

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

I. E. Amada

October 31, 1958

BULLETIN 1246

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New Jersey State Library

MEMORANDUM FOR THE DIRECTOR
FROM: SAC, NEW YORK
SUBJECT: [Illegible]

100-100000

MEMORANDUM

100-100000

[The main body of the document contains several paragraphs of extremely faint and illegible text, likely representing the body of a memorandum or report.]

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

October 31, 1958

BULLETIN 1246

1. APPELLATE DECISIONS - SEIDEL v. UPPER FREEHOLD TOWNSHIP
(CASES NOS. 1 AND 2).

Case #1)
ABE SEIDEL, trading as OASIS,)
Appellant,)

-vs-

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF UPPER FREEHOLD,)
Respondent.)

ON APPEAL

-----)
Case #2)
ABE SEIDEL, trading as OASIS,)
Appellant,)

CONCLUSIONS AND ORDER

-vs-

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF UPPER FREEHOLD,)
Respondent.)

-----)
Samuel Bard, Esq., Attorney for Appellant.
Barkalow, McGowan & Krusen, Esqs., by Clifton T. Barkalow, Esq.,
Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"In Case #1 appellant appeals from the action of respondent whereby it denied an application for a transfer of his 1957-58 plenary retail consumption license from his premises on the Hightstown-Clarksburg Road to premises at the intersection of Monmouth County Route 526 and Davis Station Road, Upper Freehold Township. In Case #2 appellant appeals from the action of respondent whereby it denied an application to renew for the 1958-59 licensing year the license he held for his premises on Hightstown-Clarksburg Road. Both appeals were consolidated at the hearing, and both may be decided at the same time.

"After the appeals were heard, the Director entered an order dated June 26, 1958, extending the term of appellant's 1957-58 license issued for the premises on Hightstown-Clarksburg Road pending the determination of the appeals. R.S. 33:1-22.

"For the purpose of clarifying the issues herein, it may be advisable to set forth briefly the evidence given herein concerning the licensing history of the premises on Hightstown-Clarksburg Road (which will be hereinafter referred to as the Oasis property). These premises have been owned for many years by Valentine Pienkowski who, prior to 1940, conducted a licensed business therein. Between 1940 and 1954 the licensed business at said premises was conducted by six or seven consecutive licensees, and since 1954 it has been conducted by appellant who occupied the premises under a lease expiring June 30, 1958.

Appellant obtained renewals of his license for the 1955-56 licensing year, 1956-57 licensing year and 1957-58 licensing year without objection. When he applied to respondent for renewal of his license for the 1958-59 licensing year, a number of objections were filed and a hearing on said objections was held by respondent on May 13, 1958. At that hearing numerous residents of the Township appeared and gave testimony concerning alleged unsatisfactory conditions at the Oasis property. On the following day appellant filed with respondent an application to transfer his license to premises located on Monmouth County Route 526 at the intersection of Davis Station Road (which will be hereinafter designated as the Brindley property). With respect to that application respondent held a hearing on June 3, 1958, at which other objectors and some of those who had appeared on May 13 testified in opposition to the granting of said transfer. At the meeting held on June 3 there were presented to respondent two petitions -- one of which contained the signatures of seventy-two persons who objected to the transfer and the other of which contained the signatures of ninety-seven persons who favored the transfer. Shortly after this hearing respondent adopted two separate resolutions denying the application for transfer to the Brindley property and denying the application for renewal at the Oasis property.

"At the hearing held herein, Alex Pienkowski (son of the owner of the Oasis property) testified that he and his wife reside within thirty feet of the licensed premises; that about two and one-half years ago he and David Spence complained to the licensee about the manner in which the premises were being conducted, and that about three months later they had another meeting with the licensee; that the unsatisfactory conditions were not corrected as a result of these meetings; that, subsequent to these meetings, the licensee permitted large amounts of waste, including bottles and bags, to accumulate on the property; that, particularly on Friday and Saturday nights, large numbers of patrons who fight and use filthy language are permitted to congregate outside the licensed premises; that he has spoken to the licensee about fifty times concerning these conditions, and that he has 'phoned to the State Police on an average of once a week. On cross-examination he admitted that conditions have improved since the hearing held by respondent on May 13. Mary Pienkowski (his wife) testified that the patrons outside the premises were noisy and used obscene language, and that she complained to the licensee. David Spence testified that he lives about one hundred and fifty feet from the Oasis property; that traffic conditions in that section are bad; that conditions outside the licensed premises have been getting worse during the past two and one-half years; that drunken patrons have trespassed on his property and that he testified at the hearing held by respondent on May 13. He admitted that conditions have improved since that hearing was held. He also testified that he had been in the premises only a few times and that he saw no improper conduct while he was there. George Rette and Kingsley Dawes (who reside some distance from the Oasis property) testified that traffic conditions are bad; that the grounds around the premises are filthy and that they have witnessed indecent actions by patrons outside the premises. At the hearing held by respondent on June 3, Melvin Dempster testified that he lives within one hundred feet of the Oasis property and that, at the hearing held on May 13, he had testified as to unsatisfactory conditions on the outside of the premises. None of the last three witnesses mentioned had ever observed any improper conduct on the inside of the licensed premises.

"As to the application for the transfer, nine witnesses testified at the hearing held on June 3 that they opposed the application because of the proximity of the premises to a picnic park, because of a traffic hazard at the intersection of the two roads on which the premises are located and because of the bad reputation of the premises presently being conducted by appellant. Their testimony shows that a large percentage of the patrons of the present premises are migrant farm workers. One of these witnesses testified that 'since they cracked down on them in Hightstown, all the trash comes there.'

"At the hearing herein, Frederick C. Kniesler (who has been a member of the Township Committee since January 1958) and Walter Polhemus (who has been a member of the Township Committee for two and one-half years) testified that the vote on both resolutions was unanimous and that the vote was based on the testimony presented at the two hearings held by the Township Committee.

"On behalf of appellant, Abe Seidel testified that he has operated the licensed business since October 1954; that in December 1954 the local issuing authority suspended his license for five days for selling for off-premises consumption before 9:00 a.m.; that in October 1956 the Director found him guilty of selling a car on of beer to a nineteen-year-old minor and suspended his license for twenty-five days; that Alex Pienkowski complained to him four or five times about conditions outside the premises, and that David Spence spoke to him about a year ago concerning noise on the outside of the premises, but that none of the other objectors had ever complained to him and that the first time he heard of their complaints was at the meeting held on May 13. The licensee's wife, and Joseph Miller who had a kitchen concession on the premises until ten months ago, testified that they had never seen 'anything out of order.' There is little, if any, testimony concerning improper conditions within the licensed premises except that appellant admits he telephoned to the State Police three or four times when patrons became unruly, and that about a year ago he discharged a tear-gas bomb on the premises when a disturbance occurred.

"As to the transfer, appellant testified that he would have much better parking facilities at the Brindley property and that the nearest residence to said property is over six hundred feet therefrom.

"At the hearing held on June 3, the attorney for respondent examined appellant as to his negative answer to Question 34 in his application. Appellant admitted that in each application filed by him he had answered the question in the negative and it appears that his answer to that question was proper because he had never been convicted of a violation in a criminal proceeding. Apparently Question 41 in each application was also answered in the negative whereas appellant should have disclosed therein the suspensions imposed upon his license. However, both members of the Township Committee who testified stated that they knew of appellant's prior record. While applicants must answer all questions properly, it does not appear in this case that the members of the issuing authority were misled.

"A licensee must keep his place and his patronage under control and is responsible for conditions outside and inside his premises. Conte v. Princeton, Bulletin 139, Item 8. However, appellant has held a license for nearly four years and respondent renewed his license for 1957-58 after the prior violations were committed. All of the objectors to renewal,

except two, admitted that they had never complained to appellant. Conditions have improved since the hearing on May 13. The situation in this case is quite similar to the situation found to exist in Freeland v. Roselle, Bulletin 352, Item 5; Vasto v. Highlands, Bulletin 622, Item 4; Monessen v. Lakewood, Bulletin 657, Item 1, and Salmanowitz v. Hightstown, Bulletin 807, Item 2, in all of which a denial of renewal was reversed with a suggestion that disciplinary proceedings be instituted if there is evidence of misconduct in the future.

"After reviewing all the evidence, I conclude that there is sufficient evidence to sustain the denial of the application for transfer but that, under all the circumstances, there is insufficient evidence to sustain the denial of renewal. It is recommended, therefore, that orders be entered affirming respondent's action in Case #1 and reversing respondent's action in Case #2."

Written exceptions to the Hearer's Report were filed by the attorneys for each party, pursuant to Rule 14 of State Regulation No. 15, and I permitted oral argument thereon. Subsequent to the oral argument the attorney who appeared for respondent advised me in writing that on September 17, 1958, respondent granted an application filed by appellant to transfer the license to other premises not mentioned in these appeals. The attorney stated that, therefore, he desired to withdraw his exceptions and oral argument in the cases now pending. The attorney for appellant has notified me to the same effect. Of course, the transfer granted on September 17, 1958 cannot become effective unless and until an order is filed herein reversing respondent's action in Case No. 2 and the license is renewed by respondent pursuant thereto. Under the circumstances I see no objection to permitting the withdrawal of the exceptions to the Hearer's Report. I shall adopt the conclusions and recommendations in said Report.

Accordingly, it is, on this 23rd day of September, 1958,

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 reversed and respondent is directed to issue a renewal of appellant's license for the premises on Hightstown-Clarksburg Road. Appellant may continue to operate at said premises (if he is still in possession thereof) under my order dated June 26, 1958, until the transfer to other premises is endorsed on the face of the renewed license, which should be done without undue delay.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - WARSHAW v. LONG BRANCH (AMENDED ORDER).

CHARLES WARSHAW, t/a LIBERTY BAR,)

Appellant,)

-vs-)

ON PETITION
ORDER

BOARD OF COMMISSIONERS OF THE CITY)
OF LONG BRANCH,)

Respondent.)

Solomon Tepper, Esq., Attorney for Appellant.
Julius J. Golden, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant licensee has made application for relief from an order I entered in the instant appeal action on July 28, 1958 reversing the action of respondent Board of Commissioners in denying the renewal of appellant's plenary retail consumption license for the 1957-58 licensing year and further providing that in the event the respondent Board of Commissioners should grant the renewal of appellant's license for the 1958-59 licensing year for the same licensed premises, said renewal shall contain the express condition that appellant make application for a place-to-place transfer of his license within four months from the date of the renewal thereof. It appears from Division records that the respondent Board of Commissioners has taken no action yet with respect to renewal of the license and that, accordingly, appellant has obtained an ad interim permit from me on July 1, 1958 permitting him to exercise the privileges of his license until the respondent Board of Commissioners shall adjudicate upon his renewal application or until my further order, whichever may first occur.

Both parties have appeared before me on oral argument of the application and have submitted letters of memoranda thereto. Appellant seeks relief from the above mentioned four-month condition upon two grounds: One, that his license is placed in jeopardy if he is unable to secure a place-to-place transfer within the limited period of time; and two, that his licensed premises, which he occupies under lease, are about to be acquired by either purchase or condemnation award by the Long Branch Housing Authority as part of its urban renewal program for the development of parking area in Long Branch, and that such condition may result in not only the unnecessarily harsh deprivation of appellant's right to share in any award thereto concerning his leasehold interest, but may also cause the loss of his license if the acquisition of his premises precedes action by the respondent Board of Commissioners on his renewal application.

It appears from the record herein that the respondent Board of Commissioners has no objection to renewal of appellant's license to him, but only to the exercise of the privileges of his license by renewal thereof at its present location. No one has questioned the personal qualifications of appellant licensee. Consequently, the condition in my original order was entered to effect a place-to-place transfer of the license within a limited period of time, not to deprive appellant of his license for failure to meet such deadline. I am therefore inclined to grant appellant relief from the

possible loss of his license if he should be unable to secure a place-to-place transfer within the prescribed period of time, or in the event there is a prior acquisition of his licensed premises by the Long Branch Housing Authority, but I cannot grant his request to exclude entirely the condition in question in view of my finding that the licensed premises are presently located in an area in which troublesome conditions exist.

Accordingly, it is, on this 25th day of September, 1958,

ORDERED that my Order of July 28, 1958 in the instant action be amended so as to read:

"ORDERED that the action of respondent in denying the renewal of appellant's plenary retail consumption license for the 1957-58 licensing year is hereby reversed; and it is further

"ORDERED that appellant shall cease all operation under the license at the premises at 14 Liberty Street, Long Branch, New Jersey, within four months from the date of renewal of the license, but if appellant loses possession of said premises or fails to obtain a place-to-place transfer of the license by or after the expiration of such four-month period, the license shall remain valid for the purpose of place-to-place transfer and further renewal thereof."

WILLIAM HOWE DAVIS
Director.

3. DISQUALIFICATION REMOVAL PROCEEDING - EFFECT OF ORDER REMOVING DISQUALIFICATION - CRIMINAL RECORD OF APPLICANT FOR LICENSE MAY AND SHOULD BE CONSIDERED BY ISSUING AUTHORITY NOTWITHSTANDING DISQUALIFICATION REMOVAL ORDER OF DIRECTOR.

September 17, 1958

Board of Commissioners
Belleville, N. J.

Gentlemen:

My attention has been drawn to a story appearing in the Newark Evening News of September 10th reading in part as follows:

"Golden also opposed the transfer of a plenary retail liquor license since Police Chief George R. Spatz recommended the transfer be denied 'in view of the record' of Dominick Rega of West Orange, who is taking over the Belmont Tavern at 12 Bloomfield Ave.

"Through his lawyer, Rega admitted to convictions for various criminal offenses since 1933 but pointed out that since he has been law-abiding for the last five years, State ABC Director William Howe Davis removed statutory disqualification barring Rega from holding a liquor license.

"The commissioners granted the transfer, agreeing that if they denied it Rega could probably win an appeal to Davis."

If the opinion of the Board is correctly reported, it is in grievous error in believing that merely because an individual's statutory disqualification resulting from conviction of crime involving moral turpitude has been removed by the Director of this Division pursuant to R. S. 33:1-31.2, a municipal issuing authority must grant an application for license to that individual.

The mere fact that an order has been entered removing a disqualification resulting from conviction of crime involving moral turpitude, does not preclude a municipal issuing authority from considering the criminal record of the applicant and, in its sound discretion, denying the application for license because of the nature or extent of that criminal record. The only result of the disqualification removal order is to remove the mandatory disqualification theretofore existing. In no way does it confer upon the individual a right to be licensed notwithstanding his criminal record.

That a denial of an application for license because of an applicant's criminal record will not necessarily be reversed on appeal but, instead, may well be affirmed, see Graham v. Newark, Bulletin 531, Item 10, wherein the then Commissioner stated in pertinent part:

"In addition, it appears that, in 1935, appellant was convicted of possessing and operating an unregistered still. It is true that, on May 27, 1942, I lifted his statutory disqualification because of said conviction. Case No. 211, Bulletin 513, Item 6. Despite this, respondent had the power to decide, in its sound discretion, whether applicant was a fit person to hold a license. As was said in Re Chiaravalli, Bulletin 300, Item 15:

"An order entered pursuant to this statute does not qualify the person therein named to hold a license. Rather it removes the disqualification which otherwise would exist. It means that instead of being mandatorily disqualified, the application of such person may be considered on its merits. The order does not have the effect of a pardon. It does not wipe out the crime. Rather, it merely extinguishes the statutory effect which a crime involving moral turpitude would normally have. It, therefore, is still necessary that the issuing authority pass on the question as to whether or not under all the facts the applicant should be given a license."

"Respondent's action herein was fully justified because of appellant's record and because of the attempted fraud in the prior case. Hence, I affirm its action in denying the transfer."

"To restate the proposition, there is no "must" about any order removing the criminal disqualification of a person who subsequently applies for a liquor license. It is still the right and duty of the municipal issuing authority to whom the application is made to determine independently whether, in its opinion, any applicant with a criminal record is worthy to hold a liquor license in its municipality.

Very truly yours,
WILLIAM HOWE DAVIS
Director.

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

In the Matter of Disciplinary Proceedings against

SOPHIE TEVIS and MICHAEL TEVIS
t/a MIKE'S TAVERN
513 Central Avenue
Jersey City, N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-417, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Defendant-licensees, by Michael Tevis, Partner.
Dora P. Rothschild, appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that on August 17, 1958 they allowed, permitted and suffered the sale of an alcoholic beverage in its original container for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

The file herein discloses that at about 2:15 p.m. on Sunday, August 17, 1958, an ABC agent purchased a pint bottle of "P. M. National Distillers Blended Whiskey" from the bartender on duty at the time. The agent left the premises but returned immediately thereafter with another agent and they identified themselves to the bartender who admitted the violation in question.

Defendants have no prior adjudicated record. I shall suspend defendants' license for the minimum period of fifteen days. Re D'Amico & Manzo, Bulletin 1239, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 15th day of September, 1958,

ORDERED that Plenary Retail Consumption License C-417, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Sophie Tevis and Michael Tevis, t/a Mike's Tavern, for premises 513 Central Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. September 22, 1958, and terminating at 2:00 a.m. October 2, 1958.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

BROAD STREET BAR, INC.)
1140 1/2 Broad Street)
Newark 5, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-234, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)

-----)
Maurice H. Pressler, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it possessed on its 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.

The file discloses that on August 26, 1958, an ABC agent, while testing and gauging the licensee's open bottles, seized a number of bottles which appeared to be off in proof. The bottles were submitted to the Division's chemist for analysis. The chemist's report discloses that the contents of two of these bottles (labeled "Gallagher and Burton Black Label Blended Whiskey 86 Proof") varied substantially in proof and solids from the contents of genuine bottles of the same product.

By way of mitigation it is alleged on behalf of the officers of defendant corporation that the only explanation they can offer is that the violation may have been caused by the act of a disgruntled employee.

Defendant has no prior adjudicated record. I shall suspend defendant's license for fifteen days (which is the minimum suspension imposed in cases involving two bottles). Re Kiken, Bulletin 1187, Item 11. Five days will be remitted for the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 15th day of September, 1958,

ORDERED that Plenary Retail Consumption License C-234, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Broad Street Bar Inc., for premises 1140 1/2 Broad Street, Newark, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. September 22, 1958, and terminating at 2:00 a.m. October 2, 1958.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE
SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

RICHARD V. JORGENSEN)
t/a JORGENSEN'S INN)
Rte. #23)
Hardyston Township)
PO Stockholm, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-4, issued by the)
Township Committee of Hardyston)
Township.)

Richard V. Jorgensen, Defendant-licensee, Pro se.
William F. Wood, 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 an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

The file herein discloses that on June 23, 1958 an ABC agent, making a routine inspection of defendant's open stock of liquors, seized one bottle, the contents of which appeared to be off in proof and color. Subsequent analysis by the Division's chemist showed that the contents of the seized bottle were low in proof and contained artificial coloring when compared with a sample of the genuine product. The licensee denied that he tampered with the seized liquor stating that he had it on the premises for over a year and that it was a slow mover.

Defendant has no prior adjudicated record. I shall suspend defendant's license for ten days (the minimum suspension for a violation involving one bottle of illicit liquor when there is no evidence of deliberate intent to defraud the public and no previous suspension or warning to the licensee with respect to a similar offense). Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 16th day of September, 1958,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of Hardyston Township to Richard V. Jorgensen, t/a Jorgensen's Inn, for premises located on Route #23, Harydston Township, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. September 29, 1958 and terminating at 2:00 a.m. October 4, 1958.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE
SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

SIRL BOGGETTI)
t/a SIRL'S TAVERN)
162 Park Avenue)
Lyndhurst, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-15, issued by the)
Board of Commissioners of the)
Township of Lyndhurst.)

-----)
Sirl Boggetti, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On July 17, 1958, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Arthur ---, age 20; in violation of Rule 1 of State Regulation No. 20."

The file herein discloses that ABC agents, acting on information received from the North Arlington Police Department, obtained sworn, written statements dated July 18, 1958 from Arthur --- (age 20) and three other minors. From these statements it appears that on Thursday, July 17, 1958, at about 10:00 p.m., the aforesaid minors drove to the vicinity of the defendant's licensed premises; that Arthur alone entered the licensed premises and, without being required to make any written representation of his age, purchased four containers of beer from Sirl Boggetti, the licensee, and that he paid him for said beer with money contributed by said minors. Later the four minors directed the ABC agents to the licensed premises and pointed it out as the place where aforesaid beer was purchased and Arthur identified Sirl Boggetti as the person who sold him said beer.

In a sworn, written statement dated July 18, 1958, Sirl Boggetti admitted aforesaid sale of alcoholic beverages to Arthur.

Defendant has no prior adjudicated record. I shall suspend the defendant's license for the minimum period of ten days. Re Top Hat Bar, Inc., Bulletin 1230, Item 8. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 16th day of September, 1958,

ORDERED that Plenary Retail Consumption License C-15, issued by the Board of Commissioners of the Township of Lyndhurst to Sirl Boggetti, t/a Sirl's Tavern, for premises 162 Park Avenue, Lyndhurst, be and the same is hereby suspended for five (5) days, commencing at 7:00 a.m. September 29, 1958 and terminating at 7:00 a.m. October 4, 1958.

WILLIAM HOWE DAVIS
Director.

8. MORAL TURPITUDE - CONVICTION OF BREAKING, ENTERING AND LARCENY AND CONVICTION OF ATROCIOUS ASSAULT AND BATTERY INVOLVE MORAL TURPITUDE.

September 15, 1958

Re: Eligibility No. 679

Applicant seeks a determination as to whether or not he is eligible to be employed by the holder of a liquor license in this State by reason of his conviction of crime.

Applicant's fingerprint returns disclose that in August 1939 he was convicted on a charge of breaking, entering and larceny and was placed on probation for three years; that in December 1939 he was convicted on a charge of attempted larceny and committed to Annandale Reformatory; that in August 1943 he was convicted on a charge of assault and battery and was fined \$10.00; that in November 1943 he was fined \$10.00 upon conviction on a charge of being a disorderly person; that in April 1946 he was sentenced to an indeterminate term in Rahway Reformatory upon conviction on a charge of atrocious assault and battery and was paroled from the institution on August 20, 1947; that on November 8, 1947, he was sentenced to one hundred twenty days in jail upon conviction on a disorderly conduct charge; that on September 1, 1950, he was convicted on a charge of breaking, entering and larceny and was sentenced to a term of from four to six years in State Prison, from which he was discharged on December 3, 1954; that on March 20, 1955, he was sentenced to ninety days in jail upon a conviction on a disorderly person charge; that on October 7, 1955, he was convicted on a charge of breaking and entering with intent to steal and was sentenced to a term of from two to three years in State Prison, from which he was paroled on April 8, 1957, and that on June 3, 1957, he was arrested as a fugitive and charged with having committed assault and battery. The disposition of the last charge is not indicated.

Considering the above record, I recommend that applicant be advised that, in the opinion of the Director, he has been convicted of crimes involving moral turpitude (breaking, entering and larceny and atrocious assault and battery) and that any licensee who employs him or permits him to be connected in any capacity with his licensed business would subject his license to suspension or revocation. R. S. 33:1-25, 26. I further recommend that applicant be advised that his conviction in 1955 precludes relief by way of disqualification removal proceedings until after June 3, 1962, since the statute appertaining thereto (R. S. 33:1-31.2) requires satisfactory proof that he has conducted himself in a law-abiding manner for at least five years last past.

Respectfully advised,
Joseph A. Burns
Attorney.

APPROVED:
WILLIAM HOWE DAVIS
Director.

9. STATE BEVERAGE DISTRIBUTOR'S LICENSE - OBJECTIONS TO TRANSFER HELD TO BE MERITORIOUS - APPLICATION FOR TRANSFER DENIED.

In the Matter of Objections to)
an Application for Transfer of)
State Beverage Distributor's)
License SBD-91 from)

TONY JIANNANTINO)
t/a T. J. BEVERAGE)
433 Central Boulevard)
Fort Lee, N. J.)

to)

RUDOLPH PAUL MANGANELLI)
t/a OCEAN COUNTY BEVERAGE)
Fairfield Avenue)
Cedarwood Park, Laurelton)
Brick Township, N. J.)

CONCLUSIONS
AND
ORDER

Harold Feinberg, Esq., Attorney for the Applicant.
Novins, Novins & O'Connor, Esqs., by Robert J. Novins, Esq.,
Attorneys for the Objector, Ocean County Tavern Ass'n.
Samuel Moskowitz, Esq., Attorney for the Objectors, Monmouth
County Retail Liquor Stores Association and the New
Jersey Liquor Stores Association.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Applicant Rudolph Paul Manganelli, t/a Ocean
County Beverage, seeks a transfer to him of State Beverage
Distributor's License SBD-91 for premises at Fairfield Avenue,
Cedarwood Park, Laurelton, Brick Township, from Tony Jiannantino,
t/a T. J. Beverage, from premises 433 Central Boulevard, Fort
Lee. The premises are distant approximately 70 miles apart.

"The Ocean County Retail Liquor Stores Association,
the Ocean County Tavern Association and Lenape Liquors Inc.
filed written objections to the transfer and the Township
Committee of the Township of Brick, by resolution dated June
18, 1958, 'opposed absolutely' the application for transfer.

"At the hearing herein applicant testified that he has
lived in Brick Township for four years where he has conducted
a 'soda business'; that he distributes carbonated beverages to
the homes of about 250 all-year plus 150 summer customers in
said Township and the surrounding area and that many of his
customers have inquired about purchasing malt alcoholic bever-
ages from him. He testified further that he has arranged with
a brewery to supply him with beer if and when he obtains a
license. A school teacher and a realtor appeared at the
hearing on applicant's behalf. The teacher testified that it
would be convenient for him and his family if they could
obtain malt beverages from applicant, who presently serves
his home with carbonated soda. The realtor testified that
the estimated population of Brick Township is between 9,000
and 10,000 and that it is 'trebled' during the summer season.

"Five licensees doing business in Brick Township
appeared as objectors to the transfer and testified that in
their opinion the area in which applicant intends to deliver
malt alcoholic beverages is, at present, amply serviced by the
existing liquor licensees.

"It was stipulated that in Brick Township there are nine retail consumption and two retail distribution licenses and that in Ocean County, of which Brick Township is a part, there are 196 retail consumption and 47 retail distribution licenses.

"It has been consistently held that the objections of retail licensees carry little weight since, obviously, they are registered for the sole purpose of preserving their own economic status. As was pointed out in Re Walkiewicz, Bulletin 1172, Item 5, 'State Beverage Distributor licensees offer little, if any, competition to retail distribution and consumption licensees even in the same area in which distribution and consumption licensees are located. State Beverage Distributor licensees deliver throughout the State and, as a rule, do not conduct a retail business (over the counter) of any substance'.

"As appears from the evidence herein applicant seeks to transfer a license from Fort Lee to Brick Township, a distance of approximately 70 miles and, in effect, plans to establish a new outlet for the sale of beer in an area which the record discloses is adequately serviced. While the question of public necessity and convenience with respect to state beverage distributor licenses will not be determined solely upon the objections of the single municipality in which the prospective business will have its principal office, nevertheless, considerable weight will be given to the attitude of the local governing body when, as in the instant case, it is 'opposed absolutely' to having an additional alcoholic beverage outlet in its municipality and, as appears herein, the area is adequately serviced by existing licensees. Cf. Re Roth, Bulletin 1176, Item 4; Re Mustardo, Bulletin 1237, Item 7.

"It was urged by the Tavern Owners Associations that the application should be denied because applicant's notice of intention was improperly published. Since no competent testimony was adduced in substantiation thereof, their contention will not be considered herein.

"I find from all the facts in the instant case that Brick Township and its surrounding area are adequately serviced by the existing licensees and that, under the circumstances, there is no need or necessity for an additional outlet in that section of the State. I recommend that the application for transfer of the license in question to Brick Township be denied."

No exceptions to the Hearer's Report were filed with me.

After carefully considering the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 9th day of September, 1958,

ORDERED that the application for transfer of the license in question be and the same is hereby denied.

WILLIAM HOWE DAVIS
Director.

10. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD NOT CONSIDERED BECAUSE OF COMPLETE CHANGE OF STOCKHOLDERS OF CORPORATION - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA - EFFECTIVE DATES TO BE FIXED BY SUBSEQUENT ORDER.

In the Matter of Disciplinary Proceedings against THE ALOHA, INC. t/a THE ALOHA, INC. 104 - 4th Avenue Belmar, N. J., Holder of Seasonal Retail Consumption License CS-6, issued by the Board of Commissioners of the Borough of Belmar.

CONCLUSIONS AND ORDER

The Aloha, Inc., Defendant-licensee, by Vincent P. McCarthy, President. William F. Wood, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded non vult to the following charge:

"On Saturday night, August 9, 1958 and early Sunday morning, August 10, 1958, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Patrick ---, age 19, and Elinor ---, age 20, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

The file herein discloses that on Sunday, August 10, 1958, at about 1:20 a.m., two ABC agents entered the defendant's licensed premises and about fifteen minutes later saw John V. Sullivan, Jr., one of five bartenders on duty, serve each of two apparent minors (male and female) with a glass of beer, in payment of which he accepted 40 cents. After observing this young couple consume part of their beer, the agents identified themselves to them and learned their names and ages to be Patrick --- (age 19) and Elinor --- (age 20).

Each of the minors gave a sworn, written statement. Patrick states that between 11:15 p.m., August 9, 1958, and 1:35 a.m. the following morning, he consumed between ten and fifteen glasses of beer served to him by Sullivan; that Elinor, whom he met on the premises, consumed three glasses of beer and that at no time were they questioned or requested to sign any written representation as to their ages. Elinor states that on Sunday, August 10, 1958, at about 1:00 a.m., she entered the premises where she met Patrick and that, without being questioned or requested to sign any written representation as to her age, she consumed three glasses of beer served to her at the bar.

The defendant's record is clear except that its license was suspended for a period of twenty-five days, effective June 3, 1954, for sale to minors and employing a minor who had not obtained the requisite employment permit. See Bulletin 998, Item 4, and Bulletin 1021, Item 3. It appears that the present stockholders were not involved in the previous violation since they took over the entire stock and operation of the corporation

about two years after the above violation occurred. Under the circumstances, the penalty to be imposed herein will not be increased for this prior record. Cf. Re Sparrow Cigar Co., Inc., Bulletin 832, Item 3, and Re Belmar Delicatessen Co., Inc., Bulletin 932, Item 6. However, it appears that when Vincent P. McCarthy, subject's president, held a license as an individual for a different premises, it was suspended effective June 20, 1949 by the Director for ten days for possession of illicit alcoholic beverages. See Bulletin 832, Item 10, and Bulletin 846, Item 8. Since this dissimilar violation occurred more than five years ago, it will not be considered in fixing the penalty to be imposed herein. Re O'Donnell, Bulletin 1131, Item 9. The minimum penalty for an unaggravated sale of alcoholic beverages to a 19-year-old minor is fifteen days. Re Stewart, Bulletin 1227, Item 4. I shall suspend defendant's license for fifteen days to which will be added five days for the number of drinks consumed by the minors (Re Cirigliano, Bulletin 1141, Item 8), making a total suspension of twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Defendant holds a Seasonal Retail Consumption License which, if renewed, normally will become effective on May 1, 1959. Thus, no effective penalty can be imposed at the present time. Cf. Re The Aloha, Inc., Bulletin 998, Item 4.

Accordingly, it is, on this 18th day of September, 1958,

ORDERED that Seasonal Retail Consumption License CS-6, issued by the Board of Commissioners of the Borough of Belmar to The Aloha, Inc., t/a The Aloha, Inc., for premises 104 - 4th Avenue, Belmar, or any license issued in renewal thereof, be and the same is hereby suspended for a period of fifteen days. Further order fixing the period of suspension will be entered if and when the defendant, or any other person, resumes business after obtaining a renewal of said Seasonal Retail Consumption License for the period commencing May 1, 1959.


WILLIAM HOWE DAVIS
Director.

11. STATE LICENSES - NEW APPLICATION FILED.

Park Beverages, A Corporation

165 Central Avenue, Rochelle Park, N. J.

Application filed October 23, 1958 for person-to-person, place-to-place transfer of State Beverage Distributor's License SBD-173 from Harry A. Bode, Aaron G. Bode and Julius A. Bode, t/a Raritan Beverage Co., Southeasterly side of Lincoln Highway, Lot 15, Block 1130 on Assessment Map, Edison Township, N. J.


William Howe Davis
Director.