

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

BULLETIN 1114

JUNE 4, 1956.

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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 1114

JUNE 4, 1956.

1. APPELLATE DECISIONS - MOSKOWITZ v. NEWARK

MORRIS MOSKOWITZ, )  
Appellant, )  
-vs- ) ON APPEAL  
MUNICIPAL BOARD OF ALCOHOLIC ) CONCLUSIONS AND ORDER  
BEVERAGE CONTROL OF THE CITY )  
OF NEWARK, )  
Respondent. )  
----- )  
Clancy & Hayden, Esqs., by John J. Clancy, Esq., Attorneys  
for Appellant.  
Vincent P. Torppey, Esq., by Jacob M. Goldberg, Esq.,  
Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of the respondent whereby it denied an application for renewal of appellant's plenary retail consumption license for the 1955-56 licensing period. Upon the filing of the appeal on July 27, 1955, the license issued for the 1954-55 licensing period was extended pursuant to the provisions of R. S. 33:1-22. During the period from July 1 to July 26, 1955, inclusive, when the respondent failed to take formal action on appellant's renewal application, appellant obtained ad interim permits from this Division which gave him the privilege of operating his licensed premises. R. S. 33:1-74.

Respondent contends that its action in denying the renewal of appellant's license was proper because it was of the opinion that appellant "is unfit to operate said licensed premises for the reason that said licensed premises were conducted improperly and in violation of the rules and regulations relating to the conduct of the licensed premises" and "it would be contrary to the best interests of the public health, public safety, public welfare and public morals to approve the application for renewal of said license."

It appears that appellant was called before respondent on the evening of June 30, 1955 concerning the renewal application filed by him for the current licensing period and was advised by the Chairman that "there were six incidents" in connection with the operation of his tavern and that the matter would be set down for hearing on July 7, 1955. The Chairman further stated that "We know of no way to grant a renewal of this license except as directed by the State Director. If such a way exists, then the Board suggest that you go down and see the State Director tomorrow morning and then get in touch with the Law Department here, and he will hand you a copy of the reasons. I think you should engage counsel. This matter will be heard on the 7th day of July."

The stenographic transcript of the proceedings before the respondent was submitted as part of the record in this appeal (Rule 8 of State Regulations No. 15). Further testimony and exhibits were introduced at the hearing herein.

It is an undisputed fact that for eight consecutive years prior to the denial of the renewal of the license for the 1955-56 licensing period, appellant's license was renewed for the premises in question.

A notice containing nine incidents which allegedly occurred since 1946 in appellant's licensed premises was served upon him, whereas the Chairman of respondent Board asserted that six such incidents occurred. An examination of the aforesaid notice indicates that there is a possibility of repetition of one or more of these alleged incidents. Because of the time which elapsed since many of the alleged incidents occurred, I am mainly concerned with appellant's adjudicated record which resulted from the violations committed in November 1954. As a result of the violations in November 1954, which included a violation of a local ordinance for failure to have the licensed premises closed during certain hours and for permitting a brawl on the licensed premises, appellant's license was suspended for a total period of twenty days.

Police Captain Rauscher, called as a witness by appellant, testified that "from January 1, 1943 until about March 12, 1955" he was assigned to the Fourth Precinct which has jurisdiction over the area wherein appellant's tavern is located and "from December 14, 1952 until about March 12, 1955" he was Captain in charge; that he had been in appellant's licensed premises at times and was of the opinion that it "was about the average tavern you find in that locality, no worse, maybe a little better than some of the others"; that the area is heavily congested; that if anything unusual happened in the section it was called to his attention by the police detectives assigned thereto; and that after proper investigation was made by officers assigned for that purpose, he approved the renewal of appellant's license for the years 1953-54 and 1954-55, respectively.

Detective William J. Knowles testified that he had, prior to July 27, 1955, been assigned to the Fourth Precinct for a period of 14 years; that his duties were to investigate vice, gambling and liquor complaints; that he visited appellant's licensed premises on the average of two or three times a week over the years and always found appellant's tavern operated in an orderly manner; and that he never was called upon to make an arrest therein. Another witness, Detective Raymond F. Manning, testified that prior to April 1, 1955, for a period of 14 years, he worked out of the Fourth Precinct and that he visited the premises in question "sometimes two or three times a week, other times twice in a night"; that appellant operated an "orderly and law-abiding place"; and that in his opinion appellant's licensed premises are operated as well as any other licensed premises in that section. The attorneys representing the respective parties to this appeal stipulated that if appellant called as witnesses in his behalf eight additional police officers, who were present at the hearing and who had been assigned at different times to the area wherein appellant's place of business is located, their testimony would be substantially the same as that of the Captain and the two Detectives aforementioned.

Flora Miller, who lives on the third floor of the building wherein appellant's tavern is located, testified that appellant conducts his business in an orderly manner and if any disturbance occurs appellant immediately "tries to quell it." It was stipulated by the attorneys herein that if George Miller, husband of Flora, were called to testify his testimony would corroborate that of his wife.

Respondent produced two men and three women as witnesses. They testified that they reside in the neighborhood wherein appellant's tavern is situated and that they are constantly annoyed by the noise and profane utterances of the great number of persons who congregate outside of the tavern. The records herein indicate that before reaching respondent Board, the renewal of appellant's license for the current period was recommended by all those in authority to whom it was referred by said Board for investigation. Although the respondent cited various incidents allegedly occurring over a period of eight years, appellant's license was renewed each year until the present term.

I am fully cognizant of the fact that proper liquor control dictates that a local issuing authority should be free within the confines of a sound discretion to determine whether or not a person is fit to hold a liquor license. However, the determination of unfitness must in every case be founded upon valid and substantial grounds. In the present case appellant has operated his tavern for many years and the only time that he was adjudged guilty for violating the Alcoholic Beverage Law or the local regulations was in November 1954. Was this in itself sufficient to warrant such drastic action on the part of the respondent? I am greatly impressed with the testimony of the police officers who patrolled the area to the effect that, from their observations, appellant always operated his business in an orderly manner. Being constantly in the neighborhood in radio cars and visiting the appellant's premises, they were in a position to observe conditions with respect to the licensed premises. It has been stated that the area in question is very congested, which contributes to a large degree to troublesome incidents. Other populous municipalities are no doubt confronted with like conditions. The police authorities are realistic enough to recognize that these areas present problems regardless of whether or not licensed premises are situated therein. This fact, in all probability, was taken into consideration by the Director of Police, based on the investigation of his staff, when he approved the renewal of appellant's license for the current licensing period.

I cannot understand why the respondent waited until the evening of June 30, 1955 to inform appellant that his license for the ensuing year would not, in all probabilities, be renewed and then suggest that he apply to me for relief from the predicament he found himself in. In fairness to licensees, where the circumstances warrant, a reasonable opportunity should be given to them to liquidate their investment in licensed premises. It is apparent that such consideration was not given to the appellant in the instant case.

In a recent case somewhat analogous to the one now under consideration I ordered that a license be renewed, subject to express conditions that said license be transferred to a suitable person within 90 days of the date of the order. See New Town Tavern, Inc. v. Pennsauken, Bulletin 1098, Item 2. I was disposed at first to enter a similar order in this case. However, the violations committed by the appellant herein were not of such a serious nature as those committed in the case above referred to. I am thoroughly convinced after a careful examination of the evidence presented in the case now under consideration that the respondent's action was unreasonable. Therefore, the action of the respondent Board in denying the renewal herein will be reversed.

Accordingly, it is, on this 26th day of April, 1956,

ORDERED that the action of respondent in refusing to renew appellant's Plenary Retail Consumption License C-346, for premises 60 Waverly Avenue, Newark, be and the same is hereby reversed and respondent is hereby directed to issue such renewal license for the 1955-56 licensing year.

WILLIAM HOWE DAVIS  
Director.

2. APPELLATE DECISIONS - BOOTS 'N SADDLE v. NEWARK.

BOOTS 'N SADDLE (a New Jersey Corporation),

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,

Respondent.

ON APPEAL  
CONCLUSIONS AND ORDER

-----  
Irving J. Zwillman, Esq., Attorney for Appellant.  
Vincent P. Torppey, Esq., by Jacob M. Goldberg, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of the respondent whereby it denied an application for renewal of appellant's plenary retail consumption license for the 1955-56 licensing period. Upon the filing of the appeal the license issued for the 1954-55 period was extended, pursuant to the provisions of R. S. 33:1-22. During the period from July 1 to July 26, 1955, inclusive, when the respondent failed to take formal action on appellant's renewal application, appellant obtained ad interim permits from this Division which gave it the privilege of operating its licensed premises. R. S. 33:1-74.

Respondent contends that its action was proper because it was of the opinion that appellant "is unfit to operate said licensed premises for the reason that said licensed premises are conducted improperly and in violation of the rules and regulations relating to the conduct of the licensed premises" and "it would be contrary to the best interests of the public health, public safety, public welfare and public morals to approve the application for renewal of said license".

It lies within the sound discretion of an issuing authority, as limited by the Alcoholic Beverage Law and the State Regulations, to determine whether an applicant is worthy of a renewal license and no licensee enjoys a vested right to a renewal. American Legion v. Beverly, Bulletin 200, Item 14. However, the determination must be founded upon substantial grounds. Jones v. Absecon, Bulletin 218, Item 1.

Where a license has been renewed from year to year, and where no disciplinary proceedings have been instituted for alleged misconduct during the then current license year, and the licensee has been thereby encouraged to make a substantial investment in the business, common fairness requires that the refusal to renew be supported by valid reasons.

Respondent called as its only witness the Secretary of its Board to explain the procedure followed in the municipality in

question when an application for renewal of a liquor license is filed by a licensee. His testimony was "The application for renewal is received by our office in turn submitted to the identification bureau for police records, who then in turn submit it to the precinct concerned and the investigating officer of the precinct concerned then has an investigation made. The report or findings of his investigation are turned over to his superior, who in this case would be the Captain of the precinct. The application is then either approved or disapproved by the Captain of the precinct. From then on it is forwarded through regular police channels bearing the same recommendations. From the Captain it goes to the Deputy Chief, from the Deputy Chief it goes to the Chief and from the Chief it finds its way into the Director of Police Office, who then in turn forwards the contents, forwards it to the ABC my attention by the signature or stamp signature of the Director of Police". He further testified that the application in question was approved "all the way through the line" and referred to the respondent Board by the Director of Police.

The undisputed evidence herein indicates that the defendant has held the license in question since January 1952 and that the record of appellant is clear with the exception that its license was suspended by the then State Director for forty-five days, effective November 9, 1953. Cf. Re Boots 'N Saddle (A N. J. Corp.), Bulletin 990, Item 2. The appellant's license was thereafter renewed for the 1954-55 licensing period.

Benjamin Chesner, president of appellant corporation, testified that there is an alarm system installed in the licensed premises and that in the event of trouble a buzzer is pressed by the bartender in charge and the alarm is relayed to police headquarters, resulting in officers being dispatched to the appellant's licensed premises without delay. Chesner further testified that he was called before the respondent Board on occasions when trouble happened in or in the vicinity of the licensed premises. He also admitted that charges were preferred against appellant by respondent Board for allowing lewdness and immoral activities on the licensed premises, but that these charges were dismissed on January 20, 1955. Chesner admitted that he and the other officers spend too little time at the premises and that if the license were renewed they intend to make application to the respondent to transfer the license to some other person or persons who could devote more time to the business.

Michael Skurla, a municipal detective subpoenaed by the appellant, testified that he and a fellow detective were assigned to the area in which appellant's licensed premises are located since March 1952 and that they made investigation of various incidents which occurred in that area. He testified that the officers of appellant corporation always complied with all their requests and if for any reason they needed the bartender employed by appellant to assist in an investigation, the officers cooperated with them. Detective Skurla further testified that the section where appellant's premises are located "is known as quite a trouble area". Furthermore, he stated that due to the subpoena being served upon him on the day of the instant hearing "It was impossible to get the reports in time to appear in court and justify each incident". Detective Skurla also said that in his opinion the owners of the licensed premises did not spend enough time there and because of conditions in the neighborhood the possibility of trouble was greater there than in most other sections of the City.

Joseph Lee, a bartender employed by appellant, testified that instructions were given him by the officers of the corporation to comply with all rules and regulations pertaining to the liquor business and in the event of trouble to press the buzzer in the establishment which would summon the police. He further testified that he has at all times completely cooperated with the police.

The mere calling of the police on divers occasions, without proof that the licensee or its employees ever engaged in, or permitted, allowed or suffered the disturbances, is insufficient to warrant the respondent's action in refusing to renew appellant's license. To the contrary, licensees should be encouraged to summon the police when they see trouble brewing. Cf. Re Polster, Bulletin 388, Item 10. The members of the Police Department to whom the matter was referred for investigation indicated their approval that appellant's licensed premises were conducted in a satisfactory manner. Although the violations which resulted in a suspension of appellant's license in November 1953 are now being advanced as a reason for respondent's present action, it should be taken into consideration that appellant's license was renewed for the 1954-55 licensing period. Moreover, the subsequent charges preferred against appellant, based on immoral activities on the licensed premises, were dismissed by the respondent Board on January 20, 1955.

The municipal detective, aforementioned, characterized the section where appellant's licensed premises are located as "quite a trouble area". He testified that the holders of the license always cooperated with him to the fullest extent. It is apparent from the record herein that the particular area where appellant and similar business establishments are located contributes to a large degree to troublesome incidents. Other populous municipalities are no doubt confronted with the same conditions. The police authorities are realistic enough to recognize that these areas present problems regardless of whether or not licensed premises are situated therein. This in all probability was considered when the Director of Police, based on the investigation of his staff, approved the renewal of appellant's license.

Appellant at the hearing in this matter indicated a willingness to transfer the license to some other person or persons who would devote more time to the operation of the business, subject, of course, to obtaining the approval of the local issuing authority. Although a change of ownership might not be an absolute solution to the problem, it is, nevertheless, a step in the right direction. Absentee operation of a tavern has always been frowned upon by this Division.

Benjamin Chesner testified that the alleged incidents which took place on the licensed premises, resulting in his being called before the respondent Board, happened spontaneously and the police were immediately notified. This is as it should be.

After a careful examination of all the evidence adduced in the instant case, I conclude that the action of the respondent Board was erroneous and, hence, will be reversed. See Freeland v. Roselle, Bulletin 352, Item 5; Vasto v. Atlantic Highlands, Bulletin 622, Item 4; Nunziato v. Matawan, Bulletin 732, Item 11; Hall v. Mt. Ephraim, Bulletin 750, Item 1; Robinson v. Glassboro, Bulletin 829, Item 10; Rudberg v. Bridgeton, Bulletin 858, Item 4; Covington v. Lawnside, Bulletin 986, Item 2.



appeal (Rule 8 of State Regulations No. 15). Further testimony and exhibits were introduced at the hearing herein.

There is no dispute that appellant's license had been renewed each year for several years for the premises in question prior to the denial of the renewal of the license for the 1955-56 licensing period.

A notice containing the alleged incidents, the past record and pending charges relating to appellant's license was served upon him. Appellant's adjudicated record discloses that, effective November 30, 1953, his license was suspended for fifteen days on a charge of permitting a brawl on the licensed premises, and again, effective June 27, 1955, for twenty days on a similar charge. The charge dated January 3, 1955, as a result of which the latter suspension was imposed, discloses that the brawl occurred on the licensed premises on or about August 14, 1954. The records indicate that a charge dated June 1, 1955 alleging that appellant permitted a brawl on his licensed premises on February 28, 1955 was heard and dismissed by respondent on June 16, 1955. The records further indicate that another charge dated June 9, 1955 alleging that appellant permitted a brawl on his licensed premises on or about March 4, 1955, was also heard on June 16, 1955 by respondent. The latter adjudged appellant guilty and by resolution and order dated July 19, 1955, suspended appellant's license for a period of twenty-five days to take effect "in the event that the State Director reverses the decision of the Board's refusal to renew said license for the term 1955-56; said suspension to become effective the Monday following such decision of the State Director". An appeal taken by appellant from the latter suspension resulted in an Order entered by me, dated simultaneously herewith, whereby the action of the respondent Board was reversed.

Detective Philip J. Smith, called as a witness by appellant, testified that during the past nine years he has been assigned to the area wherein appellant's licensed premises are located; that he considered the people who frequent the tavern in the neighborhood "pretty rough characters, some of them, in their action and their talk"; that the "trouble lies in the patrons" and that the appellant "does the best he can under the circumstances"; that he "found him to be cooperative". It was stipulated between the attorneys representing the respective parties to this appeal that if appellant called Detective Arthur M. Shine as a witness, his testimony would be substantially similar to that given by Detective Smith.

I am fully cognizant of the fact that proper liquor control dictates that a local issuing authority should be free within the confines of a sound discretion to determine whether or not a person is fit to hold a liquor license. However, the determination of unfitness must in every case be founded upon valid and substantial grounds. In the present case, appellant has operated his tavern for a number of years in the neighborhood in question and his license was suspended on two occasions. Was this in itself sufficient to warrant such drastic action on the part of the respondent? I am impressed with the testimony of the police detectives who patrol the area wherein the licensed premises are located. They stated that the blame for the trouble arising lies with the patrons of the tavern in that locality. Furthermore, they stated that the appellant did the best he could under the circumstances and always cooperates with them. It is apparent from the record herein that the particular area wherein appellant and similar public establishments

are located, contributes to a large degree to the troublesome incidents. Other populous municipalities are no doubt confronted with the same conditions. The police authorities are realistic enough to recognize that these areas present problems regardless of whether or not licensed premises are situated therein. This, in all probability, was considered when the Director of Police, based on the investigation of his staff, approved the renewal of appellant's license for the current licensing period.

I cannot understand why the respondent waited until the evening of June 30, 1955 to inform appellant that his license for the ensuing year would not, in all probability, be renewed and then suggest that he apply to me for relief from the predicament he found himself in. In fairness to licensees where the circumstances warrant, a reasonable opportunity should be given to them to liquidate their investment in licensed premises. It is apparent that such consideration was not given to the appellant in the instant case.

In a recent case somewhat analogous to the one now under consideration, I ordered that a license be renewed, subject to express conditions that said license be transferred to a suitable person within ninety days of the date of the order. See New Town Tavern, Inc. v. Pennsauken, Bulletin 1098, Item 2. I was disposed at first to enter a similar order in this case. However, the violations committed by the appellant herein were not of such a serious nature as those committed in the case above referred to. I am thoroughly convinced after a careful examination of the evidence presented in the case now under consideration that the respondent's action was unreasonable. Therefore, the action of the respondent Board in denying the renewal herein will be reversed.

Accordingly, it is, on this 26th day of April, 1956,

ORDERED that the action of respondent in refusing to renew appellant's Plenary Retail Consumption License C-684, for premises 131-133 Howard Street, Newark, be and the same is hereby reversed and respondent is hereby directed to issue such renewal license for the 1955-56 licensing year.

WILLIAM HOWE DAVIS  
Director.

4. APPELLATE DECISIONS - ROTH v. NEWARK.

WALTER ROTH, )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 MUNICIPAL BOARD OF ALCOHOLIC )  
 BEVERAGE CONTROL OF THE CITY )  
 OF NEWARK, )  
 )  
 Respondent. )

ON APPEAL  
CONCLUSIONS AND ORDER

-----  
 Peter M. Aduato, Esq., Attorney for Appellant.  
 Vincent P. Torppey, Esq., by Jacob M. Goldberg, Esq., Attorney  
 for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it suspended appellant's plenary retail consumption license for twenty-five days (to commence if and when appellant's license is renewed) after finding him guilty on July 19, 1955 of allowing, permitting and suffering a brawl on March 4, 1955 upon his licensed premises, in violation of Rule 5 of State Regulations No. 20.

In his Petition of Appeal, appellant alleges, among other things, that respondent's action was erroneous because "the verdict was contrary to the weight of the evidence".

The testimony of Fred Davis, the bartender employed by appellant, called as a witness by respondent, and who was in appellant's licensed premises on the night in question, disclosed that he was attacked by an unknown assailant and sustained injuries which required him to go to a hospital for treatment. On March 6, 1955, the bartender gave a statement to the police which he claimed was a true account of what took place on March 4, 1955. The pertinent information given in the statement was that at 10:30 p.m., a man ordered four bottles of beer but refused to pay for them; that he asked the man to leave the premises and when he refused, the bartender gave "a dime" to a woman patron to telephone the police; that when the police arrived, the man who had previously attacked him had left the premises; that upon the arrival of appellant at the licensed premises, the bartender walked to a nearby hospital for treatment of the wounds sustained as a result of being bitten by the man on the right thumb and cheek; that thereafter the bartender returned to the licensed premises to resume his duties. The bartender testified at the hearing before respondent Board on July 7, 1955 somewhat at variance to the statement aforementioned. However, he asserted that the contents of the statement were true.

The bartender was the only witness who testified in the instant case. His testimony, although it might not be considered to be too reliable, indicated that he was attacked and was not the aggressor in any manner whatsoever. He stated that he gave a woman money to telephone the police. A writing, marked as an exhibit without objection by the attorney for the appellant, indicated that the police department had no record of said call.

It is clear that a disturbance occurred on the appellant's licensed premises on the night in question, but the evidence falls

short of establishing that appellant, by his bartender, "allowed, permitted and suffered" it to occur. While the strongly recommended course to follow is to call the police when patrons become unruly or obstreperous (Re Polster, Bulletin 388, Item 10), nevertheless, licensees or their employees may defend themselves if and when suddenly and unjustifiably attacked when in the legitimate discharge of their duties. The testimony in the instant case discloses that the bartender was attacked and painfully injured. There is no evidence to disclose what happened to or became of the patron who committed this act of violence. Neither was testimony presented to refute the assertion on the part of the bartender that he gave money to a woman to telephone the police. The writing from the police department, that there was no record of a call from appellant's establishment, is not conclusive in itself that a call had not been made. Regardless, according to the uncorroborated testimony of the bartender, the police arrived at the licensed premises and suggested that he seek medical assistance.

After carefully considering all of the evidence presented herein, I am satisfied that appellant has sustained the burden of proof required in this appeal because the testimony of the bartender (the sole witness) did not establish that appellant allowed, permitted and suffered a brawl, act of violence or unnecessary noise upon the licensed premises so as to constitute a nuisance within the contemplation of the Rule pertaining thereto.

I find appellant not guilty as to the charge and, therefore, reverse the action of the respondent Board.

Accordingly, it is, on this 26th day of April, 1956,

ORDERED that the order of respondent, suspending appellant's Plenary Retail Consumption License C-684, for premises 131-133 Howard Street, Newark, for a period of twenty-five days, be and the same is hereby reversed.

WILLIAM HOWE DAVIS  
Director.

5. APPELLATE DECISIONS - NORDCO, INC. v. NEWARK.

NORDCO, INC.,	)	
Appellant,	)	
-vs-	)	ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC	)	CONCLUSIONS AND ORDER
BEVERAGE CONTROL OF THE CITY	)	
OF NEWARK,	)	
Respondent.	)	

-----  
 Jerome B. Litvak, Esq., Attorney for Appellant.  
 Vincent P. Torppey, Esq., by Jacob M. Goldberg, Esq., Attorney  
 for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of the respondent whereby it denied an application for renewal of appellant's plenary retail consumption license for the 1955-56 licensing period. Upon the filing of the appeal on July 26, 1955, the license issued for the 1954-55 licensing period was extended, pursuant to the

provisions of R. S. 33:1-22. During the period beginning July 1, 1955 until the appellant's 1954-55 license was extended, when respondent failed to take formal action on appellant's renewal application, appellant obtained ad interim permits from this Division which gave it the privilege of operating its licensed premises. R. S. 33:1-74.

Respondent contends that its action was proper because it was of the opinion that appellant "is unfit to operate said licensed premises for the reason that said licensed premises were conducted improperly and in violation of the rules and regulations relating to the conduct of the licensed premises" and "it would be contrary to the best interests of the public health, public safety, public welfare and public morals to approve the application for renewal of said license."

The record discloses that when appellant appeared, by attorney, before respondent Board on the evening of June 30, 1955, the Chairman thereof advised that appellant's license would not be renewed at that time but that a hearing would be held on July 7, 1955 in the matter. A notice setting forth various incidents alleged to have taken place in appellant's licensed premises between 1949 and 1955 was served upon appellant. This notice disclosed that on one occasion respondent suspended appellant's license for 20 days, effective January 3, 1955, for allowing, on or about October 3, 1954, a brawl on its licensed premises.

The stenographic transcript of the proceedings before the respondent was submitted as part of the record in this appeal (Rule 8 of State Regulations No. 15). Further testimony and exhibits were introduced at the hearing herein.

There is no dispute that appellant's license had been renewed each year for several years for the premises in question prior to the denial of the renewal of the license for the 1955-56 licensing period.

Appellant presented as its witnesses various members of the Newark Police Department. Detective William J. Knowles testified that since 1949 he was assigned to the Fourth Precinct which has jurisdiction over the area wherein appellant's tavern is located. In his testimony he described the area as very troublesome and a real police problem. He further testified that he had occasion to visit the licensed premises in question on an average of about three times a week and that from his observation it was operated in a proper manner.

Detective Daniel S. Dorian testified that he was assigned to the area wherein the licensed premises are located for approximately 26 years and also had occasion during the past years to visit appellant's tavern on an average of two or three times a week and that he was of the opinion, based on his observations, that appellant's licensed premises were conducted in a proper manner.

Detective Aloysius Burns testified that he was assigned to the area in question for a period of about 20 years and that in so far as he could observe from his visits in the tavern and from the neighborhood, the licensed premises were operated in an orderly fashion.

The attorneys representing the respective parties to this appeal stipulated that if appellant called as a witness in its

behalf Raymond F. Manning, who was present at the hearing and who had been assigned for many years to the area wherein appellant's place of business is located, his testimony would be substantially the same as that of Detective Burns.

Detective Philip J. Smith testified that he is familiar with appellant's licensed premises and the neighborhood wherein it is located. He further testified that although trouble may have arisen at times in appellant's licensed premises, in his opinion, the management thereof did not contribute to or was it responsible for the happenings as most of the episodes taking place were spontaneous and beyond the control of the licensee.

The attorneys herein, representing the respective parties hereto, stipulated that the testimony of Detective Arthur M. Shine, if called as a witness, would be similar to that of Detective Smith.

Robert E. Brown testified that the application for renewal of appellant's license was approved by all of those in authority to whom it had been referred for investigation before being referred for the action of the respondent Board.

It appears from the testimony presented herein that an alarm system is installed in the licensed premises and that in the event of trouble a buzzer is pressed by the bartender in charge and the alarm is relayed to Police Headquarters, resulting in officers being dispatched to appellant's licensed premises without delay.

I am impressed with the testimony of the police detectives who were assigned to and who are familiar with the area in question. These officers were of the opinion that appellant operated its licensed premises in an orderly manner and cooperated with them if and when trouble arose.

The mere calling of the police on occasions, without proof that the licensee or its employees ever engaged in or permitted, allowed or suffered disturbances, is insufficient to warrant the respondent's action in refusing to renew appellant's license. Licensees should be encouraged to summon the police if they are of the opinion that trouble is in the offing. Cf. Re Polster, Bulletin 388, Item 10. The area in question is very congested which might be to some degree responsible for troublesome incidents. Other populous municipalities are confronted with similar conditions. The police authorities are realistic enough to recognize that areas such as those wherein appellant's licensed premises are located present problems regardless of whether or not licensed premises are situated therein. This fact, in all probability, was taken into consideration by the Director of Police, based on the investigation of his staff, when he approved the renewal of appellant's license for the current licensing period.

I cannot understand why respondent waited until the evening of June 30, 1955 to inform appellant that its license would not, in all probability, be renewed for the current licensing period. In fairness to licensees, where the circumstances warrant, a reasonable opportunity should be given to them to liquidate their investments in licensed premises. It is apparent that such consideration was not given to the appellant in the instant case.

Appellant at the hearing before the respondent Board indicated that it contemplated transferring the license if and

when renewed for the present licensing term. Although a change of ownership might not be an absolute solution to the problem, it is, nevertheless, a step in the right direction.

After a careful examination of the evidence presented in the case now under consideration I am of the opinion that the respondent's action was unreasonable. Therefore, the action of the respondent Board in denying the renewal herein will be reversed.

Accordingly, it is, on this 26th day of April, 1956,

ORDERED that the action of respondent in refusing to renew appellant's Plenary Retail Consumption License C-942 for premises 213 Court Street, Newark, be and the same is hereby reversed and respondent is hereby directed to issue such renewal license for the 1955-56 licensing year.

WILLIAM HOWE DAVIS  
Director.

6. APPELLATE DECISIONS - FESSLER v. ORANGE.

SAMUEL FESSLER, trading as	)	
SAMUEL FESSLER'S TAVERN,	)	
	)	
Appellant,	)	
	)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS AND ORDER
	)	
MUNICIPAL BOARD OF ALCOHOLIC	)	
BEVERAGE CONTROL OF THE CITY	)	
OF ORANGE,	)	
	)	
Respondent.	)	

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Colalillo & Goldner, Esqs., by Ovid J. Colalillo, Esq.,  
Attorneys for Appellant.  
Edmond J. Dwyer, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action whereby it suspended appellant's license C-22 for a period of fifteen days, effective October 15, 1955, after it had found him guilty of a charge alleging that on August 27, 1955, he, his servant, agent or employee permitted and suffered in and upon his licensed premises a brawl, act of violence, disturbance and unnecessary noise, and allowed, permitted and suffered his licensed place of business to be conducted in such a manner as to become a nuisance in violation of Rule 5 of State Regulations No. 20. The licensed premises are located at 182 Hill Street, Orange.

Upon the filing of this appeal an order was entered by me, on October 14, 1955, staying respondent's order of suspension until the entry of a further order herein. R.S. 33:1-31.

The petition of appeal alleges, in substance, that the action of respondent Board was erroneous because its finding of guilt was against the weight of the evidence.

At the hearing herein, Bernice Spencer, 16 years of age, testified that she and five of her relatives entered appellant's licensed premises at about 12:30 a.m. on Saturday, August 27,

1955, and that all took seats at the bar. She further testified that about one-half hour later, a patron, Lindberg Coles, "came over and offered to buy me a drink. I refused because I told him I don't drink. He insisted I drink. I told him I didn't drink. So my cousin George came over and asked would he mind leaving me alone. So he walked off and the next thing I knew I was hit with a bottle". She further testified that the bottle broke and cut her face so severely that she had to go to the hospital where sixty-eight stitches were required. Essie Hopson, wife of cousin George, testified that on the morning in question the licensee and two bartenders were behind the bar; that she first noticed Lindberg Coles when he came over and sat beside Bernice, shortly after 1:00 a.m.; that she heard her husband tell Coles to leave Bernice alone; that as Coles started backing up she told her husband "to watch him, that he was going in his pocket after a knife"; that Coles walked to the end of the bar (a distance of fourteen feet) where he stopped, picked up an empty bottle from the bar and threw it at Bernice. She estimated that the time which elapsed between the conversation at the bar and the throwing of the bottle was "three or four, maybe five" minutes. Cousin George Hopson testified that Coles was in the premises when he and his party entered. He substantially corroborated his wife's testimony. In addition, he testified that when his wife mentioned the knife, one of the bartenders was only four feet away and did nothing and that Coles threw the bottle and also a glass at Bernice. He estimated that ten minutes elapsed between the conversation at the bar and the throwing of the bottle and glass. Cousin Arthur Hopson testified that when "Coles went around the bar, someone hollered he had a knife, something like that, and my brother started towards him and he grabbed the bottle and throwed it which hit Bernice". Cousin William Hopson testified that he saw Coles throw the bottle and glass; that he and Arthur then started after Coles, who threw a stool at them, and that the licensee came over and stopped the fight.

On behalf of appellant, Samuel Fessler, the licensee, and John Ugareo and Grant Cross, his bartenders, testified that they heard no conversation at the bar and that there was no disturbance prior to the time the bottle was thrown. The licensee testified that when he heard Bernice scream, he went to the front of the bar, jumped between the Hopson boys and Coles, pushed Coles to the rear of the tavern, and "hollered" to the bartender to call the police. Henry Byrd, a patron, testified that he heard no conversation at the bar and that, after the girl screamed, the licensee came and stopped the fight. He said that he did not see any stools being thrown around.

After considering all the testimony and the oral argument herein, I find that the disturbance was not a sudden incident which could not be anticipated, but, rather, that it was a general disturbance which lasted a considerable period of time. I conclude that the evidence is sufficient to sustain the finding of guilt. Pribila v. Linden, Bulletin 1045, Item 4; Boyd Casino, Inc. v. Newark, Bulletin 1047, Item 1; Moskowitz v. Newark, Bulletin 1061, Item 1; Greenberg v. Middlesex, Bulletin 1079, Item 5. Therefore, the action of respondent will be affirmed.

Accordingly, it is, on this 1st day of May, 1956,

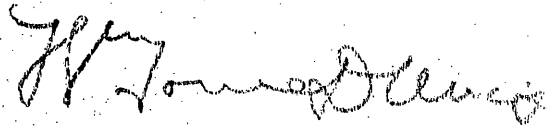
ORDERED that the fifteen-day suspension by respondent of Plenary Retail Consumption License C-22, held by Samuel Fessler, trading as Samuel Fessler's Tavern, 182 Hill Street, Orange, be and the same is hereby restored and reimposed against said license, commencing at 2:00 a.m. May 8, 1956, and terminating at 2:00 a.m. May 23, 1956.

WILLIAM HOWE DAVIS  
Director.

7. STATE LICENSES - NEW APPLICATION FILED.

Bertram A. Bruder  
t/a A. Fornero Beverages  
631 West Christopher Street  
Orange, N. J.

Application filed May 29, 1956 for transfer of State Beverage Distributor's License SBD-42 from Itala Fornero, Executrix of the Estate of Amedeo Fornero, 631 West Christopher Street, Orange, N. J.



William Howe Davis  
Director.