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

BULLETIN 1670 April 26, 1966

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ITEM

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APPELLATE DECISIONS - CLIFTON LICENSED BEVERAGE ASSOCIATION v. CLIFTON and KORTREL REALTY.

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| Clifton Licensed Beverage Association,<br><br>Appellant,<br>v.<br><br>Municipal Board of Alcoholic Beverage Control of the City of Clifton, and Kortrel Realty (a corporation),<br><br>Respondents. | ) | On Appeal<br><br>CONCLUSIONS and ORDER |

Robert W. Wolfe, Esq., Attorney for Appellant
Sam Monchak, Esq., by Nicholas G. Mandak, Esq., Attorney for Respondent Municipal Board
John Koribanics, Esq., Attorney for Respondent Kortrel Realty

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the action of respondent Municipal Board of Alcoholic Beverage Control (hereinafter Board) in approving a person-to-person and place-to-place transfer of a plenary retail consumption license from Anthony Alaburda, t/a Anthony's, to Kortrel Realty corporation, and from premises 2-4 Pleasant Avenue to premises to be constructed at 900 Route S-3, Clifton.

Appellant's petition of appeal alleges that the advertisement of the notice of intention to apply for the transfer, published in the "Clifton Leader" (a public newspaper) on December 17 and 24, 1964, "was improper in form and defective;" that appellant was notified "a few hours before the time set for the hearing" held on December 21, 1964; that the action taken by the Board at said hearing was "irregular, illegal and contrary to law;" that the Board held another hearing on the said application on February 17, 1965, pursuant to a notice of intention, the first insertion of which had been published on February 11, 1965, and the second on February 18, 1965; that notice of said hearing was given to appellant on February 17, 1965; and that the action of the Board on February 17, 1965, and a resolution approved on said date, were "irregular, illegal and contrary to law."

The Board's answer denies the allegations in the petition forementioned and asserts that its action was lawful, proper and within its discretion.

In order to clarify the matter now under consideration I shall set forth in chronological order the various steps taken by the parties to this appeal.

On November 10, 1964, the information was typewritten in an application filed by respondent Kortrel Realty (hereinafter Kortrel) for person-to-person transfer of the plenary retail consumption license held by Anthony Alaburda for premises 2-4 Pleasant Avenue. Notice of intention to apply for said transfer was published on November 12 and 19, 1964, in the "Clifton Leader."

On December 9, 1964, a meeting was held by the Board and an objection noted from the Clifton Licensed Beverage Association, the appellant herein. Edward Radomski, president, appeared for said Association and stated that on July 1, 1964, when the license was renewed by Anthony Alaburda, he had no legal right to possession of the premises at 2-4 Pleasant Avenue, having lost possession of the premises in May 1964; that the transfer requested was solely for a person-to-person transfer. As a result of a statement made by the attorney for Kortrel that the corporation intended to make application for a place-to-place transfer to premises to be constructed on Route S-3, the application was held in abeyance pending amendment thereto.

Subsequent thereto (the date thereof being unascertainable) the application was amended in ink to include in addition to a person-to-person transfer a request for a place-to-place transfer of the said license from premises 2-4 Pleasant Avenue to premises 900 Route S-3. Notice of said application to transfer was published on December 17 and 24, 1964, in the "Clifton Leader."

Irene Olivo, secretary of the Board, testified that on the afternoon of December 21, 1964, she notified Mr. Radomski by telephone that the Board was calling a special meeting that afternoon and invited him to attend the said meeting for the purpose of stating his objections; that Radomski informed her that he was just leaving for New York and could not be there. At the meeting, called at approximately 3:30 p.m., a resolution was approved to grant a person-to-person transfer of the license in question to Kortrel for premises 2-4 Pleasant Avenue; and a further resolution was approved to transfer the license from 2-4 Pleasant Avenue to 900 Route S-3 with a proviso that the said place-to-place transfer be held until completion of the proposed building at 900 Route S-3 and, further, that "this license shall not become effective until affidavi showing due publication of notice of application has been filed."

A copy of the resolution referred to above was forwarded to the Division, whereupon the Board was advised that the person-to-person transfer could not lawfully be effected because Kortrel had no legal right to possession of the premises at 2-4 Pleasant Avenue and, furthermore, that the notice of intention to transfer the license, as published, was defective because it did not contain a notice that plans and specifications of the building to be constructed at 900 Route S-3 could be examined at the office of the municipal clerk.

Subsequent publication of another notice of intention set forth that Kortrel had applied to the Board for transfer of the license theretofore issued to Anthony Alaburda from premises 2-4 Pleasant Avenue to premises to be built at 900 Route S-3 and that plans and specifications of the building to be constructed were available for examination at the office of the Clifton City Clerk. The said advertisements were published on February 11 and 18, 1965.

A meeting was called on February 17, 1965, to hear the matter, at which meeting Radomski and the attorney for appellant appeared. After a hearing at which two officers of Kortrel were

examined by appellant's attorney, the Board unanimously approved the following resolution:

> "RESOLVED, that a resolution adopted December 21, 1964 purporting to grant transfer of License C-19 from Anthony Alaburda to Kortrel Realty for premises at 2-4 Pleasant Avenue, Clifton, N. J., and purporting to grant application for transfer of the license to proposed premises at 900 Route S-3, Clifton, N. J. subject to a provision of completion of premises special condition, is hereby amended to provide that the application for person-to-person and place-to-place transfer of the license is granted subject to the special condition that there shall be no person-to-person or place-to-place transfer of the license unless and until the proposed premises at 900 Route S-3, Clifton, N. J., shall first have been duly completed in keeping with the filed and approved plans and specifications; and subject to the further condition that there shall be no transfer of the license unless and until two new and correct Notices of the application shall have been published.
>
> "BE IT FURTHER RESOLVED that a certified copy of this resolution be forwarded to the State Commissioner forthwith.
>
> "BE IT FURTHER RESOLVED that this license shall not become effective until affidavit showing due publication of notice of application has been filed."

I shall first consider the objection voiced by Radomski that the license in question had been renewed by the Board despite the fact that Alaburda had no legal right to possession of premises 2-4 Pleasant Avenue.

Gerald Hayes, treasurer of the Louis H. Hein Company, testified that the said company has a subsidiary corporation known as the Hederoda Corporation of New Jersey, with offices at 2-4 Pleasant Avenue, Clifton; that the premises are owned by the Lo-Mer Realty Company, of which he is a partner; and that the premises were conveyed to the said realty company on April 15, 1964, and possession thereof had been taken on that day. However, Alaburda was given until May 11, 1964, to remove his personal property from said premises. Since May 1, 1964, Alaburda had no legal right to possession of the said premises.

In Re Board of Commissioners of West New York, Bulletin 166, Item 9, Commissioner Burnett stated that error in the issuance of a license should be corrected upon direct appeal, in the manner and within the limitations expressly provided by the Legislature, and not collaterally. Also see Atlantic County Licensed Beverage Association et al v. Hamilton Township et al., Bulletin 879, Item 5; Balzer v. Pennsauken et als., Bulletin 1064, Item 2.

No appeal to this Division had been taken from renewal of the 1964-65 license to Anthony Alaburda.

Inasmuch as this is a collateral attack upon the renewal of the license, and since the license is being transferred to a new location, no one was harmed. Thus consideration thereof cannot be given at this late date.

With reference to the holding of a hearing prior to the second insertion of the notice of intention being purlished, in Re Novack, Bulletin 174, Item 6, Commissioner Burnett stated:

> "The purpose of the notice of intention is not accomplished merely by it publication. The notice is required in order that anyone deeming that good reason exists for the denial of the license or the transfer may have the opportunity of filing objections and a chance to be heard. Objectors must, therefore, be allowed a reasonable time after publication of the notice in which to file their protests. If perchance they do, then they must be afforded an opportunity to be heard. Until such time elapses and such opportunity is afforded, no license should be issued or transfer effected.
>
> "Henceforth, therefore, the rule will be that in all cases where a license issuing authority determines in advance of completion of advertising (but after appropriate investigation, of course), to issue or to transfer a license, the resolution after expressing such determination shall be made subject to a special condition worded (in case of a new or renewal license) substantially as follows: 'Subject to the special condition that the advertising of notice of intention be completed and proof of publication submitted, provided, however, that such license shall not be actually issued until two whole days shall have elapsed after the second publication of notice of intention, not counting the day on which such publication may be made, and, further provided, that if within such period, or at any time before the license is actually issued, an objection or a protest shall be filed against the issuance of such license, the license shall not be issued until the further determination of this board or governing body.'
>
> "If the determination concerns the transfer of an existing license, appropriate changes will, of course, have to be made in the operative language."

See Mossman v. Irvington et al., Bulletin 715, Item 1; Leppert v. New Brunswick et al., Bulletin 760, Item 9; Union County Retail Liquor Stores Association v. Elizabeth et als., Bulletin 810, Item 5.

It does not appear that the hearing prior to the completion of the publication of the notice of intention was prejudicial to the rights of appellant. This in view of the fact that the attorney for appellant was present and had full opportunity to present appellant's objections at the de novo appeal hearing herein.

As to the contention made by appellant of lack of sufficient notice of the hearing, both the attorney for the Association and its president appeared on February 17, 1965, when the Board made its determination in this matter. Thus this objection is without merit. See North Central Counties Retail Liquor Stores Association et al. v. Lopatcong et al., Bulletin 1555, Item 1.

Although the procedure herein was apparently somewhat irregular, appellant was in no way prejudiced thereby.

Under the circumstances, it is recommended that the action of the Board be affirmed. However, it is further recommended that the license be not transferred until respondent Kortrel complies with all statutory prerequisites and conditions.

Conclusions and Order

Pursuant to Rule 14, State Regulation No. 15, exceptions to the Hearer's Report and arguments thereon were filed by the attorney for the appellant, and the attorneys for the respondent Board and for Kortrel filed answers thereto. Thereafter oral argument was held before me, following which argument the attorneys were given time to file additional memoranda.

It was argued in appellant's behalf that Kortrel was not a purchaser for value and in good faith. On that point consideration may fairly be given to expenditures and commitments made in reliance upon or in the light of the grant of the transfer application and in the prospect or hope of successful fruition of the venture.

The exceptions took issue with the Hearer's statements that, while the procedure was apparently somewhat irregular, the appellant was not prejudiced thereby, and the same with specific respect to the absence of prejudice to the appellant in the respondent Board's premature holding of a local hearing on objections. Without condoning the failure to comply strictly with Rules 8 and 9 of State Regulation No. 6, I shall not deem the respondent Board's action in that regard to have constituted a fatal defect, albeit the appellant would have had more time to prepare its objections and might have called a hearing reporter so as to make a transcript of the local hearing available for the record in this appeal had the indicated Rules been followed to the letter.

The appellant's primary contention is that the grant of the transfer application should be set aside because Alaburda had no right to possession of the premises at 2-4 Pleasant Avenue on July 1, 1964, when 1964-65 license renewal to him was made effective and, thus, that the transfer must fall since the renewal was void ab initio.

It is well established that, to obtain lawful renewal, an applicant must have possession, some right to possession of, or interest in the premises sought to be licensed, but cases cited by the appellant are not in sufficient point, factually or legally, with the case here before me on this appeal. In Hirshorn v. Estell Manor, Bulletin 1326, Item 1, there was a direct, timely-filed appeal from the municipal issuing authority's rescinding of its grant of a license renewal. No premises at all were in existence and no license transfer was involved. In Richwine v. Pennsauken, Bulletin 1045, Item 2, the appeals were direct and timely. The same is true with respect to White Castle, Inc. v. Clifton et al., Bulletin 97, Item 13, and with respect to Rittenger v. Bordentown and Bensel, Bulletin 547, Item 10. In Liptak v. Division of Alcoholic Beverage Control, 44 N.J. Super. 140, in a self-initiated proceeding the Director had cancelled a new plenary retail consumption license which had been issued in established violation of the State Limitation Law.

In very close point is Re Board of Commissioners of West New York, supra (cited and followed in Atlantic County

Licensed Beverage Association v. Hamilton Township et al., supra). In that case there was an appeal from the local Board's denial of an application for a plenary retail consumption license. There was a formal discontinuance of the appeal but, prior to the discontinuance, the Board reconsidered its action of denial and granted the application. In his communication of March 4, 1937, to the Board, then Commissioner Burnett (by Nathan L. Jacobs, then Chief Deputy Commissioner and Counsel) stated:

> "The reconsideration of the application was invalid. The law is well settled that the right of a deliberating body to reconsider its action on a matter of a judicial or quasi-judicial character ceases when a final determination has been reached. See Bulletin #47, Item #10 .... Consequently, if any taxpayer or other aggrieved person had appealed from the granting of the license, a reversal would have been required without regard to the merits of the application. However, no appeal was taken and the present question is whether the license should be cancelled on the Board's own motion. The ruling in Bulletin #91, Item #7, indicates that this question should be answered in the affirmative, but on further consideration the Commissioner has reached a contrary conclusion. The license ... is presumably complete on its face and was issued by the body authorized to do so by the Legislature. Error in its issuance should be corrected upon direct appeal in the manner and within the limitations expressly provided by the Legislature and not collaterally ...."

It is argued, for the appellant, that, since question as to invalidity of the renewal to Alaburda was raised at the local hearing on objections to grant of application for transfer to Kortrel, the attempted attack herein upon renewal to Alaburda is not a collateral attack. I find such attempted attack to be a collateral one.

Having carefully considered the entire record, including the petition of appeal and the answers thereto, the evidence adduced at the hearing with the exhibits, the argument at the hearing, the Hearer's report, the exceptions to the Hearer's report, and the answers thereto, the oral argument before me and the subsequent memoranda filed, I endorse the Hearer's recommendation and I find that the burden of establishing (Rule 6, State Regulation No. 15) that the action of the respondent Board was erroneous and should be reversed has not been sustained by the appellant.

By a resolution of June 28, 1965, the respondent Board granted Kortrel's application for 1965-66 renewal subject to a completion-of-premises special condition and subject to the outcome of this appeal.

Accordingly, it is, on this 9th day of March 1966,

ORDERED that the action of the respondent Board be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that transfer of the 1964-65 license to Kortrel Realty and from place-to-place shall be deemed effective as of June 30, 1965, for the purpose of permitting grant of application for 1965-66 renewal; and it is further

ORDERED that the 1965-66 license be issued to Kortrel Realty upon due completion of the premises at 900 Route S-3, Clifton.

JOSEPH P. LORDI
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE AND NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

CHATTER BAR & GRILL, INC.,
122 South Broadway
South Amboy, N. J.

Holder of Plenary Retail Consumption License C-12, issued by the Common Council of the City of South Amboy.

CONCLUSIONS AND ORDER

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Wilentz, Goldman & Spitzer, Esqs., by Warren W. Wilentz, Esq., Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on divers dates between October 14 and December 7, 1965, it permitted acceptance of horse race and numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Main Street Bar, Bulletin 1617, Item 4.

Accordingly, it is, on this 15th day of March 1966,

ORDERED that Plenary Retail Consumption License C-12, issued by the Common Council of the City of South Amboy to Chatter Bar & Grill, Inc., for premises 122 South Broadway, South Amboy, be and the same is hereby suspended for fifty-five (55) days, commencing at 2 a.m. Tuesday, March 22, 1966, and terminating at 2 a.m. Monday, May 16, 1966.

JOSEPH P. LORDI
DIRECTOR

3. STATE LICENSES - OBJECTIONS TO APPLICATION FOR RETAIL PRIVILEGE BY PLENARY WINERY LICENSEE - APPLICATION DENIED.

In the Matter of Objections to Application for Retail Privilege under Plenary Winery License V-2 issued to

Monte Carlo Wine Industries, Ltd.
337-343-345-347 (rear) Delavan St.
New Brunswick, N. J.

) CONCLUSIONS

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Abraham M. Buchman, Esq., Attorney for Applicant.
Samuel Moskowitz, Esq., Attorney for New Jersey Retail Liquor Stores Association, an Objector.
Charles T. Hock, Esq., Attorney for North Central Counties Retail Liquor Stores Association, an Objector.
New Jersey Licensed Beverage Association, Inc., by Joseph E. Zimmerman, Executive Secretary, an Objector, pro se.
New Brunswick Tavern Association, Inc., by Anthony Barzda, President, an Objector, pro se.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The applicant, which is the present holder of Plenary Winery License No. V-2, issued by this Division, has filed an application for retail privileges under the said license as authorized by R.S. 33:1-10(2a) as amended and supplemented. The act provides, among other things, that "Upon payment of an additional fee of $100.00 the holder of a (plenary winery) license shall have the right to sell wine at retail on the licensed premises..."

Written objections to the granting thereof having been filed by objectors herein, a hearing was held thereon pursuant to Rule 2 of State Regulation No. 9.

At the hearing counsel for one of the objectors (New Jersey Retail Liquor Stores Association) articulated the objections of the objectors herein, which may be summarized as follows:

(1) There is no public need, necessity or convenience to be served by the granting of said retail privilege;

(2) That such privilege would be contrary to the "fundamental scheme" of the alcoholic beverage law in permitting a manufacturer or wholesaler to be connected with the retailing of beverages;

(3) That the Director, in his discretion, should not grant such privilege and should give prior consideration to applicants engaged in growing and cultivating grapes on lands owned by applicants;

(4) That the granting of this privilege would "circumvent the number of retail licenses in the municipality. 33:1-12.14"

(5) That there is no standard in the regulations governi the operation of this type of business, noting a possible conflict between Rule 5 of State Regulation No. 9 and the applicable statute

At the hearing herein, the following picture was reflected from the testimony: The applicant holds a plenary winery license and to date has engaged in the manufacture and bottling of champagne at its plant in New Brunswick, and also sells solely in bulk to wineries throughout the State of New Jersey. It does not package any still wines and consequently does not sell such still wines to wholesalers.

The applicant sets forth that it is the largest producing winery in the State of New Jersey, is one of the largest purchasers for wine production of New Jersey grapes, and that at least seventy-five per cent. of the volume of such wines will be derived from fresh grapes grown in New Jersey. All of such wines and champagnes will have the appropriate certificate of approval from the Federal Alcohol and Tobacco Tax Division, approving the use of the designation "New Jersey Wine" on its labels.

In short, the applicant states that it desires to produce a New Jersey champagne grown from grapes purchased from vineyards in this State. It further represents that there are no other producers in the State which have bottled a champagne exclusively from grapes grown in this State; that this enterprise will substantially benefit the New Jersey grape industry, and, indeed, the agricultural industry in this State.

The applicant further testified that at least seventy-five per cent. of the volume of its wine will be derived from fresh grapes grown in New Jersey. It pointed out that, although similar grapes can be purchased at a lesser cost from outside the State, it wants to engage upon this enterprise because it is convinced that it will be of real benefit to agriculture of this State. It also asserts that the only item applied for in this retail privilege is a package that will be marked "New Jersey Wines".

The applicant further represented that, while its product would be offered to wholesalers, "we would not offer it to retail stores themselves; it would be the wholesalers' job to go to the retailers." In other words, the consumer would pay the same price whether he bought it at the retail outlet of this applicant or at any of the retail stores which offered the product for sale, without any difference in cost to the said consumer.

Ray Boardman (a licensee who holds a plenary retail distribution license in New Brunswick) stated that he is affiliated with the New Jersey Retail Liquor Stores Association and with the North Central Counties Retail Liquor Stores Association. He objected to the granting of this retail privilege because he felt that the applicant's product can best be distributed through present wholesalers rather than through opening up a new retail outlet. He specifically objected to its location in New Brunswick because he felt that there were sufficient facilities presently in this community. He was then asked whether he would handle the applicant's wines if they were offered to him. His answer: "I have a lot of wines. I don't know what it would do."

Joseph Zimmerman (executive secretary of the New Jersey Licensed Beverage Association) expressed a similar objection. He felt that there were sufficient licensees in the general area and that the grant of this retail privilege would "only cause undue hardship and unfair competition."

It was stipulated that Anthony Barzda (holder of a retail consumption license in New Brunswick) would state the same

objections as heretofore testified to by the prior witnesses.

The applicant has demonstrated that the products which it proposes to sell at retail under the specific statutory authority would afford a genuine convenience in this State. It has also advanced persuasive argument in support of the proposition that New Jersey should have a distinctive New Jersey champagne, just as other States have such products from grapes grown exclusively in those States. It is thus immaterial whether the applicant is the only bottler of champagne derived exclusively from grapes grown in this State. What is significant is the showing that applicant intends to make a substantial investment in this enterprise, and that its products will aid the grape-growing industry in this State.

I consider it commendable that the applicant is willing to make such investment and indeed pay more for grapes grown in this State than it would have to pay for similar products from the neighboring States. The basic objections to the granting of this retail privilege is that the applicant would be in competition with other retail outlets in the City of New Brunswick. It should be noted, however, that this privilege is conferred by statute and permits the plenary winery licensee to sell wine at retail on the licensed premises. I do not find that this is in conflict with any of the rules and regulations of this Division; nor is it in basic conflict with the fundamental theme of the alcoholic beverage law. The right of such (plenary winery) licensee to sell both at wholesale and at retail, where it serves the best interests of the grape-growing industry, expresses the present intent of the Legislature, and such legislative will cannot be disregarded by this Division.

Furthermore, the testimony indicates that there is no readiness on the part of the objectors or other retailers to accept applicant's products for distribution in their outlets. It is clear that applicant can only sell its products at retail at its own licensed winery.

Another objection advocated was that the Director, in his discretion, should give prior consideration to other applicants engaged in growing and cultivating grapes grown upon lands owned by such applicants. However, there is an absence of testimony showing that there are such other applicants, as contemplated under the act. Thus this objection should be rejected.

I conclude that the evidence herein is sufficient to establish that the applicant's request for the retail privilege is in consonance with the provision of the act; its granting would be in the public interest and fulfills a public need. Cf. Mauriello v. Driscoll, 135 N.J.L. 220 (Sup. Ct. 1947); Re Admiral Wine Co., Inc Bulletin 1460, Item 7.

Accordingly, it is recommended that the application for retail privileges under applicant's existing plenary winery license herein be granted, upon the express condition, however, that said applicant shall sell only such sparkling wines and champagnes as have been manufactured in New Jersey by the applicant; shall have affixed thereto the label legend "New Jersey Wine"; and that at least seventy-five per cent. of the volume of such wines and champagnes will be derived from fresh grapes grown in New Jersey.

## Conclusions

The objectors filed exceptions to the Hearer's report.

Thereafter, oral argument was presented before me in this matter.

To arrive at a proper determination with respect to the instant application for retail privileges, it is essential to view such application in the light of the legislative history surrounding plenary winery licenses. Originally, a plenary winery license entitled its holder to manufacture and bottle wines and to sell his products "to wholesalers and retailers...and to churches for religious purposes..." P. L. 1933, c. 236. Other than the quoted incidental privilege of selling "to churches for religious purposes", a plenary winery license had no retail privileges until June 10, 1940, when the law was amended to provide that on payment of an additional annual fee of $100, a plenary winery licensee could sell wine at retail. P. L. 1940, c. 83. (A later 1942 amendment restricted such sales to those for off-premises consumption.)

Thereafter, the retail privilege continued until enactment of P. L. 1949, c. 276 (Bulletin 844, Item 2) effective July 1, 1949, which sharply amended the foregoing retail privilege by specifying:

> "...such sales shall be made...only when the winery at which such wines are manufactured or blended, fortified or treated is located and constructed upon a tract of land owned exclusively by the holder of such plenary winery license, which said tract of land shall have an area of not less than three acres and have growing and under cultivation upon said land at least twelve hundred grape vines; and provided, further, that such wines shall be manufactured or blended, fortified or treated from fresh grapes grown in this State."

Subsequent amendment in 1950 (P. L. 1950, c. 340) continued to evince the legislative intent to favor those retail applicants engaged in the grape growing industry. A numerical limitation (three per each million of state population as shown by federal census) was imposed upon the number of licensees to be given retail privileges and the stipulation was made that the Director give "prior consideration" to those engaged in the growth and cultivation of grapes upon their lands. The legislative policy toward strict limitation is further evidenced by the most recent enactment of P. L. 1965, c.208, effective December 23, 1965, which reduced the number of licenses which may be granted from three per each million of such population to one per each million. Emphasis is also given to the restrictive legislative intent in the provision for prior consideration to be given only to applicants <u>owning</u> the land upon which the <u>applicants</u> are <u>themselves</u> engaged in the grape growing industry.

It is also not amiss to state that, following the 1949 restriction and the 1950 restrictive and numerical limitation amendment, twenty-two of the twenty-six plenary winery licensees theretofore enjoying retail privileges failed to qualify for "prior consideration" and were denied further retail privileges. The many applications for such privileges far exceeded the number which could be granted under the 1950 numerical limitation and the then Director denied all applications for retail privileges except to applicants growing and cultivating grapes upon their lands in this state. The then enunciated Divisional policy has been consistently applied and no retail privileges have been granted since 1949 except to such applicants (now five in number). I am fully in accord with this policy and deem it to be in accord with the manifest legislative intent to favor such applicants. Admittedly, Monte Carlo Wine Industries does not grow its own grapes and is not, therefore, entitled to the legislatively conferred favor.

Furthermore, there is no need here for an additional retail outlet, albeit only champagne is now contemplated. With eighty-four retail licensees (exclusive of club licensees) in New Brunswick and ten retail licensees, including two substantial package outlets in the immediate vicinity of applicant's premises, there are sufficient to satisfy normal public convenience. Applicant is now licensed to sell its and any other bottled champagnes and wines to these or any other retailers and has failed to convince me that the public interest, as distinguished from its private economic interests, would be served by grant of its application for the privilege of selling directly to the consumer. See Mauriello v. Driscoll, 135 N.J.L. 220.

Accordingly, in view of the foregoing and in the exercise of reasonable discretion, I conclude that the application for retail privilege should be and hereby is denied.

JOSEPH P. LORDI,
DIRECTOR

Dated: March 9, 1966

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

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| In the Matter of Disciplinary Proceedings against<br><br>Barone's Lounge, Inc.,<br>217-219 Straight Street,<br>Paterson, N. J.<br><br>Holder of Plenary Retail Consumption License C-105, issued by the Board of Alcoholic Beverage Control for the City of Paterson. | CONCLUSIONS and ORDER |

Licensee, by Louis Barone, Treasurer, Pro se
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 17, 1966 it permitted the removal of an opened half-pint bottle of liqueur from its licensed premises during prohibited hours in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the municipal issuing authority for fifteen days for sale during prohibited hours, affirmed by the Director on appeal effective May 9, 1962. Barone's Lounge, Inc. v. Paterson, Bulletin 1455, Item 2.

The prior record of suspension of license for similar violation within the past five years considered, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re DeVries, Bulletin 1555, Item 9.

Accordingly, it is, on this 14th day of March, 1966,

ORDERED that Plenary Retail Consumption License C-105, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Barone's Lounge, Inc., for premises 217-219 Straight Street, Paterson, be and the same is hereby suspended for twenty-five (25) days, commencing at 3 a.m. Monday, March 21, 1966, and terminating at 3 a.m. Friday, April 15, 1966.

JOSEPH P. LORDI,
DIRECTOR

DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

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| In the Matter of Disciplinary Proceedings against | ) | |
| Albert Orbach<br>t/a Albert's Tavern<br>147 Broadway<br>Paterson, N. J. | ) | CONCLUSIONS<br>and<br>ORDER |
| Holder of Plenary Retail Consumption License C-106, issued by the Board of Alcoholic Beverage Control for the City of Paterson. | ) | |

Licensee, Pro se.
Morton B. Zemel, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 19, 1966, he sold a pint bottle of whiskey for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Commissioner for ten days effective June 3, 1940, for possession of illicit liquor. Re Orbach, Bulletin 406, Item 10.

The prior record of dissimilar violation occurring more than five years ago disregarded, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Lekas and Paroby, Bulletin 1659, Item 12.

Accordingly, it is, on this 15th day of March, 1966,

ORDERED that Plenary Retail Consumption License C-106, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Albert Orbach, t/a Albert's Tavern, for premises 147 Broadway, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. Tuesday, March 22, 1966, and terminating at 3:00 a.m. Friday, April 1, 1966.

JOSEPH P. LORDI,
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS - NO REMISSION FOR PLEA ENTERED ON HEARING DATE.

| | |
|---|---|
| In the Matter of Disciplinary Proceedings against<br><br>The Strike Out, Inc.,<br>109 Butler Street,<br>Paterson, New Jersey,<br><br>Holder of Plenary Retail Consumption License C-353, issued by the Board of Alcoholic Beverage Control for the City of Paterson. | CONCLUSIONS and ORDER |

Licensee, by Vince Martinez, Secretary, Pro se
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On the date scheduled for hearing, licensee pleaded guilty to a charge that on January 28, 1966, it sold mixed drinks of alcoholic beverages to two minors, ages 17 and 18, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days (Re Robert E. Lee Inn, Inc., Bulletin 1637, Item 7), without remission for the plea not entered prior to the hearing date. (Re Curley's, Inc., Bulletin 1518, Item 3).

Accordingly, it is, on this 15th day of March 1966,

ORDERED that Plenary Retail Consumption License C-353, issued by the Board of Alcoholic Beverage Control for the City of Paterson to The Strike Out, Inc., for premises 109 Butler Street, Paterson, be and the same is hereby suspended for twenty (20) days, commencing at 3 a.m. Tuesday, March 22, 1966, and terminating at 3 a.m. Monday, April 11, 1966.

JOSEPH P. LORDI,
DIRECTOR

7.

## ACTIVITY REPORT FOR MARCH 1966

| | | | |
|---|---|---|---|
| ARRESTS: | | | |
| Total number of persons arrested | | | 13 |
| Licensees and employees | 8 | | |
| Bootleggers | 5 | | |
| SEIZURES: | | | |
| Distilled alcoholic beverages - gallons | | | 7.00 |
| Brewed malt alcoholic beverages - gallons | | | 70.12 |
| RETAIL LICENSEES: | | | |
| Premises inspected | | | 878 |
| Premises where alcoholic beverages were gauged | | | 699 |
| Bottles gauged | | | 10,569 |
| Premises where violations were found | | | 69 |
| Violations found | | | 99 |
| Unqualified employees | 51 | Other mercantile business | 4 |
| Application copy not available | 20 | Improper beer taps | 1 |
| Reg. #38 sign not posted | 7 | Other violations | 16 |
| STATE LICENSEES: | | | |
| Premises inspected | | | 22 |
| License applications investigated | | | 12 |
| COMPLAINTS: | | | |
| Complaints assigned for investigation | | | 439 |
| Investigations completed | | | 393 |
| Investigations pending | | | 244 |
| LABORATORY: | | | |
| Analyses made | | | 37 |
| Refills from licensed premises - bottles | | | 21 |
| IDENTIFICATION: | | | |
| Criminal fingerprint identifications made | | | 9 |
| Persons fingerprinted for non-criminal purposes | | | 359 |
| Identification contacts made with other enforcement agencies | | | 318 |
| DISCIPLINARY PROCEEDINGS: | | | |
| Cases transmitted to municipalities | | | 6 |
| Violations involved | | | 6 |
| Sale during prohibited hours | 4 | | |
| Sale to minors | 2 | | |
| Cases instituted at Division | | | 35 |
| Violations involved | | | 51 |
| Sale to minors | 9 | Unqualified employees | 3 |
| Sale during prohibited hours | 7 | Hindering investigation | 3 |
| Permitting lottery activity on prem. | 7 | Permitting hostesses on prem. | 2 |
| Possessing liquor not truly labeled | 6 | Failure to file notice of change in lic. application | 1 |
| Fraud in application | 5 | Conducting business as a nuisance | 1 |
| Permitting immoral activity on prem. | 3 | Permitting foul lang. on premises | 1 |
| Permitting gambling on premises | 3 | | |
| Cases brought by municipalities on own initiative and reported to Division | | | 19 |
| Violations involved | | | 26 |
| Sale to minors | 13 | Permitting unlic. bartender on premises (local reg.) | 1 |
| Unqualified employees | 3 | Hindering investigation | 1 |
| Permitting minors to congregate on premises (local reg.) | 2 | Sale during prohibited hours | 1 |
| Conducting business as a nuisance | 2 | Permitting brawl on premises | 1 |
| Purchase from improper source | 1 | Permitting minors on prem. unaccomp. by parent (local reg.) | 1 |
| HEARINGS HELD AT DIVISION: | | | |
| Total number of hearings held | | | 47 |
| Appeals | 4 | Seizures | 3 |
| Disciplinary proceedings | 27 | Tax revocations | 2 |
| Eligibility | 11 | | |
| STATE LICENSES AND PERMITS ISSUED: | | | |
| Total number issued | | | 1,001 |
| Licenses | 1 | Social affair permits | 404 |
| Solicitors' permits | 54 | Miscellaneous permits | 134 |
| Employment permits | 182 | Transit insignia | 152 |
| Disposal permits | 57 | Transit certificates | 16 |
| Wine permits | 1 | | |
| OFFICE OF AMUSEMENT GAMES CONTROL: | | | |
| Licenses issued | 168 | | |
| Enforcement files established | 1 | | |

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

dd: April 12, 1966

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

| | |
|---|---|
| In the Matter of Disciplinary Proceedings against | ) |
| 430 LANES, INC.<br>430 Market Street<br>East Paterson, N. J. | ) CONCLUSIONS AND ORDER |
| Holder of Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of East Paterson. | ) |

Licensee, by Louis Martone, Manager, Pro se.
Morton B. Zemel, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 1, 1966, it possessed alcoholic beverages in five bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Walt Whitman Hotel, Inc., Bulletin 1659, Item 5.

Accordingly, it is, on this 10th day of March 1966,

ORDERED that Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of East Paterson to 430 Lanes, Inc., for premises 430 Market Street, East Paterson, be and the same is hereby suspended for twenty (20) days, commencing at 3 a.m. Thursday, March 17, 1966, and terminating at 3 a.m. Wednesday, April 6, 1966.

JOSEPH P. LORDI
DIRECTOR

9. STATE LICENSES - NEW APPLICATIONS FILED.

Better Brands Inc.
38 - 46th Street
Harrison, N. J.
Application filed April 26, 1966 for person-to-person transfer and place-to-place transfer of Plenary Wholesale License W-89 from Schenley Distillers Inc. 1290 Avenue of the Americas, New York, N. Y.

Ark Beverages Inc.
191 Paris Avenue
Northvale, N. J.
Application filed April 26, 1966 for person to person transfer of State Beverage Distributors License SBD-204 issued for 191 Paris Avenue, Northvale, N. J.

Joseph P. Lordi
Director