

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

BULLETIN 1420

NOVEMBER 14, 1961

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

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.. LICENSED PREMISES - OTHER MERCANTILE BUSINESS - DIRECT PUBLIC ACCESS PROHIBITED BETWEEN CERTAIN LICENSED PREMISES AND PREMISES WHEREON PROHIBITED OTHER MERCANTILE BUSINESS IS CONDUCTED - HEREIN OF THE EFFECT OF COURT DECISION (BULLETIN 1395, ITEM 1).

TO ALL MUNICIPAL ISSUING AUTHORITIES:

In a recent decision\* the Appellate Division of the New Jersey Superior Court considered the legality of licensing, under plenary retail consumption license, of premises directly accessible by the public from unlicensed premises whereon other mercantile business was conducted.

The provision of the Alcoholic Beverage Law involved was R.S. 33:1-12(1), which provides, in pertinent part:

"...this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business (except the keeping of a hotel or restaurant, or the sale of cigars and cigarettes at retail as an accommodation to patrons, or the retail sale of non-alcoholic beverages as accessory beverages to alcoholic beverages) is carried on..."

The court held, in effect, that when premises licensed under plenary retail consumption license (and, by parity of reasoning, under plenary retail distribution license in municipalities having an ordinance prohibiting conduct of other mercantile business on such premises) are directly accessible by members of the public from unlicensed premises on which other mercantile business is conducted, and vice versa, such licensing was violative of the Alcoholic Beverage Law.

(All references to "licensed premises" hereinafter are meant to include premises licensed under (a) plenary or seasonal retail consumption licenses pursuant to R.S. 33:1-12(1) and (2), and (b) plenary retail distribution licenses in municipalities having in effect an ordinance prohibiting conduct of other mercantile business on such licensed premises pursuant to R.S. 33:1-12(3a).)

Accordingly, to assure full compliance with the applicable provisions of the Alcoholic Beverage Law, and to avoid the possibility of mandatory denial of renewal applications, or cancellation of licenses improvidently granted, each municipal issuing authority should promptly cause inspection of all licensed premises in its municipality to be made pursuant to the mandate of R.S. 33:1-24, to ascertain whether there is any existing direct public access between licensed premises and unlicensed premises on which a grocery, delicatessen, drug store or other prohibited mercantile business is conducted. In such situations, the licensee should be advised to make necessary structural alterations, or discontinue the mercantile business, or take such other corrective action as may be indicated well in advance of application for renewal.

In connection with any alterations, it should be borne in mind that continuing compliance must be had with any and all municipal ordinances governing the physical arrangement of licensed premises, particularly those with respect to affording public view of the interior of licensed premises.

It is recommended to all concerned, particularly any licensees who may be affected, that the cited opinion of the court be consulted and considered in its entirety before any structural changes are ordered or undertaken.

Dated: October 25, 1961

WILLIAM HOWE DAVIS  
DIRECTOR

\*North Central Counties Retail Liquor Stores Association vs. Municipal Council of the Township of Edison, Division of Alcoholic Beverage Control of the State of New Jersey, and R. H. Macy & Co., Inc., t/a Bamberger's New Jersey, 68 N. J. Super. 351, reprinted in Bulletin 1395, Item 1.

2. APPELLATE DECISIONS - CLUB FREMONT, INC. v. NEWARK (CASES 1 and 2).

Case No. 1. )  
CLUB FREMONT, INC., )  
Appellant, )

v. )

MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY )  
OF NEWARK, )  
Respondent. )

ON APPEAL  
CONCLUSIONS  
AND ORDER

----- )  
Case No. 2. )  
CLUB FREMONT, INC., )  
Appellant, )

v. )

MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY )  
OF NEWARK, )  
Respondent. )

-----  
Anthony E. Grasso, Esq., Attorney for Appellant.  
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney for  
Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"These appeals involve the same issues and may be decided together.

"In Case No. 1 appellant appeals from respondent's action on June 29, 1961, whereby it revoked appellant's plenary retail consumption license which was issued for the 1960-61 licensing year. In Case No. 2 appellant appeals from respondent's action on July 19, 1961, whereby it denied renewal of said license for the 1961-62 licensing year. Appellar premises are located at 463 Fifth Street, Newark.

"Appellant was permitted to operate its licensed business after July 1, 1961, pursuant to a special permit issued by the Director permitting such operation until respondent acted upon appellant's application for renewal and, after the appeal from denial of renewal was filed, pursuant to an order then entered by the Director which extended the term of the 1960-61 license until entry of a further order in said appeal. See R.S. 33:1-22.

"The hearing in Case No. 1 was held on July 18, 1961. At that time the attorneys for both parties agreed to submit upon the transcript of the testimony taken in the disciplinary proceedings heard by respondent on June 28, 1961. On August 10, 1961, Case No. 2 was submitted upon an agreed statement of facts which sets forth, in effect, that the application for renewal was denied 'since there was no license to renew as far as this Board was concerned.' The procedure followed in both cases is authorized by Rule 8 of State Regulation No. 15.

"From the transcript of the testimony taken by respondent in the disciplinary proceedings it appears that a notice setting forth three charges had been duly served upon the appellant herein. At the close of said hearing respondent dismissed the first charge which alleged, in substance, that on September 23, 1960, appellant had allowed, permitted and suffered a brawl on the licensed premises and, by unanimous vote, found appellant guilty of the other two charges which alleged that appellant:

2. On Friday, September 23, 1960 and on divers prior dates, allowed, permitted and suffered in and upon the licensed premises, criminals, gangsters, racketeers and other persons of ill repute, and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 4 of State Regulation No. 20.
3. On Friday, September 23, 1960, hindered and caused a hindrance and delay, and failed to facilitate in the investigation of your licensed premises; in violation of Revised Statute 33:1-35.

"Thereafter respondent adopted the resolution revoking the license then held by appellant.

"It appears from the transcript of testimony introduced into evidence in Case No. 1 that, at the hearing below, various members and officers of the Newark Police Department were called as witnesses by the respondent.

"Lieutenant Joseph A. Kinney testified that on September 23, 1960 at 10:16 a.m., he received an assignment to investigate a shooting at Bloomfield Avenue and 3rd Street; that, pursuant thereto, he and Sergeant Buerle went to a gasoline station at said address where they found Vincent Calabrese, with what appeared to be a bullet wound, on the floor in the office of a gasoline station; that the injured man told him he had been shot on 5th Street by a man who held him up; that he then went in an ambulance with the injured man to the hospital.

"Sergeant Eugene C. Buerle, Jr., testified that he accompanied Lieutenant Kinney to the gasoline station and remained there after the Lieutenant accompanied Calabrese to Martland Medical Center; that a call came over the police radio that another shooting victim had gone to Columbus Hospital; that he went to Columbus Hospital, found John Russo on a table in the emergency room and stayed with Russo until they removed him to a room.

"Patrolman Anthony E. Bongiovani testified that on September 23, 1960, he and another patrolman assigned to a radio car received an alarm of a shooting at 3rd Street and Bloomfield Avenue; that, when they arrived there, they received a call from the dispatcher to disregard the previous call and proceed to Club Fremont, 463 5th Street, on a report of a shooting. The patrolman further testified that, when they arrived at Club Fremont shortly thereafter, he saw Vito Torsiello in the doorway of the premises; that he walked right by him, entered the premises and saw Natale Lento in the premises; that he searched the premises but found nothing; that he then asked Torsiello, who was in a state of nervousness, shaky and pale, if anything happened and that Torsiello said that nothing at all happened and that he had just opened up. The patrolman further testified that he and his partner then went to the aforesaid gasoline station and, after Calabrese was taken to the ambulance, they returned to routine duty.

"Captain Robert F. Donnelly testified that he and Director Joseph F. Weldon went to the Club Fremont on September 23, 1960, at 11 a.m., and saw Torsiello and Lento at the premises; that, when the Director asked Torsiello what happened, he replied 'Nothing' and that, when the Director asked Torsiello if there was a shooting, he replied 'Nothing, no shooting.' Captain Donnelly further testified that he then asked Lento if there had been a shooting and he replied 'No.' Director Weldon corroborated the testimony of Captain Donnelly concerning the conversation between the Director and Torsiello.

"It appears from the testimony given by Lieutenant Kinney and Sergeant Buerle that on the afternoon of the same day Torsiello and Lento were brought to Police Headquarters where each signed a voluntary statement. It further appears from said testimony that, at some time later on the same day, Lieutenant Kinney and Sergeant Buerle went to the Club Fremont where they recovered two bullets from a wall in the kitchen and that these bullets, and a bullet removed from John Russo's body, were subsequently identified through ballistic examination as having been fired from a gun found on the person of Anthony Antonelli.

"Detective William J. Leonardis, of the Homicide Squad, testified that on the following day he moved a picture from the upper portion of the mirror on the back-bar of appellant's premises and found what appeared to be a bullet hole.

"Detective Francis J. Lyons identified police records of Vincent Calabrese, John Russo and Patsy Antonelli, which he had obtained from the Identification Bureau of the Newark Police Department. Over objections, said records were admitted into evidence by the respondent.

"It also appears from the transcript of testimony introduced into evidence in Case No. 1 that, in addition to the aforesaid members of the Police Department, the following were present and were called as witnesses by the respondent: Vito Torsiello, James (Vincent) Calabrese, John Russo, Pasquale (Anthony) Antonelli and Natale Lento. Torsiello, Calabrese, Russo and Antonelli, upon advice of their respective counsel, refused to testify upon the ground that such testimony might tend to incriminate them.

"Natale Lento then testified that on September 23, 1960, he was employed as a bartender in appellant's premises; that Antonelli entered about 10 a.m. and Russo entered about five minutes later; that they sat with Calabrese who was in the premises when they entered; that he served coffee to the three patrons and then went to the stockroom; that he heard noises which sounded like a truck back-fired, but didn't leave the stockroom until about ten minutes later, at which time no one was in the barroom. He further testified that he saw a chair overturned and saw on the floor a few spots of blood which he wiped up with a towel; that he put the towel under the sink; that he then saw Vito Torsiello (the manager) come in and that thereafter two radio policemen arrived and questioned only Torsiello. He testified that

Captain Donnelly entered 'a way after' the two radio policemen. On cross-examination he testified that he spoke to Captain Donnelly and answered all questions put to him. On redirect examination he testified that, when he wiped up the blood, he saw Torsiello coming in; that Torsiello asked what happened and he replied '---, look what happened, a lot of blood over there.' He admitted that he hadn't told the police until he arrived at Police Headquarters that he had wiped up the blood from the floor. On recross he testified that he didn't tell Torsiello that a shooting had taken place.

"At the hearing below the defendant (appellant herein) called Calabrese, Russo and Antonelli, who again refused to testify upon the ground previously stated. George Benedict, Florence Benedict, Michael Torsiello and Anthony Torsiello then testified that they are the officers and stockholders of Club Fremont, Inc. Each testified that he or she was not on the premises on September 23, 1960, and did not participate in the alleged violations. They admitted, however, that Vito Torsiello (brother of Michael and Anthony) was manager of the licensed business and that Lento was employed as bartender on said date. Defendant then called Natale Lento who testified that he had no personal knowledge of gangsters, racketeers or criminals coming in the premises and had never had any occasion to call the police. He further testified that Calabrese had been in the premises four or five times; that Russo had been there once before but that he had never seen them and Antonelli together on the premises prior to September 30, 1960.

"After considering the evidence and exhibits herein and the brief submitted by appellant's attorney, I make the following findings of fact: At least five shots were fired on appellant's premises shortly after 10 a.m. on September 30, 1960. The bartender, who was in the stock-room, heard the shots, returned to the barroom, cleaned up the blood-spots on the floor and threw the towel in a sink where it was later found by the police. Both the manager and bartender had reason to believe that a shooting had occurred and they had such knowledge before police officers arrived at the licensed premises after 10 a.m. and before Captain Donnelly and Director Weldon arrived after 11 a.m.; that, despite such knowledge, the manager and bartender, on both occasions, denied to the police that anything had happened.

"In his brief, appellant's attorney refers to the three patrons as 'small-time punks.' Whatever shadowy distinction may exist between 'punks' and 'gangsters and persons of ill repute', I find as facts that the three patrons, who had criminal records, were gangsters and persons of ill repute and that they were permitted on the licensed premises by the bartender. Stein v. Passaic, Bulletin 451, Item 5. From the facts above stated, it clearly appears that the manager and bartender hindered and failed to facilitate the police investigation. Kleinberg v. Newark, Bulletin 1168, Item 1.

"Despite the fact that the officers and stockholders of appellant corporation did not personally participate in the violations, the management thereof was apparently entrusted to Vito Torsiello, and the corporation is responsible for the actions of the manager and bartender. Rule 33 of State Regulation No. 20; Essex Holding Corp. v. Hock, 136 N.J.L. 28.

"Appellant further contends that the revocation in Case No. 1 was excessive. The measure or extent of penalty to be imposed in a disciplinary proceeding rests within the sound discretion of the issuing authority and will not be disturbed on appeal unless the evidence clearly shows an abuse of discretion. Dzieman v. Paterson, Bulletin 233, Item 10. In this case the evidence warrants revocation. Santore v. West New York, Bulletin 958, Item 2; Meicke v. Hoboken, Bulletin 1375, Item 1. In fact, revocation would be warranted upon a finding of guilt only as to Charge 3. Bacus v. Guttenberg, Bulletin 1332, Item 4.

"For the foregoing reasons, it is recommended that an order be entered in Case No. 1 affirming respondent's action in finding appellant guilty as to Charges 2 and 3 and revoking the license then held by appellant. It is recommended that a further order be entered in Case No. 2 affirming respondent's action and fixing an effective date when the Director's order extending the 1960-61 license will be vacated."

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

After carefully considering the evidence and exhibits herein, the brief submitted by appellant's attorney, his letter referring thereto, the Hearer's Report and the exceptions and written argument thereto, I concur in the findings and conclusions of the Hearer. Hence I shall affirm the action of respondent in both cases.

Accordingly, it is, on this 26th day of September 1961,

ORDERED that the action of respondent in Case No. 1 be and the same is hereby affirmed; and it is further

ORDERED that the action of respondent in Case No. 2 be and the same is hereby affirmed and that my order entered therein extending the term of appellant's 1960-61 license be vacated, effective at 2 a.m. Friday, September 29, 1961, at which time appellant must cease operation under the extension of said license.

WILLIAM HOWE DAVIS  
DIRECTOR

3. APPELLATE DECISIONS - WARE v. NEWARK.

TOUSSAINT WARE AND THEODORE WARE,  
t/a HEAT WAVE TAVERN,  
  
Appellants,  
  
v.  
  
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE  
CONTROL OF THE CITY OF NEWARK,  
  
Respondent.

ON APPEAL  
CONCLUSIONS  
AND ORDER

-----  
Joseph A. D'Alessio, Esq., Attorney for Appellants.  
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent Board whereby, on June 29, 1961, it, by a unanimous vote, denied appellants' application for a transfer of its plenary retail consumption license C-156 from premises 92 West Street to premises 151-53 Somerset Street, Newark.

"The respondent Board adopted a resolution, the operative part of which states, as follows:

'The Board has considered all of the testimony produced by the objectors as well as that produced by the appellant and after considering all of the facts, was of the unanimous opinion that there is no need or necessity for another liquor outlet in this particular neighborhood, and accordingly, this application is denied by unanimous vote.'

"The petition of appeal alleges, in effect, that this is a hardship case in that the applicants were forced to vacate their premises



by the Newark Housing Authority, which had acquired their property for the purpose of erecting a new low-cost housing project; that the Board was informed of the situation and of the circumstances surrounding the application; that in such hardship case, the appellant was not required to prove 'public need and convenience'; that the Board had adopted this policy and has, in this instance, acted contrary to this policy; and that the action of the respondent was unlawful, arbitrary, capricious, and an unreasonable exercise of its discretionary powers.

"Respondent Board, in its answer, alleges that the aforesaid determination was based upon the factual testimony before the Board from which it, in its sound discretion, concluded that the said transfer should be denied.

"A transcript of the proceedings before the respondent Board on June 28, 1961, which contained a copy of the resolution passed by the respondent Board on June 29, 1961, was admitted into evidence, by consent of the parties hereto, and in accordance with Rule 8 of State Regulation No. 15. The respondent thereupon rested its case and supplemental testimony was presented by the appellants.

"An examination of the transcript of the hearing held before the local Board indicates that there were no witnesses produced on behalf of the applicant (the appellants herein). There were 23 objectors, several of whom were represented by counsel. In his statement to the Board, counsel for several of the objectors stated the position of the objectors as follows: This is a residential zone and on this block (where the proposed transfer is to be relocated) reside 155 families with 300 children; and within a two-block radius there are 12 liquor outlets; that the situation would be aggravated by the addition of another liquor outlet; and that there is no need for such additional liquor outlets.

"Norman E. Threadgill, a resident of this area, stated that he represented a number of people, including himself, and that this proposed tavern was intended to replace a candy store which has served a real need to the children, in particular, in this neighborhood.

"Mary A. Reed, a property owner, testified that her principal objection to the addition of another liquor outlet was that the conduct of persons frequenting the existing liquor outlets was such as to interfere with her right of privacy. She stated that she has five children and she is very much concerned about the drunkards from the taverns in the neighborhood.

"Frances Cheatham, a property owner, deplored the replacement of a candy store which she says, 'Has been running an educational program, because it has been run very nicely. It served outstanding lunches and helped in the welfare and health education of the children.' She objected to the introduction of another liquor outlet 'for the sake of the children'.

"Willie Mae Crapps, another objector, decried the sight of drunken men who, by their debased acts, have had a very deleterious effect upon the children of the neighborhood. She further testified that these habitues of taverns congregate in front of her house and on her front steps and create a disturbance; that this happens all the time, 'every day of the week, every night of the week. I can't sleep at nights. I live on the third floor and when I go to my room to go to sleep, many nights I have to sit up most of the nights and don't get enough sleep to go to work.' She stated that she has called the police on many occasions but these drunkards return when the police have left. She submitted a petition of people presumably living on Somerset Street, who have signed a statement to the effect that they were opposed to this liquor outlet.



"At the hearing on this appeal, Toussaint Ware, one of the appellants, testified that he has invested a total of \$29,500 in the tavern at its present address; that he was a tenant of the property which was taken by the Newark Housing Authority for the purpose of making way for a new low-cost housing project; that after searching all year, he located the premises upon which his present application for transfer is based. He further asserted that he has never violated any of the liquor laws, and that his entire investment will be lost unless he is permitted to relocate. He further testified that other similar applications for transfer have been granted by the respondent Board within the last few years because of 'hardship'; that he was present at the hearings on those applications and did not hear any references made to 'need and convenience' in those cases.

"The principal contention of the appellants is that the respondent unreasonably exercised its discretionary power in denying this transfer because this transfer application involved what is known as a 'hardship' case. Appellants have delineated this 'hardship' by alleging that they have been forced to vacate the present location by the Newark Housing Authority which has acquired their property for the purpose of erecting a new low-cost housing project. Thus, since appellants were tenants in the present premises, they state that their entire investment would be lost. As a secondary contention, appellants argue that such action of the respondent was violative of 'its established policy (with respect to hardship cases)'.

"The resolution of June 29, 1961 hereinabove referred to, in denying this transfer application stated as its reason that 'there is no need or necessity for another liquor outlet in this particular neighborhood.' The question thus arises whether the respondent's conception of 'public need and convenience' definitively embraced its reasons for its action herein, and whether it acted contrary to any established policy in this connection.

"It is clear that each case must be decided upon its own merits regardless of any so-called established policy. It could never be logically argued that merely because a 'hardship' exists, the local board is prevented from using its reasonable discretion to decide whether a particular area or neighborhood would be deleteriously affected by the introduction of another liquor outlet. Hardship cases understandably should be given greater consideration, but the public interest is always paramount to that of the individual. This has been the underlying philosophy in our jurisprudence, and certainly has been applied in the control and enforcement of the liquor traffic. In other words, as the court stated in Fanwood v. Rocco, 59 Super. 306 (App. Div. 1959) aff. 35 N.J. 404 Sup. Ct. 1960: 'No person is entitled to a "transfer of a license" as a matter of law', and 'if the motive of the governing body is pure, its reasons, whether based on morals, economics or aesthetics are immaterial. N.J.S.A. 33:1-26; Zicherman v. Driscoll, 133 L. 586 (Sup. Ct. 1946).' Cf. Grundlehner v. Dangler, 29 N.J. 256, 269 (1959); Bivona v. Hock, 5 N.J. Super. 118; and Board of Commissioners of the Borough of Belmar v. Division of Alcoholic Beverage Control, 50 N.J. Super. 423, 142 Atl. 2d 653. To hold otherwise would mean that in all 'hardship' cases the local boards would be deprived of their discretion and judgment, and would be required to approve all transfers regardless of the number of liquor licenses extant in any particular neighborhood. Absent improper motivation, the action of local boards, based upon proper and bona fide use of their discretion, must be supported. Hudson-Bergen Retail Liquor Stores Ass'n., Inc. v. Hoboken, 135 N.J.L. 511.

"The local Board used the terms 'public necessity' and 'public convenience' as primary considerations in their action in denying this transfer application. Exactly what they meant by these terms is not altogether clear, nor were members of the respondent Board called upon by appellants at the hearing herein to define these terms as they

understood them, vis-a-vis, their determination herein. It would have helped to clarify my thinking if more specific reasons were given by the respondent Board instead of their use of these terms. As Judge Gaulkin pointed out in Fanwood v. Rocco, supra:

'The terms "public necessity" and "public convenience" are probably as confusing and misleading when used in connection with liquor cases as the term "abuse of discretion". It is to be noted that these terms are not found in the statute but are the unfortunate products of tort case law. Judge Clapp pointed this out in the case of Township Committee of Lakewood Township v. Brandt, 38 N.J. Super. 462 (App. Div. 1955) saying: "An even more obvious question arises as to the significance of the terms in connection with intoxicating liquors. Is there any public necessity for a tavern?"'

"It is also clear that the respondent has taken into consideration the 'hardship' element in deciding other cases before it. Where the facts warranted, the respondent took a liberal attitude in its determination and action upon transfer applications based upon 'hardship'. Thus, in Jacobs v. Newark and Melody Bar & Liquor, Inc., Bulletin 1398, Item 4, the respondent Board approved an application for the transfer of plenary retail consumption license where said application was based upon hardship.

"At the hearing below, no one appeared in support of the appellants, but there were 23 objectors, a number of whom testified. The picture presented was one of a residential area already flooded with liquor outlets and reflecting sordid, demoralizing and abhorrent by-products of such excess. It would appear from the testimony that a very substantial number of property owners and residents were highly incensed and opposed to the introduction of such new outlets. One of the objectors (Mrs. Crapps) presented a petition containing 110 names of people who were apparently opposed to this application. It seems certain that the respondent took into consideration the manifest expression, among other things, of this petition, although the actual petition was not included as an exhibit nor was it offered in evidence. As the court said in Re Powell, Bulletin 59, Item 15:

'There is no objection to any person or group presenting a petition. It serves as a convenient medium for presenting to the governing body the views of the group, but the weight to be accorded it, after proper discount for self-interest and the irresponsible way in which petitions are often signed as friendly accommodation, without any considered thought of its contents or effect on the outcome on the other side, depends on what the petition states, who signs it, and how it accords with the policy and common sense of the officials responsible for the administration of the law and whose duty and privilege it is to hear both sides.'

See also Re Dunster, Bulletin 99, Item 1.

"Counsel for the appellants cites Geltzeiler v. Newark, Bulletin 1171, Item 1 and Black v. Newark, Bulletin 1219, Item 1 (denial of transfers reversed) in support of his contention that this application on a 'hardship' basis should have been granted. However, these cases are distinguishable from the instant case because those transfers were sought for premises in the same area as the old premises, and it was determined that the transfers would not increase the number of licensees in those areas. In the Jacobs case, supra, an officer of the respondent licensee testified that his liquor establishment will not be operated as a tavern but will sell alcoholic beverages in original containers for off-premises consumption. It should also be noted that

the transfer of that license was to an area which was predominantly commercial and thus did not have the same social and moral problems that are manifest in the instant case. This is similarly true in Helms v. Newark and Cardinal Wine & Liquors, Inc., Bulletin 1398, Item 3, where an application for the transfer of a plenary retail distribution license was granted by the respondent Board to a commercial area in the City of Newark. This, too, was a 'hardship' case and the Board, acting within a reasonable use of its discretionary authority, approved this transfer, notwithstanding substantial objections made thereto on behalf of property owners, area residents and other licensees.

"These cases point up the fact that the respondent Board has looked favorably upon granting applications for transfers in 'hardship' cases. It is commendable that it does not consider this policy so inflexible and so rigid that it cannot, in the exercise of its legislated responsibility, take a contrary action where the facts and circumstances so warrant. The local Board was familiar with this particular neighborhood, and the problems peculiar to it. It is part of the old 'Third Ward', which has suffered from slum conditions, with the concomitant social, economic and moral conflicts which are the by-products and evil results of this situation. The city has, during the past few years, been engaged in an urban renewal program to correct and improve living conditions. Thus, as the court said in Ward v. Scott, 16 N.J. 16 (1954) at p. 23: 'Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such application.'

"It is well established that the transfer of a liquor license is not an inherent or automatic right and that the issuing authority may grant or deny the transfer in the exercise of a reasonable discretion. Palmer Food & Liquors, Inc. v. Bogota, Bulletin 1298, Item 1. Consideration of undue concentration of licensed premises in the area, are matters entrusted to the sound discretion of the issuing authority. Miles et al. v. Paterson et al., Bulletin 1306, Item 2. The respondent apparently took into consideration in its determination and action herein, that there would be an aggravated concentration which would further endanger the existing conditions complained of in this neighborhood. Under these circumstances, it was not an unreasonable abuse of its discretion to deny this transfer regardless of any general policy with respect to 'hardship' cases.

"The Director's function on appeal is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm, irrespective of his personal views. Broadley v. Clinton and Klinger, Bulletin 1241, Item 1, citing Weiss v. Newark, Bulletin 1079, Item 7. See also Rule 6 of State Regulation No. 15.

"In this case, it is regrettable that the licensees, who have conducted their business in a law-abiding and respectable manner, must be the victims of community progress without any immediate prospect of recouping their financial losses. It may well be that more extensive search in another area might be more salutary and profitable to them and to the community. As was pointed out hereinabove, however, it is elementary that concern for the licensees' own financial misfortune will not be elevated above the public interest. Cf. Hudson-Bergen County RLS Assn. v. Board of Commissioners of the City of Hoboken, 136 N.J.L. 502, 510, (E. & A. 1947). Since the respondent, in the reasonable exercise of its circumspect discretion, determined that the public interest in this particular case required the denial of the application, its actions, in the absence of improper motivation (not raised in this case), should be affirmed.

"After considering all the evidence herein and the brief filed on behalf of the appellants, I conclude that appellants have failed to sustain the burden of establishing that the action of respondent was arbitrary, unlawful or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15; Palmer Food & Liquors, Inc. v. Bogota, supra.; Shilo Baptist Church of Atlantic City v. Atlantic City, et al., Bulletin 1387, Item 2. It is recommended, therefore, that an order be entered affirming respondent's action and dismissing the appeal."

Written exceptions to the Hearer's Report and written argument in substantiation thereof were filed with me by appellants' attorney, pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the record herein, including the transcript of the proceedings before respondent Board, the Hearer's Report and the written exceptions and argument with respect thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 26th day of September, 1961,

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

WILLIAM HOWE DAVIS  
DIRECTOR

DISCIPLINARY PROCEEDINGS - HOSTESSES - FOURTH VIOLATION ON SAME PREMISES - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA - SPECIAL PERMIT CANCELLED.

In the Matter of Disciplinary Proceedings against )  
ANGELINA GARRABRANT )  
701 Paterson Plank Road )  
Union City, N. J. )

Holder of Plenary Retail Consumption License C-82, issued by the Board of Commissioners of the City of Union City. )

CONCLUSIONS  
AND ORDER

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In the Matter of Disciplinary and Cancellation Proceedings against )  
ANGELINA GARRABRANT )  
701 Paterson Plank Road )  
Union City, N. J. )

Holder of Special Permit E No. 44, issued by the Director of the Division of Alcoholic Beverage Control. )

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Defendant-licensee-permittee, Pro se.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On July 14, 25 and 28, 1961, you allowed, permitted and suffered females employed on your licensed premises to accept beverages at the expense of or as a gift from

customers and patrons; in violation of Rule 22 of State Regulation No. 20."

Defendant was also required but failed to show cause why her Special Permit E No. 44, authorizing the employment of non-resident entertainers, should not be cancelled, suspended or revoked.

At 10:25 p.m. Friday, July 14, 1961, ABC agents R, B and G entered defendant's licensed premises wherein Mario Casamassimo (hereafter Mario) was tending bar and two musicians were entertaining six men and two women. Shortly after the agents' arrival, one of the women, who was called Eva, did a cha-cha dance, and the other, called Jean, did a Spanish folk dance. When Eva finished her dance she retired to the dressing room, changed her clothes, returned to the bar and sat with one of the men who bought her a drink. Jean, after completing her dance, returned to the bar but refused Agent G's offer to buy her a drink, saying "Not while I'm working; they make me hot." Thereafter the agents left the premises.

At 9:10 p.m. Tuesday, July 25, 1961, Agent G returned to the licensed premises alone. Mario was tending bar. A pianist was on the stage, and a female known as Marge sat at the bar. Later four men entered and the pianist M.C. introduced Marge, who sang a few songs and then returned to the bar. Agent G invited her to join him for a drink. She accepted, and Mario poured her a drink of scotch and water. Mario also accepted a drink at the expense of the agent who, before leaving the premises, bought Marge another scotch and water.

At 8:45 p.m. July 28, 1961, Agents G and S visited the licensed premises. Mario was behind the bar at which five men and Marge were seated. Two musicians were on the stage. March greeted Agent G and he introduced her to Agent S and bought her a scotch and water. Mario served the drink, charging Agent G ninety cents. At 9:45 p.m. two more men entered the premises, spoke to Mario and took seats in a booth. At Mario's suggestion Marge joined the men and, after conversing with them, returned to the bar and informed Mario that they wanted to buy her a drink. Mario told them to bring her over to the bar. In the meantime another female entertainer, known as Saundra, arrived and, after greeting Mario, took a seat at the bar. At 9:55 p.m. Marge and the two men came to the bar, and one of the men bought drinks for himself, his friend and Marge. The other man, who was seated next to Saundra, bought another round of drinks, including one for Saundra, and a little later on the first man bought a third round of drinks for the foursome. Marge and Saundra then performed and thereafter returned to the two men at the bar and each accepted another drink at the men's expense. At 11:08 p.m. Agent G told Mario to serve drinks to the three agents and to Marge and Saundra. Mario complied and, after the entertainers had sipped their drinks, the agents identified themselves and seized the remaining portions. Mario admitted the aforesaid violations and Marge said that she knew that she shouldn't drink at the expense of patrons "but thought the agents were O.K." Saundra declared that she drinks at the expense of patrons only when Mario OKs it.

Defendant has no prior adjudicated record. However, when the license for the same premises was held by The Holly Club Inc., in which defendant held one share of stock, it was suspended by me for forty-five days, effective June 9, 1958, for hostess activity and knowingly employing an unqualified person (Bulletin 1232, Item 2). When the license was held by defendant's father (John Casamassimo) it was suspended by me for fifteen days, effective January 28, 1959; for thirty-five days, effective August 5, 1959, and for fifty-five days, effective November 27, 1959, for hostess activities (Bulletin 1317, Item 2, and bulletins cited therein).

The minimum penalty for the violation charged herein is twenty

days (Re Casamassimo, Bulletin 1266, Item 6) but when, as in the instant case, four similar violations occur on licensed premises within a five-year period, the penalty is usually quadrupled. Cf. Re Woodlawn Bar & Grill, Inc., Bulletin 1060, Item 2. However, because the violation charged against defendant-licensee is her first and only infraction of the Rules and Regulations since the license was transferred to her by her father, who has retired, and because of other mitigating factors, which warrant some leniency, I shall in this case suspend defendant's license for sixty days and remit five days for the plea, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 27th day of September 1961,

ORDERED that Plenary Retail Consumption License C-82, issued by the Board of Commissioners of the City of Union City to Angelina Garrabrant, for premises 701 Paterson Plank Road, Union City, be and the same is hereby suspended for fifty-five (55) days, commencing at 2 a.m. Tuesday, October 10, 1961, and terminating at 2 a.m. Monday, December 4, 1961; and it is further

ORDERED that defendant's Special Permit E No. 44, issued by the Director of the Division of Alcoholic Beverage Control, be and the same is hereby cancelled, effective immediately.

WILLIAM HOWE DAVIS  
DIRECTOR

DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED -  
LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary	)	
Proceedings against	)	
WALTER ROST	)	
t/a WALTER'S CORNERS	)	CONCLUSIONS
Main Rd. & N.J. Route 517	)	AND ORDER
Green Township	)	
PO Tranquility, N. J.	)	
Holder of Plenary Retail Consumption	)	
License C-1, issued by the Township	)	
Committee of Green Township.	)	

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Defendant-licensee, Pro se.  
David S. Piltzer, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he possessed on his licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On July 5, 1961, an ABC agent tested defendant's open bottles of alcoholic beverages and seized two quart bottles of "Seagram's Seven Crown American Blended Whiskey, 86 Proof" for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of the seized bottles, when compared with the contents of a genuine bottle of the same brand, varied substantially in solids and color.



Defendant has a prior adjudicated record. Effective April 12, 1938, his license was suspended by the local issuing authority for five days for sale to minors and an "hours" violation. Since said violation occurred more than ten years ago, it will not be considered in fixing the penalty herein. Re Donst, Bulletin 1390, Item 2. I shall suspend defendant's license for fifteen days, the minimum penalty imposed in "refill" cases involving two bottles. Re Kasica, Bulletin 1400, Item 11. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 25th day of September, 1961,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of Green Township to Walter Rost, t/a Walter's Corners, for premises Main Rd. & N. J. Route 517, Green Township, be and the same is hereby suspended for ten (10) days, commencing at 12:01 a.m., Monday, October 2, 1961, and terminating at 12:01 a.m., Thursday, October 12, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED -  
PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

REGINA HITTNER & JOSEPH HODES )  
t/a JOE'S BAR & GRILL )  
14 Centre Street )  
Newark, New Jersey )

CONCLUSIONS  
AND ORDER

Holders of Plenary Retail Consumption )  
License C-519, issued by the Municipal )  
Board of Alcoholic Beverage Control of )  
the City of Newark. )

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Defendant-licensees, by Joseph Hodes, A Partner.  
David S. Piltzer, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge that they possessed on their licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On June 6, 1961, an ABC agent tested defendants' open stock of liquor and seized a number of bottles for further tests by the Division chemist. Subsequent analysis by the chemist disclosed that the contents of three of the bottles varied substantially in solids and acids from the contents of genuine bottles of the labeled brands.

Defendants have a prior adjudicated record. When the license was held by one of the partners (Joseph Hodes, individually) for other premises in Newark, his license was suspended for ten days, effective February 6, 1956, by the local issuing authority for an "hours" violation. Since this dissimilar violation occurred more than five years prior to the date herein, it shall not be considered in fixing the penalty. However, effective April 20, 1959, the license of the defendant-partnership was suspended by the Director for fifteen days



for possession of illicit liquor. Bulletin 1278, Item 5. The minimum penalty imposed in cases involving three bottles is twenty days. Re Levy, Bulletin 1359, Item 10. Because of the similar violation which occurred within the past five years, I shall suspend defendant's license for thirty days. Re Riverview Tavern, Inc., Bulletin 1384, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 25th day of September 1961,

ORDERED that Plenary Retail Consumption License C-519, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Regina Hittner & Joseph Hodes, t/a Joe's Bar & Grill, for premises 14 Centre Street, Newark, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, October 2, 1961, and terminating at 2 a.m. Friday, October 27, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED, AFTER TERMINATION OF PROCEEDINGS TO REVIEW.

In the Matter of Disciplinary Proceedings against	)	
	)	
CALDWELL'S LIQUOR STORES	)	
t/a CALDWELL'S LIQUOR STORES	)	
3301-3303 Atlantic Avenue	)	
Atlantic City, N. J.	)	ORDER
Holder of Plenary Retail Distribution License D-3 (for the 1960-61 and 1961-62 licensing years) issued by the Board of Commissioners of the City of Atlantic City.	)	

BY THE DIRECTOR:

On October 13, 1960, the defendant's license was suspended for fifty days. See Bulletin 1364, Item 6. Pending defendant's appeal to the Superior Court, Appellate Division, the suspension was stayed by the Court. On June 26, 1961, the suspension was affirmed by said Court, but the licensee filed a petition for certification of said decision with the Supreme Court. On September 19, 1961, the Supreme Court denied said petition and, therefore, the suspension may now be reimposed.

Accordingly, it is, on this 3rd day of October 1961,

ORDERED that the fifty-day suspension heretofore imposed against Plenary Retail Distribution License D-3, issued by the

Board of Commissioners of the City of Atlantic City to Caldwell's Liquor Stores, t/a Caldwell's Liquor Stores, for premises 3301-3303 Atlantic Avenue, Atlantic City, be and the same is hereby reimposed, commencing at 9:00 a.m., Tuesday, October 10, 1961 and terminating at 9:00 a.m., Wednesday, November 29, 1961.

WILLIAM HOWE DAVIS  
DIRECTOR

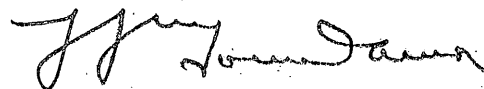
8. STATE LICENSES - NEW APPLICATION FILED.

Ashley, Ltd.

447 Central Avenue

Orange, New Jersey

Application filed November 8, 1961 for Plenary Wholesale License.



William Howe Davis  
Director

New Jersey State Library