

Director Davis
Sent to Regular Mailing List
STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1043

DECEMBER 27, 1954.

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

BULLETIN 1043

DECEMBER 27, 1954.

1. APPELLATE DECISIONS - VOGEL ET AL. v. MATAWAN AND MALINCONICA.

KENNETH VOGEL, ET AL.,)
Appellants,)
-vs-)
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF MATAWAN, and)
FLORENCE MALINCONICA, trading)
as FLO'S BAR & GRILL,)
Respondents.)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

Edward Farry, Jr., Esq., Attorney for Appellants.
Ezra W. Karkus, Esq., Attorney for Respondent Township Committee.
John W. Applegate, Esq., Attorney for Respondent-licensee.

BY THE DIRECTOR:

This is an appeal from the action of respondent Township Committee on June 9, 1954, whereby it granted the application of respondent licensee for transfer of her license, place-to-place, from 93 Lower Main Street to premises known as Parcel No. 425-C as shown on the Garden State Parkway map of Section No. 7.

After written objections to the transfer had been filed, respondent Township Committee held a public hearing and, at a regular meeting held on June 9, 1954, adopted by unanimous vote the resolution granting the transfer. The resolution recited that respondent licensee had held a license for premises at 93 Lower Main Street from 1947 to 1954; that she was obliged to vacate said premises by reason of the construction of the "Garden State Parkway"; that the premises to which the license is sought to be transferred is approximately 100 feet from the rear of the building housing the former licensed premises; that the transfer does not involve the issuance of a new or additional license in the same neighborhood and that the character of the neighborhood has not materially changed except for the construction of the Parkway, the re-location of Lower Main Street and the addition of an access road. The resolution cited as controlling authorities Bivona v. Hock, 5 N. J. Super. 118 (App. Div. 1949); O'Bertz v. Perth Amboy, Bulletin 1011, Item 1 and Palmer v. Atlantic City, Bulletin 1017, Item 1, and approved the transfer subject to the following conditions:

"(a) The building to house the said licensed premises, now temporarily situate on a vacant lot on Washington Avenue, in this municipality, be erected upon the said Parcel No. 425-C aforesaid, with adequate sanitation facilities therein installed.

"(b) That said building be set back from the said access road at not less than 40 feet therefrom.

"(c) That adequate parking facilities for parking of automobiles be provided in front of said building, which parking area shall be adequately illuminated.

"(d) That at all times the music on said licensed premises shall be moderate in volume."

The resolution further provided that the transfer be approved, effective immediately, for the sole purpose of permitting a renewal of the license.

The special conditions (R.S. 33:1-32) in the resolution received ex parte approval by the Director on June 17, 1954 and similar ex parte approval was given July 21, 1954 after the license was renewed for the 1954-55 licensing period subject to the same conditions.

Appellant contends that respondent Township Committee's action was erroneous for reasons which may be summarized as follows: At the public hearing the applicant (respondent licensee) was permitted to amend, by motion, the answers to questions 38 and 41 which deal with prior licenses and prior suspensions; there was no proof of public necessity and convenience to be served by the transfer; the building which allegedly is to be used for the licensed premises was not located on the premises sought to be licensed and, thus, respondent Committee could not make a proper inspection as required by law; the imposition of the special condition was contrary to law; and the authorities cited in the resolution are not controlling.

The answers filed on behalf of both respondents denied these allegations.

At the hearing on this appeal appellant Vogel and a number of objectors appeared and testified. Respondent licensee and Chairman Marz of respondent Township Committee also testified. In addition, numerous exhibits were introduced in evidence including petitions favoring and opposing the transfer.

The principal objections advanced in behalf of appellants may be summarized as follows: The proposed premises are too close to the homes of some of the objectors; at respondent licensee's prior location some of the patrons indulged in profane language and engaged in other reprehensible conduct; children traveling between their homes and school must pass the proposed new location; and the proposed location is too close to the Parkway. However, most of the objectors admitted that they had not objected to the issuance of the license at the former location which, admittedly, is but a short distance from the proposed new location.

Chairman Marz testified that he had been a member of respondent Township Committee since 1933; that the license was originally held by the father and, later, the mother of respondent licensee; that, at the proposed new location, there was a hollow which has been filled since the transfer was granted; that he is familiar with the location and the neighborhood; that the distance between the former premises and the proposed new premises is approximately 125 feet; that, within a half-mile of those locations, there are both business and industry; that he knew that respondent licensee's license had been suspended for five days in 1947 for permitting music after 11:00 p.m., contrary to local regulations, but that he did not believe it to be sufficient to deny the transfer; and that a half-dozen witnesses testified at the public hearing that there was a need for the transfer. He further testified that there is more of a demand for a tavern in that locality now than before the Parkway was constructed; that questions 38 and 41 of the license application were permitted to be amended as claimed by appellants; that no other license had been granted subject to special conditions, but that respondent Township Committee believed that the conditions were necessary and desirable.

Respondent licensee testified that her former premises had been taken over by the Garden State Parkway; that she had held a license at the location for approximately five years and, before that, had held a license approximately two blocks away; and that the transfer sought is for the same neighborhood as her former premises at 93 Lower Main Street.

It was stipulated that three other persons, if called as witnesses, would corroborate respondent licensee's testimony that the old premises and new premises are in the same general neighborhood. It was further stipulated that there is no zoning ordinance in the Township of Matawan.

Counsel for appellants filed a memorandum in which he contended that, (1) the special conditions imposed by the resolution of June 9, had not received prior approval of the Director, as required by R.S. 33:1-32; (2) respondent Township Committee erred in permitting the amendment of questions 38 and 41 of the license application because the original application was under oath, as required by R.S. 33:1-25, and, by permitting the amendment to the application previously made under oath "destroyed all jurisdiction the committee may have had to hear and determine the question relating to the transfer of this license..." and (3) the record is "barren of any proof that public convenience and necessity require the transfer...."

With respect to the first contention, it is true that R. S. 33:1-32 reads as follows:

"Subject to rules and regulations, each issuing authority by resolution, first approved by the commissioner, may impose any condition or conditions to the issuance of any license deemed necessary and proper to accomplish the objects of this chapter and secure compliance with the provisions hereof, and all such licenses shall become effective only upon compliance with the conditions so stated and shall be revocable for subsequent violation thereof."

However, as early as 1937 the late Commissioner Burnett held that the failure to submit special conditions for approval prior to the issuance of the license was a mere technicality and that, when raised, the matter would be considered on its merits nunc pro tunc. Re Fidelity & Harmony Beneficial Association of South Plainfield, Bulletin 162, Item 14. This policy has been followed uniformly ever since. See Cesar v. Trenton (Case No. 1), Bulletin 951, Item 2, The Ebony Corporation et al. v. Trenton, Bulletin 958, Item 1. As hereinabove indicated, these special conditions received ex parte approval by the Director.

Appellants apparently do not now contend that the conditions are unreasonable. Rather, they contend that their imposition evidences a recognition on the part of respondent Township Committee that the objections to the granting of the transfer were valid and, therefore, inferentially, that the transfer should not have been granted. I cannot agree with this contention. As Chairman Marz testified, respondent Committee felt that the conditions were reasonable and necessary under the particular circumstances. I cannot find that either the imposition of the special conditions or the granting of the transfer subject to those conditions was unreasonable or an abuse of discretion and the ex parte approval of the special conditions heretofore given is hereby affirmed.

With respect to the second contention, a written amendment to questions 38 and 41, under oath, and dated June 7, 1954 was attached to the application for transfer. While it is true that all questions are material and must be answered accurately it would appear that there has been substantial compliance with the statutory requirements. Furthermore, respondent Township Committee was well aware of the true facts and could not have been misled. I find no error on the part of respondent Committee in permitting the amendments under the circumstances here involved.

With respect to the third contention, while the question of public necessity and convenience ordinarily is paramount, the situation is different where the place-to-place transfer is from one location in a particular neighborhood to another location in the same neighborhood. In such cases it has been held that the mere fact that other licenses also serve the same neighborhood, is not a valid reason for denying a place-to-place transfer from one location in a neighborhood to another location in the same neighborhood, since no greater concentration of licenses is created by such transfer. Palmer v. Atlantic City, Bulletin 1017, Item 1; O'Bertz v. Perth Amboy, Bulletin 1011, Item 1; Kupay v. Passaic, Bulletin 803, Item 9; Costa v. Verona, Bulletin 501, Item 2.

Counsel for appellant also contended that the portion of the resolution which provided for the issuance of the license, effective immediately, for the sole purpose of permitting a renewal thereof was improper. There is no merit in this contention. In a situation such as was here present, it was entirely proper for the local issuing authority to issue the license for the sole purpose of permitting a renewal and to renew the license subject to a special condition requiring completion of premises. Pursuant to R. S. 33:1-39, which empowers the Director to instruct municipalities and municipal issuing authorities, specific instructions have been issued with respect to the imposition of such special conditions (Re Licensed Premises, Bulletin 762, Item 5; Re State Limitation Law, Bulletin 876, Item 1) and have received judicial sanction. Passarella v. Board of Commissioners, 1 N. J. Super. 313 (App. Div. 1949). See also Atlantic County Licensed Beverage Association et al. v. Township Committee of the Township of Hamilton et al., Bulletin 879, Item 5.

The burden of establishing that the action of respondent was erroneous and should be reversed rests with appellant. Rule 6 of State Regulations No. 15. After carefully considering the evidence in this case I find that appellants have failed to sustain this burden.

Accordingly, it is, on this 7th day of December, 1954,

ORDERED that the action of the Township Committee of the Township of Matawan be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - CARRIELL ET AL. v. NEWARK AND SALERNO AND LIPNICK.

ANNIE CARRIELL, ET AL.,)
Appellants,)
-vs-)
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
NEWARK, and NICHOLAS SALERNO and)
ABRAHAM LIPNICK,)
Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

Irving N. Yankowitz, Esq., Attorney for Appellants.
Vincent P. Torppey, Esq., by Joseph A. Ward, Esq., Attorney for
Municipal Board of Alcoholic Beverage Control.
William Osterweil, Esq., Attorney for Respondents Nicholas Salerno
and Abraham Lipnick.

BY THE DIRECTOR:

This is an appeal from the action of respondent Board whereby it granted a place-to-place transfer of the 1953-54 plenary retail consumption license of respondents Nicholas Salerno and Abraham

Lipnick from premises 141 High Street to 40 Madison Avenue, Newark. The members of respondent Board voted unanimously to grant the transfer in question.

The record below, including the testimony of the witnesses who appeared at the hearing before respondent Board, was made part of the record in this appeal. Additional testimony and exhibits were introduced at the hearing of this appeal.

Appellants' petition of appeal sets forth various grounds for reversal of the action of the respondent Board which may be summarized as follows: (1) There are adequate facilities within the area to serve the needs and convenience of the public and, therefore, respondent Board's action was arbitrary, capricious and unreasonable; (2) the general welfare, social and economic conditions of persons residing in the immediate area of the proposed licensed premises will be adversely affected and the property located in the area will depreciate in value; (3) the grant of the transfer of the license to the proposed premises violates the section of the local ordinance pertaining to the floor space and toilet facility requirements; (4) the letters on the sign posted on the proposed premises with reference to the transfer in question did not meet the specifications set forth in the local ordinance; (5) the place-to-place transfer approved by the respondent Board violated the municipal zoning ordinance; and (6) the application for transfer failed to meet the requirements, rules and regulations of the State Division of Alcoholic Beverage Control.

The respondent licensees were forced to vacate their former premises when the site whereon it was located was taken over by the government housing authorities. Consequently, the case of the respondent licensees comes within the hardship provision of the local ordinance (Chapter 3, Article 2, Section 3.29 of ordinance adopted October 15, 1952) relating to alcoholic beverages.

The proposed premises are located on a part of the ground floor on the Madison Avenue side of a three-story frame dwelling situated on the corner of Madison Avenue and Badger Avenue. There is testimony that there are many residences and also business establishments in the vicinity of the proposed licensed premises. The businesses include a coal yard, a grocery store, a barber shop, and a restaurant. There are no licensed premises within 500 feet of the proposed premises.

The number of licensed premises to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. Santoriello v. Howell, Bulletin 252, Item 8; Mita v. Orange, Bulletin 266, Item 10; Sudol v. Wallington, Bulletin 267, Item 10; Pitman v. Pemberton, Bulletin 277, Item 6; Boody v. Gloucester, Bulletin 300, Item 11; Smith v. Winslow, Bulletin 334, Item 1; Alpert v. Asbury Park, Bulletin 380, Item 2; Winslow v. Pennsauken, Bulletin 401, Item 11; Bodrato et al. v. Northvale et al., Bulletin 433, Item 1; Hearty et al. v. Liberty et al., Bulletin 671, Item 5; Segal et al. v. Clifton et al., Bulletin 732, Item 5; McGill v. Orange et al., Bulletin 900, Item 2; DeCapua v. Ocean Township, Bulletin 941, Item 1.

The burden rests with appellants to show that such discretion was unreasonably exercised. In an effort to meet such burden, appellants produced divers witnesses who testified that the needs or convenience of people in the neighborhood did not warrant the issuance of an additional license therein. The members of the respondent Board have decided otherwise.

My function on appeals of this type is not to substitute my 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 my personal view on the subject. Rafalowski v. Trenton, Bulletin 155, Item 8; Northend Tavern, Inc. v. Northvale et al., Bulletin 493, Item 5; Petti v. Bayonne, Bulletin 564, Item 7; Mulcahy et al. v. Maplewood et al., Bulletin 658, Item 4; McGill v. Orange et al., supra.

Appellants further contend that the establishment of a licensed premises at the proposed location would tend to create a moral hazard for those persons living in the immediate neighborhood and especially for the young folks passing the premises. In this regard, if the licensed business is properly conducted it should be no more objectionable than the other types of businesses now conducted in the neighborhood. General objections to the issuance of any license for premises located in a neighborhood wherein business establishments are not prohibited do not justify a refusal. In so far as the contention that the surrounding properties will depreciate in value because of the transfer is concerned, there has been no proof presented in substantiation thereof. Furthermore, appellants have failed to present satisfactory proof in support of their contentions that the letters on the sign posted on the proposed premises failed to meet the required specifications; that the municipal zoning ordinance was violated in any manner whatsoever and that the respondent Board's action failed to comply with the rules and regulations of the Division of Alcoholic Beverage Control.

I am satisfied after careful examination of all the evidence adduced herein that the members of respondent Board in approving the transfer were not improperly motivated in their action. Moreover, there is no evidence that they acted in an arbitrary, capricious or an unreasonable manner in reaching their determination. The only meritorious reason advanced by appellants herein is that there has not been compliance with the section of the local ordinance with reference to the minimum floor space and toilet facility requirements. The proof presented indicates that the proposed place of business contains less than 400 square feet of floor space and that the proposed premises is lacking in requisite toilet facilities. I might point out, however, that this ground of appeal was raised for the first time in the present appeal hearing. Since it is manifest that in disposing of the matter below, respondent Board failed to consider the fact that the premises had inadequate floor space and toilet facilities, the matter must be remanded to respondent Board for further consideration.

Accordingly, it is, on this 8th day of December, 1954,

ORDERED that this case be and the same is hereby remanded to the respondent Board of Alcoholic Beverage Control of the City of Newark for further and immediate action in accordance with the foregoing conclusions.

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - PASSAIC COUNTY RETAIL LIQUOR DEALERS' ASSOCIATION v. PATERSON AND BERTELLI'S LIQUOR STORE, INC. PHILMORE LIQUOR SALES, INC. v. PATERSON AND BERTELLI'S LIQUOR STORE, INC. AND BERTELLI'S, INC.

PASSAIC COUNTY RETAIL LIQUOR DEALERS' ASSOCIATION,)

Appellant,)

-vs-)

BOARD OF ALCOHOLIC BEVERAGE CONTROL FOR THE CITY OF PATERSON, and BERTELLI'S LIQUOR STORE, INC.,)

Respondents.)

ON APPEAL CONCLUSIONS AND ORDER

-----) PHILMORE LIQUOR SALES, INC.,)

Appellant,)

-vs-)

BOARD OF ALCOHOLIC BEVERAGE CONTROL FOR THE CITY OF PATERSON, and BERTELLI'S LIQUOR STORE, INC., and BERTELLI'S, INC.,)

Respondents.)

Theodore D. Rosenberg, Esq., Attorney for Appellant Passaic County Retail Liquor Dealers' Association.

Arnold M. Smith, Esq., Attorney for Appellant Philmore Liquor Sales, Inc.

Louis Nussman, Esq., Attorney for Respondent Board of Alcoholic Beverage Control for the City of Paterson.

Harry Smith, Esq., Attorney for Respondents Bertelli's Liquor Store, Inc. and Bertelli's, Inc.

BY THE DIRECTOR:

These appeals, consolidated for hearing and determination, were taken from the action of respondent Board in approving an application for transfer of a plenary retail consumption license from Edward A. Levy, Receiver in Bankruptcy for the 230 Market Street Corporation, to respondent Bertelli's, Inc. (formerly Bertelli's Liquor Store, Inc.), and from premises 230 Market Street to 218-230 Redwood Avenue, Paterson.

After the hearing herein, appellant Philmore Liquor Sales, Inc. abandoned its appeal and a stipulation was filed consenting to a dismissal of that appeal.

In a prior similar appeal, a similar grant of a person-to-person transfer was remanded (on May 21, 1954) for respondent Board's further consideration of the question of whether or not the applicant's (Bertelli's) premises and method of conducting its business complied with the statute and the regulations (R. S. 33:1-12.23 (P.L. 1948, c. 98) and State Regulations No. 32). Passaic County Retail Liquor Dealers' Association et al. v. Paterson et al., Bulletin 1021, Item 1.

As in the prior appeal, the reason urged for reversal is that respondent Board's action was contrary to such statute and regulations.

On May 28, 1948, Chapter 98, Laws of 1948, now R.S. 33:1-12.23, became effective, reading as follows:

"The holder of a plenary retail consumption license or a seasonal retail consumption license, after the effective date of this act, may sell and display for sale alcoholic beverages in original containers for consumption off the licensed premises only in the public barroom of the licensed premises, such barroom being a room containing a public bar, counter or similar piece of equipment designed for and used to facilitate the sale and dispensing of alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises; provided, however, that where, prior to the effective date of this act, alcoholic beverages in original containers for off-premises consumption were sold and displayed for sale by the holder of such license, either to the exclusion of sale for consumption on the licensed premises or upon a portion of the licensed premises other than the public barroom, such sale and display shall be permitted as heretofore and notwithstanding renewal or transfer of the license either from person to person or place to place, subject to rules and regulations to be promulgated by the commissioner."

The license in question did not come within the proviso set forth in said section and does not contain "the broad package privilege" notation set forth in Rule 4, State Regulations No. 32.

In the Conclusions and Order entered in the prior appeal hereinabove cited, the facts were summarized as follows:

"At the time respondent-licensee made application for the transfer in question the plans filed with the respondent-issuing authority showed the building proposed to be licensed as having a frontage of fourteen feet six inches and a length of sixty-five feet; that approximately four feet from the front entrance and adjacent to each wall divers shelves were to be erected; that the shelves to the left were to be twenty-four feet in length and the shelves to the right twenty-one feet in length; that at the end of the right shelving and at right angles thereto a counter about eight feet long and two feet wide was proposed to be erected; that approximately four feet behind this counter toward the rear of the premises a refrigerator eight feet by eight feet was to be installed; that to the left of the refrigerator and beyond the shelving attached to the left wall a small table, approximately two and one-half feet by two feet, was to be placed; that about four feet beyond this table there was to be erected a ten-foot curved bar, the short curved end thereof attached to the left wall, which bar would be approximately eight and one-half feet from the rear of the building. Also, some distance beyond the refrigerator toward the end of the building another table was to be placed. Henry DeVries, President of respondent-licensee, testified that the counter in front of the refrigerator was to be used solely for wrapping package goods for off-premises consumption; that he did not know whether or not any plumbing was to be installed in connection therewith; that it was the intention of the respondent-licensee to dispense liquor over the bar situated in the rear of the premises but, if a patron happened to be in the front of the store and desired a drink of alcoholic beverages for immediate consumption, it would be served to him; that the name 'Bertelli's Liquor Store, Inc.' was to be placed on the front window of the premises."

On June 9, 1954, a new plan was submitted to respondent Board by respondent Bertelli's, showing the enlargement and relocation of the bar. According to the new plan the bar has an over-all length of 20 feet, with a sink, a 10-foot back bar, and eight bar stools

and has been moved from the rear part of the building behind the refrigerator to the front of the refrigerator in plain view of anyone entering the front door. The plan shows 24 feet of shelving on one side of the room and 27 feet of shelving on the other side.

Under date of June 29, 1954, counsel for respondent Bertelli's notified respondent Board of the change of its corporate name from Bertelli's Liquor Store, Inc. to Bertelli's, Inc. The notices of application, published June 22 and June 29, contained the new name and a statement to the effect that plans and specifications of the premises to be constructed could be examined at the office of the Secretary. At the hearing on this appeal, Mr. Bertelli, President of the respondent Bertelli's, testified that if any sign is placed in the front window it will not contain the words "liquor store."

From the foregoing it is clear that the factual situation has changed materially since the matter was remanded to respondent Board. Neither the premises nor the manner of conducting the business is open to the attack which resulted in the remand. It now appears that the proposed premises, if completed and conducted as indicated by the plans and the testimony, will comply with the statute and regulations.

One other matter must be disposed of. The minutes of several meetings of respondent Board which followed the remand were introduced in evidence. They disclose that the Board sought, without success, a definition of "tavern" so that it might reconsider the matter in a manner consistent with the Conclusions and Order accompanying the remand. Failing in this, Mr. Brady, a member of respondent Board, personally brought to the office of this Division the aforementioned new plan which had been filed with the Board. He reported this visit to the other members of the Board at its meeting held June 30, 1954 (at which the transfer here appealed from was granted), as follows:

"When I spoke with Director Davis he called into his office his assistant, Mr. Dorton. He too examined this plan and both the Director and Mr. Dorton stated that in their opinion the plan was for a tavern. I can readily understand why they hesitated to give us an opinion in writing."

At the hearing herein, counsel for appellant Passaic County Retail Liquor Dealers' Association questioned the right of Deputy Director Dorton to conduct the hearing and the right of the Director to decide the case on the general ground that they had prejudged the matter. Later, he abandoned his objection to the conduct of the hearing by Deputy Director Dorton.

As to the Director, who is the sole, immediate appellate agency in matters of this kind (R.S. 33:1-22), it has been held that a statutory administrative agent may hear and determine a matter, even though biased or prejudiced, when no hearing could otherwise be had. Rinaldi v. Mongiello, 4 N.J. Super 7 (App. Div. 1949). Clearly, under the law, I have the authority and the duty to decide this appeal.

However, and quite apart from the doctrine of Rinaldi v. Mongiello, supra, I hereby state for the record that this matter was not prejudged. I did not pass or rule upon the new plan and it was made clear to the Board member that the Board would have to make its own determination as to whether or not the statute and the regulations were being complied with and that, of course, such determination was subject to appeal to the Director.

The burden of establishing that the action of respondent Board is erroneous and should be reversed rests with appellant. Rule 6

of State Regulations No. 15. Under all of the facts and circumstances in this case I find that this burden has not been sustained.

Accordingly, it is, on this 13th day of December, 1954,

ORDERED that the action of the respondent Board of Alcoholic Beverage Control for the City of Paterson be and the same is hereby affirmed; and that the appeals herein be and the same are hereby dismissed.

WILLIAM HOWE DAVIS
Director

4. APPELLATE DECISIONS -- BUFIS v. FORT LEE.

MICHAEL BUFIS,)
Appellant,)
-vs-)
MAYOR AND COUNCIL OF THE)
BOROUGH OF FORT LEE,)
Respondent.)

ON APPEAL
OF THE
ORDINARY

A. Demorest Del Mar, Esq., Attorney for Appellant.
William V. Breslin, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from an order entered by respondent declaring appellants premises ineligible to become the subject of any further license of any kind or class during the period from June 24, 1954, through June 23, 1956. The premises in question are located at 1200 Palisade Avenue, Fort Lee, and the order was entered in a disciplinary proceeding instituted by respondent against Bell Club, Inc., which was formerly a tenant of the appellant herein.

Prior to the hearing scheduled to be held herein, the attorney for appellant advised me in writing that his client desired to withdraw his appeal. No reason appearing why the request should not be granted.

It is, on this 3rd day of December, 1954,

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

WILLIAM HOWE DAVIS
Director

5. SEIZURE - FORFEITURE PROCEEDINGS - INTERSTATE TRANSPORTATION OF TAX PAID ALCOHOLIC BEVERAGES WITHOUT COMPLIANCE WITH STATE REGULATIONS NO. 18 - ALCOHOLIC BEVERAGES INTENDED FOR UNLAWFUL IMPORTATION INTO NEW YORK - ALCOHOLIC BEVERAGES ORDERED FORFEITED - RETURN OF MOTOR VEHICLE TO TRANSPORTER DENIED FOR LACK OF EVIDENCE THAT TRANSPORTER ACTED IN GOOD FAITH - MOTOR VEHICLE ORDERED FORFEITED.

In the Matter of the Seizure on June 9, 1954 of a quantity of whiskey and a Plymouth coupe, on the northbound lane of the New Jersey Turnpike, 75 Mile Post, South Brunswick Township, County of Middlesex and State of New Jersey.) Case No. 8632) ON HEARING) CONCLUSIONS AND ORDER)

Alex Monroe, Pro Se. I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages and a Plymouth coupe, described in a schedule attached hereto, seized on June 9, 1954 on the northbound lane of the New Jersey Turnpike, at the 75 Mile Post, in South Brunswick Township, New Jersey, constitute unlawful property and should be forfeited.

New Jersey State Troopers halted the vehicle while on routine patrol of traffic on the highway on the above date. The car, registered in the name of Walter Monroe, at a New York City address, was being driven by Alex Monroe, with two other passengers therein, all residents of New York City. The troopers discovered 150 pint bottles, 48 half pint bottles, and 26 four-fifth quart bottles of whiskey in the trunk of the car. The troopers thereupon seized the whiskey and the car. The Division of Alcoholic Beverage Control was notified and the motor vehicle and whiskey were turned over to its agents.

Although the whiskey appeared to be tax paid, Alex Monroe did not hold any license or permit issued by the Division of Alcoholic Beverage Control authorizing the transportation of such alcoholic beverages, nor did he display any waybill or other similar document setting forth the consignor and consignee of such alcoholic beverages.

Assuming that the whiskey was being transported through this state for ultimate delivery in New York City, the driver is required to carry with him a waybill or similar document as above referred to, and satisfactorily establish that the source and destination of such whiskey is legitimate, and intended for delivery in conformity with the laws of the state of its destination. R.S. 33:1-2, State Regulations No. 18, Rule 2. Otherwise such whiskey and the motor vehicle are subject to forfeiture for the transportation thereof in violation of the law and regulations of this state.

When the matter came on for hearing, pursuant to R.S. 33:1-66, Alex Monroe appeared and sought return of the whiskey, and inferentially the car, although no formal appearance was entered on behalf of Walter Monroe, the registered owner of the vehicle.

Alex Monroe presented a sales slip dated June 9, 1954 ostensibly issued to Bennie Jackson, c/o Elks, 3rd & R.I.N.W., Washington, D.C., listing alcoholic beverages substantially of the same brands and quantity seized. The name of the dealer does not appear on the document,

which Monroe states is a duplicate which he obtained after the seizure.

Monroe testified that he visited a relative in Washington without any intention to purchase whiskey, and while there observed that the price of whiskey was cheap; that thereupon he purchased the whiskey in question for \$447.92 for the personal use of himself and his family. He further states that when first asked by the troopers where he obtained the whiskey he did not tell the truth; that, advised that it would be easier for him if he could produce a bill for the whiskey, he claimed that he "tore up" the bill.

This is substantially the same account that Alex Monroe gave the ABC agents in a signed statement previous to the hearing, wherein it appears that he destroyed the bill when the troopers approached the car. Monroe said in his statement that he intended to store the whiskey in his attic for his personal use, and made no mention of distributing any of the whiskey to relatives.

Asked to explain why the bill was issued to Jackson, Monroe said that Jackson was the person with him in the liquor store, who purchased the whiskey for him; that Monroe did not directly make the purchase. In the next breath Monroe testified that he personally purchased the whiskey.

The requirement that alcoholic beverages transported through this state must be accompanied by a bona fide bill for the whiskey naming the actual purchaser is of obvious importance in controlling the traffic of alcoholic beverages through this state. The failure to have such a document is in itself sufficient cause for forfeiture.

However, I have in addition given full consideration to the evidence covering Alex Monroe's background, and whether it is probable that a person in his financial circumstances would purchase the large amount of whiskey for personal use. If this whiskey was intended for other than personal use, Monroe could not legally import such beverages into New York. See Seizure Case No. 8604, Bulletin 1029, Item 11.

Alex Monroe testified that he is a janitor and handy man of an apartment house and also does plumbing, painting and repair work with some unnamed partners. He has a wife and eight children to support. He used his father's car at will and his brother's truck. His savings are in the hundreds, not thousands. On a casual visit to Washington, he advanced about \$450.00 which he had on his person, in the expectation that when he arrived home in New York, he would be able to distribute the whiskey among his relatives, who knew nothing about the matter. He now states that he did not intend to store all of the alcoholic beverages in his attic, thus contradicting his written statement.

Aside from the fact that Alex Monroe's description of his business, income and purported use of the alcoholic beverages is extremely vague in detail, his account of the purchase and intended use of the whiskey does not have the ring of truth. He certainly did not intend to use all of the whiskey for personal consumption, and it seems entirely likely that he intended to sell the whiskey at a profit. In the absence of convincing proof that Alex Monroe was engaged in a legitimate venture, forfeiture of the whiskey and motor vehicle must follow as of course.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions,

or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
Director.

Dated: November 24, 1954.

SCHEDULE "A"

- 150 - one-pint bottles of whiskey
- 48 - one-half pint bottles of whiskey
- 26 - 4/5 quart bottles of whiskey
- 1 - Plymouth Coupe, Serial No. 1442632,
Engine No. P9357626, 1954 N. Y.
Registration 6Z-4-30.

6. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL AND ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE RETURNED FOR LACK OF EVIDENCE OF UNLAWFUL USE OR INTENDED USE.

In the Matter of the Seizure on)	Case No. 8661
July 25, 1954, of a still and)	
appurtenant equipment, two gallon)	
jugs of alcohol, and a Ford truck)	ON HEARING
in woodland in the rear of Rev.)	CONCLUSIONS AND ORDER
Benjamin F. Craig's farm, located)	
on the west side of Philadelphia)	
Avenue, in the City of Egg Harbor,)	
County of Atlantic and State of)	
New Jersey.)	

-----)
Joseph M. Kiell, Esq., Attorney for Elijah Mincey and Lucille Nooran.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a still, appurtenant equipment, two gallon jugs of alcohol, and a Ford truck, described in a schedule attached hereto, seized on July 25, 1954 in woodland in the rear of Rev. Benjamin F. Craig's farm, located on the west side of Philadelphia Avenue, Egg Harbor, New Jersey, constitute unlawful property and should be forfeited.

The Division of Alcoholic Beverage Control received information that an unregistered still was being operated at the above location. Accordingly, on July 25, 1954 ABC agents searched the area and discovered a still, appurtenant equipment and two jugs of alcohol. The Ford truck, registered in the name of Lucille Nooran, was parked on a road leading to the still. The agents seized all of these articles.

Elijah Mincey was identified as the person who rented the farm from Rev. Craig. Mincey was apprehended and stated that he was the owner of the truck and had it registered in the name of his friend, Lucille Nooran.

There were no labels, or stamps indicating the payment of the tax on alcoholic beverages, on the jugs. The contents of the jugs were analyzed by the Division chemist, who reports that it is alcohol and water fit for beverage purposes with an alcoholic content of 24.8 per cent.

When the matter came on for hearing, pursuant to R.S. 33:1-66, an appearance was entered on behalf of Elijah Mincey and Lucille

Nooran, who sought return of the Ford truck. No one opposed forfeiture of the other seized property.

There were no alcoholic beverages in the truck. It was not seized on the premises where the alcohol was seized. Consequently the truck could be forfeited only if there was any evidence that illicit alcoholic beverages, or raw material, or still equipment, had been or was intended to be transported therein. No definitive evidence on that score was presented. Hence, at the conclusion of the hearing, it was deemed advisable to return the truck immediately in advance of formal order, because the continuing costs of seizure and storage of the car appeared likely to exceed its value, and instructions to effect the return of the truck to the claimants were issued. This order is merely for purpose of formal records.

The alcoholic beverages are illicit because of the absence of any labels or tax stamps on the jugs. R.S. 33:1-1(i), R.S. 33:1-888. Such illicit alcohol, and the other property seized therewith constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS

Dated: November 24, 1954.

Director.

SCHEDULE "A"

- 2 - gallon jugs with alcoholic beverages
- 1 - stove
- 1 - 55-gallon drum
- 1 - gooseneck
- 1 - dephlegmator
- 1 - coil
- 1 - 25-gallon tank
- 9 - 50-gallon barrels with mash
- 1 - 100 lb. bag of corn
- 50 - one-gallon glass jugs
- Miscellaneous personal property

7. DISCIPLINARY PROCEEDINGS - UNLABELED BEER TAP - SUBSEQUENT VIOLATION NOT CONSIDERED BECAUSE NO LOCUS POENITENTIAE INTERVENED - LICENSE SUSPENDED FOR 3 DAYS, LESS 1 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

PAULINE JACKSON)
 T/a JACKSON'S)
 756 Harrison Avenue)
 Harrison, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consump-)
 tion License C-38, issued by the)
 Town Council of the Town of)
 Harrison.)

-----)
 George B. Astley, Esq., Attorney for Defendant-licensee.
 William F. Wood, Esq., appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that on September 10, 1954, and September 16, 1954, she allowed, permitted and suffered unlabeled connected beer taps on her licensed premises, in violation of Rule 26 of State Regulations No. 20.

The file herein discloses that, on the dates alleged in the above charges, an ABC agent, making a routine inspection of defendant's licensed premises, found six barrels and one barrel of Camden beer respectively, each connected to a tap which bore no brand name.

Defendant has no prior adjudicated record. It is evident that no locus poenitentiae intervened between the violations hereinabove alleged. Re Schuyler, Bulletin 1032, Item 3. Under the circumstances of this case I shall suspend defendant's license for three days, remitting one day for the plea entered herein, leaving a net suspension of two days. Re Dwyer, Bulletin 1036, Item 5.

Accordingly, it is, on this 3rd day of December, 1954,

ORDERED that Plenary Retail Consumption License C-38, issued by the Town Council of the Town of Harrison to Pauline Jackson, t/a Jackson's, for premises 756 Harrison Avenue, Harrison, be and the same is hereby suspended for two (2) days, commencing at 2:00 a.m. December 13, 1954, and terminating at 2:00 a.m. December 15, 1954.

WILLIAM HOWE DAVIS
 Director.

8. DISCIPLINARY PROCEEDINGS - SALE AT PREMISES OTHER THAN LICENSED PREMISES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

LEO TELKOWSKI)
T/a LEO'S TAVERN)
304 Communipaw Avenue)
Jersey City 4, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-199, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)
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Leo Telkowski, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On Friday, November 5, 1954, you sold alcoholic beverages not pursuant to and within the terms of your plenary retail consumption license in that you sold drinks of alcoholic beverages at premises other than your licensed premises, viz., in an unlicensed hallway adjoining your licensed premises, contrary to R.S. 33:1-26; in violation of R.S. 33:1-2."

The file herein discloses that on November 5, 1954, ABC agents, who were present on defendant's licensed premises, observed the bartender therein serve Piel's beer to two women who were standing in a connecting but unlicensed hallway. The agents left the tavern, entered the hallway, seized the beer from the aforesaid women and identified themselves to the bartender who volunteered a signed statement admitting the off-premises sale.

Defendant has no prior adjudicated record. I shall suspend his license for ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Perlowski, Bulletin 932, Item 7.

Accordingly, it is, on this 3rd day of December, 1954,

ORDERED that Plenary Retail Consumption License C-199, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Leo Telkowski, t/a Leo's Tavern, for premises 304 Communipaw Avenue, Jersey City, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. December 13, 1954, and terminating at 2:00 a.m. December 18, 1954.

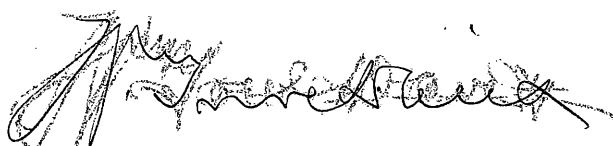
WILLIAM HOWE DAVIS
Director.

9. STATE LICENSES - NEW APPLICATION FILED.

Smith's Transfer Corporation of Staunton, Va.
645 Spring St., Elizabeth, N. J.

Application filed December 20, 1954 for an additional warehouse at U. S. Highway No. 1 abt. 1/2 mile north of New Brunswick line on west side of Highway, Edison Township, N. J.

New Jersey State Library



William Howe Davis
Director.