

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

BULLETIN 1628

August 13, 1965

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - JAMES A. DECKER v. RARITAN (MONMOUTH COUNTY)
APPELLATE DECISIONS - MARCELLA DECKER v. RARITAN (MONMOUTH COUNTY)
2. APPELLATE DECISIONS - REED v. SOUTH TOMS RIVER and STOP-INN, INC.
3. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1964 THROUGH JUNE 30, 1965.
4. DISCIPLINARY PROCEEDINGS (Franklin Township - Gloucester County) - SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS.
5. STATE LICENSES - NEW APPLICATION FILED.

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

BULLETIN 1628

August 13, 1965

1. APPELLATE DECISIONS - JAMES A. DECKER v. RARITAN (MONMOUTH COUNTY)

APPELLATE DECISIONS - MARCELLA DECKER v. RARITAN (MONMOUTH COUNTY).

JAMES A. DECKER,)

Appellant,)

v.)

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF RARITAN (MONMOUTH)
COUNTY),)

Respondent.)

ON APPEAL
CONCLUSIONS
AND ORDER

MARCELLA DECKER, ADMINISTRATRIX)
OF THE ESTATE OF ARTHUR H. DECKER,)

Appellant,)

v.)

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF RARITAN (MONMOUTH)
COUNTY))

Respondent.)

James A. Decker, Appellant, Pro se.
Benjamin Gruber, Esq., Attorney for Appellant Marcella Decker.
No appearance on behalf of Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Two separate appeals were instituted by the appellants against the Township Committee of the Township of Raritan, respondent. Since the issues herein are interrelated and involve the same issues of law and fact, they have been consolidated for hearing and will be the subject of a single report.

James A. Decker (a co-licensee with Marcella Decker, the administratrix of the estate of Arthur H. Decker for the year 1963-64) filed an appeal challenging the action of the respondent which denied his application for a renewal of a plenary retail consumption license to himself personally for the year 1964-65. He sets forth in his petition of appeal that, in the resolution of July 10, 1964 denying his application, it set forth that on June 19, 1964 the license was extended to the estate of Arthur H. Decker, Marcella Decker, Administratrix and James Decker, trading as West End Tavern. The resolution sets forth that, whereas the application for the renewal of the said

license was filed by James Decker and thereafter by Marcella Decker, Administratrix, and whereas the objection to such issuance was filed on behalf of Marcella Decker, Administratrix, application of James Decker for renewal in his individual name be and the same was thereby denied.

The petition further alleges that the action of the respondent was erroneous in that the interest of Arthur H. Decker (deceased) in the aforesaid license ceased upon his death and no formal application for renewal was requested. It further asserts that the administratrix had no vested right in the said license and that the appellant James Decker had sole legal and equitable rights in said license. Thus he advocates that the action of respondent was "arbitrary, capricious and an abuse of discretion in refusing to allow his renewal application." He therefore prays that the action of the respondent be reversed and that it be ordered to issue a renewal license to him individually.

Marcella Decker, Administratrix of the Estate of Arthur H. Decker, also filed a petition of appeal wherein she states that the license was extended to the estate and to her as administratrix thereof; that she did on July 6, 1964 file an application for renewal of the license as administratrix but that James Decker refused to join with her in the joint application for such license. The respondent thereupon denied her application for renewal as administratrix.

She asserts that the action of the respondent was erroneous in that she was entitled to renewal of the license upon the refusal of James Decker to join with her, and that the action of the respondent in denying such renewal was "arbitrary, capricious and an abuse of discretion." She similarly urges that the action of respondent be reversed and that it be ordered to issue a renewal of the said license to her.

The premises in question are located at Highway 36 near the intersection of Laurel Avenue, West Keansburg, in the Township of Raritan.

No answers were filed by respondent to either of the petitions of appeal.

These were appeals de novo, with full opportunity for counsel to be heard, to present evidence under oath and cross examine witnesses, pursuant to Rule 6 of State Regulation No. 15.

The appellant James Decker appeared pro se at this plenary de novo hearing, the attorney who appeared and filed the petition of appeal having been discharged by him prior to the hearing. Marcella Decker was represented by counsel.

The record developed at this hearing reflects the following established facts: Arthur Decker (deceased) was the original licensee for this tavern, having first obtained his license in 1946 or 1947. In 1951 he incorporated his brother (the appellant James Decker) as an equal partner in this business, and thereafter they operated the business as co-licensees. Arthur Decker died on August 16, 1963, and his wife (the appellant Marcella) became the administratrix of his estate. She testified that her brother-in-law James refused to permit her to participate in the business and he managed the business by himself.

Upon application to the respondent, the license was extended to James Decker and Marcella Decker as administratrix of

the estate. However, at the time of renewal James refused to permit his sister-in-law to join in an application and made a renewal application to respondent in his individual name.

Thereafter Marcella Decker, as administratrix, also filed an application in her capacity as administratrix of the estate, and sought renewal of the license to her, setting forth in such application that her brother-in-law refused to join in her application and, therefore, the license should be issued to her. Accordingly the respondent denied both applications for renewal.

At the plenary hearing before me James Decker insisted that he did not join as an applicant with his sister-in-law for the issuance of this license, and would not do so "unless the law adjudicates she has equity [then] I would accept her."

Marcella Decker testified that she has been willing and is presently willing to amend her application to include James Decker as a joint applicant, and has only applied in the manner above indicated because of his refusal to join in such application. It was further developed that there is presently an action in the New Jersey Superior Court (Chancery Division) for an adjudication of the equities of these parties and for an accounting. At the same time an order was entered in that court restraining James Decker from transferring the license.

R.S. 33:1-26 provides in part that:

"In case of death ... of the licensee, or if for any other reason whatsoever the operation of the business covered by the license shall devolve by operation of law upon a person other than the licensee, the director or other issuing authority may, in his or its discretion, extend said license for a limited time, not exceeding its term, to the executor, administrator, trustee, receiver or other person upon whom the same has devolved by operation of law as aforesaid. Under no circumstances, however, shall a license, or rights thereunder, be deemed property, subject to inheritance, sale, pledge, lien, levy, attachment, execution, seizure for debts, or any other transfer or disposition whatsoever, except to the extent expressly provided by this chapter."

In accordance with the provisions of that section the respondent extended the license to include the names of James Decker and Marcella Decker as Administratrix of the Estate of Arthur Decker, deceased. It is well established and axiomatic that, under these circumstances, both appellants have an equal right to the license and neither is entitled to the license to the exclusion of the other in the absence of a waiver or consent of the other party.

As the former Commissioner Burnett stated in Re Nordheim, Bulletin 310, Item 7:

"It may be that, the partnership being terminated, each partner plans to continue the business for the next year each in his own name and to apply for the successive license. However, the license may be granted only to the one having the right to immediate and exclusive possession of the premises now licensed. Should each have an equal right to possession, then neither may obtain the license. The municipal limitation of the number of licenses is not to be augmented because of partnership friction. The license cannot be halved. If the partners can't agree,

then both will have to go without.

"(2) You ask whether, 'if one partner refuses to operate with other partner', can such other partner continue to conduct the business under their partnership license.

"If the partnership remains in existence and continues to own the business, and all that happens is that the partners are on the 'outs' or in combative mood, it is immaterial, so far as this Department is concerned, how they arrange between themselves as to who shall manage the business. Either partner may, under the partnership license, manage the business so long as he is doing so pursuant to the partnership. Their internal fights must be settled between themselves or in the courts.

"However, if the partner who 'refuses to operate' is actually withdrawing from the business, the remaining partner may continue to conduct that business under the original license even though now conducting it for himself, but he must immediately notify the municipal clerk of his partner's withdrawal so that an endorsement to such effect may be made on the license (which thereupon stands in his name alone) and so that adequate notation may be entered in the municipal clerk's records. See Re Baumgartner, Bulletin 165, Item 10. At renewal time, he may renew the license as though it had been in his name throughout."

Under the facts of this case I am persuaded that the action of the respondent was erroneous in denying both applications. What the respondent should have done, in the absence of disqualifying factors involved with respect to either applicant, was to have moulded these two applications as though they were one application and to have renewed the license to both applicants.

Obviously, so far as the position of James Decker is concerned, it is clearly untenable. It is not the duty or obligation, nor within the province of the issuing authority, to adjudicate the equitable rights of the partners herein under their partnership agreement. That is a matter for judicial determination in the courts. As the court stated in Mannion v. Greenbrook Hotel, Inc., 138 N.J. Eq. 518:

"The legislative policy is limitational, but it was not intended to abrogate all the contractual or legal obligations of such licensees in anywise related to the business of selling liquor."

The position of the appellant James Decker presupposes a false hypothesis that the license is property in which the issuing authority may require the administratrix of the estate to transfer her interest therein to the surviving partner. Takacs v. Horvath, 3 N.J. Super. 433.

I therefore conclude that both appellants had a right to renewal of this license as co-licensees, and that the respondent, in the absence of any stated substantial reason for denying the same, should be directed to renew the license to both appellants. If James Decker refuses to continue as a co-licensee herein, his remedy is clear. He may express such intention in writing to the respondent, advising it of such intention, and request that his name be omitted from the license and the said license be issued solely to Marcella Decker as Administratrix of the Estate of Arthur Decker.

Notwithstanding James Decker's expression at the hearing on appeal that he would refuse to join in the application for renewal, I believe the Director is without authority to cancel his interest therein. Circumspect action is indicated especially where he is not represented by counsel. The proper procedure should be that such expression be made by him, in writing, directly to the respondent.

It is therefore recommended that an order be entered reversing the action of the respondent with respect to both applications and directing that a renewal license be issued to James Decker and Marcella Decker as Administratrix of the Estate of Arthur H. Decker, as co-licensees.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, written exceptions to the Hearer's Report were filed with me by appellant James A. Decker. In the exceptions it is contended, in effect, that, while Rule 2 of State Regulation No. 5 calls for application for extension of license to be made in the form of a petition, no "petition" was made by appellant Marcella Decker, Administratrix; that, while Rule 8 of State Regulation No. 5 calls for endorsement of extension on the face of the license certificate, no endorsement of the extension herein was made on the face of the 1963-64 license certificate; that, "contrary to R.S. 33:1-26, the administratrix still deems the license to be property and demands to be my partner in the license ...;" and that the application of the administratrix for a 1964-65 license was filed after the 1963-64 license had expired.

No form of "petition" is prescribed in Rule 2 of State Regulation No. 5. Respondent Committee's extension-granting resolution of June 19, 1964 sets forth clearly that the administratrix had made "application" for the extension, and the application was legally sufficient.

Strictly, of course, pursuant to Rule 8 of State Regulation No. 5, endorsement of the extension should have been made on the face of the 1963-64 license (and also on the license stub -- Rule 9, State Regulation No. 5). It is not, however, the ministerial act of endorsement which grants an extension but the issuing authority's resolution (here the resolution of June 19, 1964).

Quoted in the Hearer's Report are the here pertinent provisions of R.S. 33:1-26, a careful reading of which will serve to bring out appellant Decker's misunderstanding concerning the alleged misunderstanding on the part of the administratrix with respect to her deeming the license to be property "contrary to R.S. 33:1-26." The quoted language of that section negatives the "property" concept as to a license but then continues with a prescription of "any other transfer or disposition (of a license) whatsoever, except to the extent expressly provided by this chapter" (underscoring added). The extent so expressly provided is by person-to-person transfer (R.S. 33:1-26, Paragraph 4) or by extension of license (R.S. 33:1-26, Paragraph 2).

The application of the administratrix for a 1964-65 license was filed well before the deadline date (here July 31, 1964) provided by law -- in R.S. 33:1-12.13 and R.S. 33:1-96.

After careful consideration of the record herein, including the transcript of the testimony, the exhibits, the arguments of

counsel and of appellant James A. Decker, and the Hearer's Report and written exceptions thereto, I concur in the conclusions and recommendation of the Hearer and adopt them as my conclusions herein.

No new application for the 1964-65 license and no new publication of Notices thereof will be required.

Accordingly, it is, on this 8th day of June 1965,

ORDERED That the action of respondent Township Committee with respect to both 1964-65 applications is hereby reversed; and it is further

ORDERED that the respondent Township Committee issue a 1964-65 plenary retail consumption license in the names of James A. Decker and Marcella Decker, Administratrix of the Estate of Arthur H. Decker, deceased; and it is further

ORDERED that my Conclusions and Order herein are subject to the outcome of the action pending in the Superior Court (Chancery Division).

JOSEPH P. LORDI
DIRECTOR

2. APPELLATE DECISIONS - REED v. SOUTH TOMS RIVER and STOP-INN, INC.

EDWINA S. REED,)
Appellant,)
v.)
MAYOR and BOROUGH COUNCIL of the)
BOROUGH of SOUTH TOMS RIVER, and)
STOP-INN, INC.,)
Respondents.)

ON APPEAL
CONCLUSIONS
AND ORDER

Appellant, Pro se.
No appearance for Respondent Mayor and Borough Council
James F. McGovern, Jr., Esq., Attorney for Respondent Stop-Inn, Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Appellant appeals from the action of respondent Mayor and Borough Council whereby on February 8, 1965 it approved a place-to-place transfer of respondent licensee's plenary retail consumption license from premises on Flint Road to premises 380 Dover Road, South Toms River. Four of the Council members voted in favor of the transfer, two voted to deny, and the Mayor did not vote in the matter.

Appellant contends in her petition of appeal that the action of respondent Mayor and Council in granting the transfer in question was erroneous on the following grounds:

- "a. The locality being a place in the center of homes and stores where small children congregate and pass through on errands.

- "b. We are questioning the legality of this license renewal as it was not advertised locally twice before renewal.
- "c. We were not given an open hearing when the transfer was granted by Borough Council in February, 1965."

Appellant testified that in the shopping center wherein the proposed premises is located there are a number of stores, viz., "confectionery, barber shop, hardware, and bakery, and dry cleaner;" that there are "about 900 homes surrounding the shopping center;" that children visit the stores and, because of the location of the proposed premises, additional traffic problems will be created; that appellant resides "about three blocks down" from the proposed site and that the nearest liquor outlet to the premises in question is approximately 6,000 feet distant.

Henry Reilly, residing "within five hundred feet" of the proposed premises, testified that he was apprehensive that the operation of respondent licensee's establishment "might possibly create a public nuisance in the area being it is primarily residential;" that "it can create quite a traffic situation" and parking facilities are insufficient; and that, because there is "just a part-time police department, it is volunteer", in case of disturbance it would be difficult to contact the members of said department. Mr. Reilly agreed that the State Police was available to render assistance if any untoward trouble arose.

Two other witnesses residing a distance away from the site of the proposed premises in substance corroborated appellant's testimony.

Appellant and some of the other witnesses were in substantial agreement that there would be no objection to a plenary retail distribution license in the shopping center because of the earlier closing hour for such type of license.

It will be unnecessary to consider grounds "b" and "c" set forth in the petition of appeal. In so far as "b" is concerned, no appeal has been taken to renewal of the current license for the former premises. As to "c", since the appeal was heard de novo, full opportunity was afforded counsel and others to present testimony under oath and to examine and cross examine witnesses. Rule 6 of State Regulation No. 15; Rokay Wines & Liquors, Inc. v. Passaic, Bulletin 1198, Item 1. Appellant's assertion, unsubstantiated by proof, that a liquor outlet at the proposed site will create a traffic and parking hazard in the area is ineffective.

The question whether a licensed premises shall be permitted in a particular section of the municipality is a matter confided to the sound discretion of the local issuing authority. Carriell v. Newark et als., Bulletin 1043, Item 2. On appeal the burden of showing that the municipal issuing authority abused its discretion rests with appellant. Vide, Rule 6 of State Regulation No. 15. The Director's function on appeal is not to substitute his opinion for that of the issuing authority but, rather, to determine whether cause exists for its opinion and, if so, to affirm irrespective of his personal views. DeStefano et als. v. Jersey City et al., Bulletin 1289, Item 4, and cases cited therein.

The holder of a plenary retail consumption license may, of his own volition, close the licensed premises earlier than the closing hour set forth in a local ordinance with reference thereto.

However, a municipal issuing authority has no power to impose a discriminatory closing hour in individual cases. In Cesar v. Trenton, Bulletin 951, Item 2, former Director Cavicchia held, when considering a similar condition imposed by a respondent, that:

"Our State Alcoholic Beverage Law (in R.S. 33:1-40) empowers the governing body of each municipality to limit, by ordinance, the hours between which the sale of alcoholic beverages at retail may be made. It would seem clear that the intentment of the statutory authorization in this regard in R.S. 33:1-40 (taken together with R.S. 33:1-94) is that a given municipality's hours for the sale of alcoholic beverages may be fixed by ordinance only and not by a special condition under R.S. 33:1-32. It has long been held that municipal hours of sale and closing must be uniform with respect to all licensees of the same class. (See Re Grillo, Bulletin 253, Item 4; Re Harrington, Bulletin 118, Item 13; Re Lamson, Bulletin 118, Item 6; Re Wenzel, Bulletin 19, Item 7.)"

I am satisfied that in all respects proper consideration was given by respondent Mayor and Council before action was taken on the application for transfer. There has been no evidence presented herein to indicate that there was an abuse of discretion or improper motivation on the part of any of the members of said respondent. General objections to the issuance of a license in a business area, filed by residents of side streets which are residential in character, are not in themselves a sufficient reason for denying the transfer of a license. Brummer v. North Arlington, Bulletin 426, Item 11; Pistilli v. Bernardsville, Bulletin 1030, Item 2.

After careful examination of the evidence, I recommend that the action of respondent Mayor and Borough Council in granting the transfer of the license in question to the proposed site be affirmed, and that the appeal herein be dismissed.

Conclusions and Order

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

Having carefully considered the entire record herein, including the testimony taken, the Hearer's Report and the recommendations therein, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein. Hence I shall enter an order as recommended.

Accordingly, it is, on this 9th day of June 1965,

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

JOSEPH P. LORDI
DIRECTOR

3. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1964 THROUGH JUNE 30, 1965

	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter			Total
	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	
ARRESTS:													
Total number of persons arrested	51			53			78			83			265
Licenses and employees	25			32			40			49			146
Bootleggers	26			21			38			34			119
SEIZURES:													
Motor vehicles - cars	1			2			-			5			8
- trucks	-			-			1			3			4
Still - over 50 gallons	1			2			1			2			6
- 50 gallons or under	2			2			6			1			11
Alcohol - gallons	16,105			287,80			36,041			70,697			410,643
Mash - gallons	300			1,331			1,165			2,250			5,046
Distilled alcoholic beverages - gallons	364,990			62,40			121,051			24,241			572,682
Wine - gallons	44,281			240,7459			14,25			14,038			313,3149
Brewed malt alcoholic beverages - gallons	91,952			66,5352			27,85			15,511			201,8482
RETAIL LICENSEES:													
Premises inspected	1,575			1,917			2,057			2,032			7,581
Premises where alcoholic beverages were gauged	1,160			1,653			1,678			1,616			6,107
Bottles gauged	18,513			24,180			24,213			21,765			88,671
Premises where violations were found	172			168			181			197			718
Violations found	241			219			240			240			940
Unqualified employees	94			83			68			61			306
Application copy not available	33			25			39			58			155
Reg. #58 sign not posted	51			32			22			23			128
Other mercantile business	13			16			18			19			66
Disposal permit necessary	9			12			14			14			49
Prohibited signs	11			6			7			7			31
Improper beer taps	2			-			2			-			4
Other violations	28			45			70			58			201
STATE LICENSEES:													
Premises inspected	56			28			35			69			188
License applications investigated	38			27			18			54			137
COMPLAINTS:													
Complaints assigned for investigation	1,012			1,113			1,065			1,157			4,347
Investigations completed	983			1,067			1,047			1,401			4,498
Investigations pending	(163)			(233)			(197)			214			214
LABORATORY:													
Analyses made	460			298			295			480			1,533
Refills from licensed premises - bottles	142			136			119			156			553
Bottles from unlicensed premises	86			33			50			64			233
IDENTIFICATION:													
Criminal fingerprint identifications made	26			13			20			36			95
Persons fingerprinted for non-criminal purposes	1,119			759			760			1,355			3,993
Ident. contacts made w/other enforcement agencies	690			521			466			890			2,567
MV identifications via N.J. State Police teletype	2			5			1			3			11
DISCIPLINARY PROCEEDINGS:													
Cases transmitted to municipalities	34			28			29			22			113
Violations involved	39			28			32			28			127
Sale during prohibited hours	26			16			15			13			70
Sale to minors	9			10			11			11			41
Failure to close prem. dur. proh. hours	3			-			3			4			10
Single instance of other violations	1			2			3			-			6
Cases instituted at Division	74*			48			74			71*			267*
Violations involved	87			78			96			88			349
Sale during prohibited hours	8			12			14			14			68
Possessing liquor not truly labeled	14			8			15			15			52
Sale to minors	8			14			12			10			44
Permitting lottery activity on premises	16			4			10			3			33
Permitting bookmaking on premises	9			2			4			4			19
Sales below filed price	4			2			10			-			16
Beverage Tax Law non-compliance	1			3			2			9			15
Fraud in application	2			3			5			2			12
Failure to close prem. dur. prohibited hours	1			4			3			3			11
Conducting business as a nuisance	2			1			1			5			9
Hindering investigation	2			3			2			1			8
Unqualified employees	1			1			4			2			8
Fraud and front	1			1			1			4			7
Permitting immoral activity on premises	2			-			2			2			6
Permitting hostess activity on premises	2			1			1			2			6
Permitting gambling on premises	2			2			1			1			6
Permitting foul language on premises	1			2			1			2			6
Possessing pinball machine on premises	2			1			1			1			5
Retailer-to-retailer sales	-			3			-			2			5
Substituting alc. bev. other than ordered	1			2			-			-			3
Unauthorized transportation	-			2			-			-			2
Sale to intoxicated persons	-			-			-			2			2
Single instance of other violations	8			7			7			4			26

*Includes three cancellation proceedings - licenses improvidently issued to licensees, and stockholder, convicted of crimes involving moral turpitude and non-resident stockholder.

	1st Quarter July Aug. Sept.	2nd Quarter Oct. Nov. Dec.	3rd Quarter Jan. Feb. Mar.	4th Quarter Apr. May June	Total
DISCIPLINARY PROCEEDINGS (CONTINUED)					
Cases brought by municipalities on own initiative and reported to Division	73	70	69	65	277
Violations involved	98	94	79	74	345
Sales to minors	37	41	38	33	149
Permitting brawl etc. on premises	17	8	10	11	46
Sale during prohibited hours	13	4	6	8	31
Failure to close prem. dur. prohibited hours	10	4	7	3	24
Conducting business as a nuisance	5	3	4	6	18
Permitting minors on premises unaccomp. by parents or guardians (local reg.)	3	2	-	5	10
Hindering investigation	1	6	-	2	9
Permitting lottery activity on premises	1	4	1	-	6
Permitting bookmaking on premises	-	-	4	1	5
Failure to afford view into premises during prohibited hours	3	1	-	-	4
Permitting immoral activity on premises	1	3	-	-	4
Employing persons w/o indent. cards (local reg.)	-	2	1	1	4
Act of violence	1	1	-	1	3
Employing female bartender (local reg.)	-	2	-	-	2
Employee working while intoxicated	-	-	2	-	2
Unqualified employees	-	-	2	-	2
Single instance of other violations	4	3	4	3	14
HEARINGS HELD AT DIVISION:					
Total number of hearings held	109	106	125	119	459
Appeals	23	15	26	17	81
Disciplinary proceedings	61	58	74	64	257
Eligibility	21	26	16	24	87
Seizures	2	2	5	4	13
Tax revocations	1	3	2	8	14
Applications for license order to show cause	1	-	-	-	1
STATE LICENSES AND PERMITS ISSUED:					
Total number issued	5,264	4,515	3,063	22,280	35,122
Licenses	756	7	9	11	783
Solicitors' permits	173	136	140	2,861	3,310
Employment "	1,090	705	556	3,617	6,968
Disposal "	270	170	208	165	813
Social affair permits	1,344	1,236	1,087	1,307	4,974
Wine permits	-	893	15	4	912
Miscellaneous "	667	571	362	749	2,349
Transit insignia	867	741	554	12,270	14,432
Transit certificates	97	56	132	1,296	1,581
OFFICE OF AMUSEMENT GAMES CONTROL:					
Licenses issued	233	99	272	270	874
Premises inspected	1,094	-	-	325	1,419
Premises where violations were found	20	-	-	89	109
Number of violations found	27	-	-	128	155
Enforcement files established	76	55	13	83	227
Disciplinary proceedings instituted	3	1	-	1	5
Violations involved	3	1	-	3	7
Charge in excess of 25¢	3	-	-	-	3
Operating controlled game	-	-	-	1	1
Redemption of prize for money	-	1	-	-	1
Operating unlicensed game	-	-	-	1	1
Non-registered employee	-	-	-	1	1

JOSEPH P. LORDI
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: July 15, 1965

and consumed about fifteen beers each, Richard also consuming "a couple of shots." Both made their exit at 4 a.m.

David testified that there were two bartenders on duty; that no one questioned him as to his age; he was not requested to make any written representation as to his age, and he heard no one question Richard as to his age. He further testified that he could not identify anyone in the hearing room as being one of the bartenders that night. On cross examination David furnished a detailed description of the interior of the licensed premises and its contents, and stated that the bartender who served him the first time he went in had blond hair, the other bartender had dark hair.

Richard testified that he was born on September 8, 1947; was seventeen years of age on October 18, 1964, and corroborated the story related by David which culminated in the entry of both minors in the licensed premises at about 12:45 a.m. on October 18, 1964. Both minors ordered, were served and consumed beers, and neither was questioned as to age. Richard estimated he drank about twenty beers and about four whiskeys; that both left at closing time (4 a.m.) and that, upon leaving, he was inebriated. An exhaustive and most searching cross examination by the attorney for the licensee failed to produce any material inconsistencies in the testimony of the two minors relating to the charge.

Richard testified on cross examination that in November 1964 he visited the licensed premises in the company of Division Agents L and H and identified Edward Keegan as the tall man with the crew cut as the bartender who served the minors, and Fred Tecklenburg as the other bartender on duty, both of whom were in the hearing room. Keegan has light colored hair.

Agent L testified that, in the course of investigating the charge against the licensee, he visited the licensed premises on four occasions -- on November 10 and 20, 1964, and on two occasions prior thereto. On November 10, 1964, Agents L and H drove David to the licensed premises to attempt to make identification of the premises. Agent L testified that two or three days prior thereto he visited the licensed premises and spoke with the licensee; he had asked the licensee who her employees were; upon being advised, he asked the licensee as to when it would be convenient for her to arrange for a meeting with them; that, upon arriving at the licensed premises on November 10, he spoke with the licensee and arrangements were made to see the bartenders in the kitchen; that, after the bartenders Edward Keegan and Fred Tecklenburg entered the kitchen, the agent had David and Agent H come into the kitchen; at that time the licensee and the two bartenders were informed as to the purpose of the visit and asked them as to who was tending bar on early Sunday morning October 18; he was told that they were the two that were tending bar on that date; that David did not identify either Keegan or Tecklenburg as the bartender who served the minors on the night in question; however, in the presence of the licensee, David stated that this was the tavern he was in.

On November 20, 1964, Richard directed the same Division agents to the licensed premises after arrangements had been made to meet with the two bartenders Keegan and Tecklenburg. Richard identified the licensed premises after the group passed several other taverns on Delsea Drive in Franklinville. The agents and Richard met with the licensee, Keegan, Tecklenburg and Keegan's

mother (later identified as Mrs. Stella M. Keegan). Richard stated that the licensed premises was the tavern in question and Keegan was the bartender who then served the alcoholic beverages on October 18. Both Keegan and his mother denied he (Keegan) was there that night. Agent L further testified that he thereupon said to the licensee, "Well, when I first came to you, it might have been the 6th, 7th, or 8th of November, and I asked you for your employees you gave me Keegan's name and Fred's name," and she said to me, "Well, at that time they were the only two I could think of, and they were the names I gave you", but she said he wasn't working at that time there." On cross examination Agent L confirmed that both David and Richard directed the agents to the tavern operated by the licensee; David did not identify the bartenders; Richard did identify Keegan as the bartender who served them; that, when Richard made the identification, first the licensee, then Mrs. Stella M. Keegan, and then Edward Keegan denied that he was on duty on October 18, 1964, maintaining he had had an operation on his shoulder. It was also brought out on cross-examination that Richard described the bartender who served him as being tall, thin, crew haircut, about twenty-two or twenty-three years of age.

In her defense the licensee called upon Edward Keegan, Albert E. Kuhs, Fred Tecklenburg and Stella M. Keegan.

Keegan testified that he was employed by the licensee as a bartender since April or May of 1961; that he was on the pitching staff of the Philadelphia National League baseball club; that he sustained an injury to his right shoulder; entered the Jefferson Hospital in Philadelphia on September 3, 1964; was confined at the hospital for ten to eleven days; tried to work one Tuesday afternoon about two to four weeks after release from hospital; his arm hurt, he quit after about an hour, and he did not return to work at the licensed premises until the 28th or 30th of October. He stated he was not in the licensed premises on October 18, 1964, and therefore could not and did not serve alcoholic beverages to David and Richard. On cross examination he was asked, "Was there any bartender who worked in this tavern either on October 18 or at any other time other than yourself who had a description similar to that given by this young man?" Keegan responded, "No, sir." Keegan testified that he was six feet three inches tall, weighed about 170 pounds on October, 18, and was twenty-five years of age. His hair was blond and crew cut.

Albert E. Kuhs testified that he worked as a bartender at the licensed premises every week-end including Friday, Saturday and Sunday evenings, until closing at four o'clock in the morning, commencing Friday, September 4, 1964 to October 25; that he was so employed on Saturday evening October 17 to Sunday October 18 at 4 a.m.; that he never saw the minors David and Richard until he met them in the hearing room; he did not see them in the licensed premises; that Fred Tecklenburg was the other bartender during that period, and Edward Keegan did not perform any bartending while he was so employed.

Fred Tecklenburg, employed as a bartender by the licensee, testified that he was so employed on the date in question and denied seeing either David or Richard on that date.

Mrs. Stella M. Keegan (a sister of the licensee and mother of Edward Keegan) testified that she helps her sister manage the place; her son was not engaged as a bartender due to physical incapacity from early September to late October 1964; she was

in the licensed premises Saturday evening October 17th until closing time, and that David and Richard were not in the licensed premises on that occasion.

Due to the sharp conflict in the testimony presented by the Division and by the licensee, I have set forth in detail a large quantum of the material and vital testimony adduced herein so that we may develop a proper perspective of factual issues involved in this proceeding.

At the outset it should be indicated that we are dealing here with a purely disciplinary action, and such action is civil in nature, and not criminal. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951). Thus the proof must be supported by a fair preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Since this is strictly a factual situation, the credibility of witnesses must be weighed. Evidence, to be believed, must not only proceed from the mouths of credible witnesses, but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App.Div. 1961).

I have had an opportunity to observe the demeanor of the witnesses as they testified and, in view of the conflict in the testimony, I have made a careful analysis and evaluation of their testimony.

Although I strongly deplore the conduct of both minors on the date in question, none the less I am imperatively persuaded that their version had a substantial ring of truth with respect to the alleged purchases and consumption of the alcoholic beverages upon the licensed premises.

I reject the arguments advanced by the licensee's attorney in his memorandum and reply memorandum. As to the argument that the age of the minors was not established, it has long been held that testimony by the minor himself is legally sufficient to establish his age. Briefly summarized, the balance of the arguments is directed to the theory that the Division has failed to prove the charge by a fair preponderance of the evidence.

I am impressed by the fact that both minors unequivocally identified the licensed premises. One minor made positive identification of the bartender who served them. Assuming (for the purpose of argument only) that both minors had failed to identify the particular employee making the sale or service, it has long been established that the failure to identify the particular employee making the sale or service of alcoholic beverages to a minor is not fatal in disciplinary proceedings, provided it be established that the minor purchased, had served to him or was permitted to consume an alcoholic beverage in the licensed premises. Re Kurinsky and Ancel, Bulletin 1100, Item 7; Re Dante, Bulletin 771, Item 9; Ott's Incorporated v. Division of Alcoholic Beverage Control (App.Div.), decided March 29, 1962, not officially reported, reprinted in Bulletin 1444, Item 1.

I have carefully noted the demeanor of the minors and carefully examined the entire record herein, and I failed to detect any semblance of improper motivation on their part. Additionally, a searching cross examination by the licensee's

attorney failed to reveal improper motivation on the part of the minors.

While a finding of guilt should not be made where the evidence is in serious conflict and equally as consistent with innocence as with guilt, nevertheless a categorical denial by the licensee and his witnesses should not be permitted to overcome clear and logical evidence to the contrary. I am of the opinion that a fair evaluation of the evidence clearly leads to the conclusion that the evidence of the minors preponderates in favor of a finding of guilt, and I so recommend.

The licensee has no record of suspension of license prior to the violation alleged herein, albeit the license was suspended (for undisclosed interests of Edward and Stella Keegan in the license) for the balance of its term, effective April 29, 1965, with leave to apply for lifting of the suspension upon proof of correction of the unlawful situation after twenty days from its commencement. Re Riper, Bulletin 1618, Item 7. I further recommend that the license be suspended for twenty days. Re Liebert, Bulletin 1453, Item 3.

Conclusions and Order

Written exceptions to the Hearer's Report and argument thereto were filed by the licensee's attorney pursuant to Rule 6 of State Regulation No. 16.

Licensee's attorney argues in his second exception that the Hearer erred in refusing to allow him to examine the minors as to their condition of sobriety and ability to remember what transpired following their alleged departure from the licensed premises. The transcript indicates that on cross examination both minors testified as to their "condition of sobriety." Further, the record plainly indicates that the licensee was accorded ample latitude in cross examining the minors as to subsequent acts.

The attorney for the licensee complains that he was not afforded an opportunity to borrow the transcript so that inconsistencies in the testimony could be detailed. As to this, I am informed by a staff member that licensee's attorney was afforded full opportunity to examine the transcript during the normal working hours of the Division and, as a matter of fact, he did avail himself of such opportunity.

I find that the matters contained in the other exceptions had been considered in detail by the Hearer in his report and they are without merit.

Consequently, having considered the entire record herein, including the exceptions filed, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Division records indicate that the suspension of license for the balance of its term as mentioned in the Hearer's report (Re Riper, supra) has been lifted effective May 19, 1965 by supplemental order dated June 7, 1965, Re Riper - Keegan, Bulletin 1627, Item 7.

Accordingly, it is, on this 10th day of June 1965,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Franklin to Mary Riper, t/a "Pleasant Valley Inn", for premises w/s Delsea Drive, north of Franklinville, Franklin Township (Gloucester County), and transferred to Edward & Stella Keegan for the same premises during the pendency of these proceedings, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1965, commencing at 4 a.m. Thursday, June 17, 1965; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 4 a.m. Wednesday, July 7, 1965.

JOSEPH P. LORDI
DIRECTOR

5. STATE LICENSES - NEW APPLICATION FILED.

Flagstaff Liquor Co.
536 Fayette Street
Perth Amboy, N. J.

Application filed August 6, 1965 for place-to-place transfer of Plenary Wholesale License W-22 to include additional space.


Joseph P. Lordi
Director