRENTON - ORDER DISMISSING APPEAL.

Herman Strauss, t/a Herman's Tavern,)	
)	On Appeal
Appellant,)	
v.)	O R D E R
City Council of the City of Trenton,)	
)	
Respondent.)	

Harvey L. Stern, Esq., Attorney for Appellant.
Joseph P. Merlino, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the imposition by respondent of a special condition upon the renewal of appellant's plenary retail consumption license for premises 286 North Clinton Avenue, Trenton, for the licensing period commencing July 1, 1967.

Prior to the hearing of the appeal, appellant's attorney advised me by letter dated July 11, 1967, that his client had completed arrangements to sell the building which houses the licensed premises and to transfer the license to the purchaser. Appellant therefore desires to discontinue the appeal. No reason appearing to the contrary,

It is, on this 18th day of July, 1967,

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

JOSEPH P. LORDI
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - DEFERRED EFFECTIVE DATE OF SUSPENSION.

In the Matter of Disciplinary Proceedings against)

Bordentown Enterprises, Inc.)
t/a Bordentown Grill & Bar)
North Junction of Route 130 & 206)
Bordentown Township)
Bordentown, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4 issued by the Township Committee of the Township of Bordentown.)

Convery and Waldron, Esqs., by Vincent J. Convery, Esq., Attorneys for Licensee.
Leon Chorkavy, Jr., Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on November 21, 1966, it possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Hrabowucky, Bulletin 1735, Item 6.

Accordingly, it is, on this 18th day of July, 1967,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Bordentown to Bordentown Enterprises, Inc., t/a Bordentown Grill & Bar, for premises North Junction of Route 130 and 206, Bordentown Township, be and the same is hereby suspended for ten (10) days,* commencing at 2:00 a.m. Tuesday, July 25, 1967, and terminating at 2:00 a.m. Friday, August 4, 1967.

JOSEPH P. LORDI
DIRECTOR

*Suspension deferred.

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 Lido G. Corporation)
 62-64 Smith Street)
 Perth Amboy, New Jersey,)
)
 Holder of Plenary Retail Consumption License C-1, issued by the Board of Commissioners of the City of Perth Amboy.)
 -----)

CONCLUSIONS and ORDER

Wilentz, Goldman & Spitzer, Esqs., by Dean Sandford, Esq.,
 Attorneys for Licensee
 Leon Chorkavy, Jr., Esq., Appearing for Division of
 Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 1, 1967 it possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re First & Last Chance, Inc., Bulletin 1738, Item 4.

Accordingly, it is, on this 7th day of August 1967,

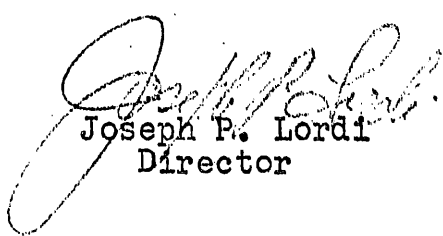
ORDERED that Plenary Retail Consumption License C-1, issued by the Board of Commissioners of the City of Perth Amboy to Lido G. Corporation, for premises 62-64 Smith Street, Perth Amboy, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. Monday, August 14, 1967, and terminating at 2 a.m. Saturday, August 19, 1967.

JOSEPH P. LORDI
 DIRECTOR

7. STATE LICENSES - NEW APPLICATION FILED.

Carlo C. Gelardi Inc.
 306 Adamsville Road
 Bridgewater Twp.
 PO Somerville, N. J.

Application filed September 19, 1967 for place-to-place transfer of State Beverage Distributor's License SBD-51 from 14-16 Elm Street, Somerville, New Jersey.



Joseph P. Lordi
 Director