

Deputy Director Saum

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

March 6, 1967

BULLETIN 1717

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

BULLETIN 1717

March 6, 1967

1. APPELLATE DECISIONS - 93 FRELINGHUYSEN CORP. v. NEWARK.

93 Frelinghuysen Corp.,	)	
t/a Ricky's Corner Bar,	)	
	)	On Appeal
Appellant,	)	
v.	)	CONCLUSIONS
	)	and
Municipal Board of Alcoholic	)	ORDER
Beverage Control of the City	)	
of Newark,	)	
	)	
Respondent.	)	

-----  
Louis R. Cerefice, Esq., Attorney for Appellant.  
Norman N. Schiff, Esq., by Anthony J. Iuliani, Esq.,  
Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent whereby it suspended appellant's license for premises 93 Frelinghuysen Avenue, Newark, for thirty days effective July 11, 1966, after finding appellant guilty in disciplinary proceedings of a charge alleging that after 10:00 p. m. on Thursday, October 7, 1965, appellant sold and permitted the removal of an alcoholic beverage in its original container for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Upon the filing of the appeal, an order dated June 29, 1966 was entered by the Director staying the effect of the suspension pending the determination of the appeal.

Summarizing the grounds of appeal, appellant alleges that the verdict was unreasonable and contrary to the weight of the evidence, that respondent did not consider the testimony of appellant's witnesses, that the testimony given by respondent's witnesses was contradictory, and that the penalty imposed was excessive and unduly severe.

Respondent, in its answer, denies the substantive allegations of the petition of appeal and contends that respondent based its decision upon the factual testimony presented and, acting within its sound discretion, concluded that the penalty imposed substantiated such action.

It was agreed by the parties to this appeal to submit that matter upon the stenographic transcript of the proceedings held before respondent, pursuant to Rule 8 of State Regulation No. 15.

The matter herein was heard by respondent on March 23 and June 22, 1966. According to the transcript of the proceedings,

on the March date ABC Agent M testified that on October 7, 1965, he and Agent T arrived in the vicinity of appellant's licensed premises and, after checking their watches with the radio time signal at 10:35 p.m., Agent T, having no alcoholic beverages on his person, entered the establishment while he (Agent M) remained outside. Agent M further testified that about "two minutes" thereafter, Agent T came out of the premises and showed him a pint of Seagram's gin. Agent M and Agent T then entered appellant's premises and spoke to the bartender, who gave his name as Charles Thomas. When the bartender was apprized of the alleged violation, he denied he had sold the bottle of gin to Agent T. At the hearing below, Agent M was asked to point out the person whom Agent T had identified as making the sale on the night in question; and the man whom Agent M identified said his name was Ruben Saunders.

Agent M further testified that when he requested the bartender (known to him as Charles Thomas) to obtain the tape from the cash register so that he (Agent M) might examine the same, he was told "that the register was locked and that he was unable to unlock it." Agent M also testified that when he and Agent T entered appellant's premises, two police officers followed them and questioned them regarding their identity.

Agent T, who on October 7, 1965 had accompanied Agent M during the investigation of appellant's premises, had left his employment with the Division prior to March 23, 1966. Respondent continued the hearing until June 22, 1966, at which time Agent T appeared as a witness for respondent. Agent T testified that he and Agent M went to appellant's licensed premises, he alone entering the tavern, approximating the time to be 10:35 p. m. as his watch was broken; that he went to the bar where he purchased a pint of Gordon's gin from the bartender; that he left the premises and, after informing Agent M what he had done, both entered appellant's establishment; that he and Agent M identified themselves to the bartender and showed him the bottle, at which time the man gave his name as Charles Thomas.

On cross examination, Agent T, when asked if he could identify Charles Thomas, pointed to a man in the room. The said man failed to identify himself for the record.

Commissioner MacDonald called to Agent T's attention that he had testified purchasing a pint of Gordon's gin whereas Agent M had previously testified that the purchase made was a pint of Seagram's gin. In response thereto, Agent T stated that he was not positive of the brand purchased because he had no definite recollection of the transaction since "I haven't been with the A. B. C. for some time and I haven't refreshed my memory."

William Burt, called as a witness by appellant, testified that he was never known as Charles Thomas and, although since "around the first of April of this year" (1966) has been employed by appellant, had previously (including the month of October 1965) been employed "at the Derby Club" located at "81 Frelinghuysen Avenue"; that he could not recall whether he knew any former employee of appellant; that although he has seen Agent T and Agent M, he does not know them; that up to April 1, 1966, he saw Agent T come in and out of the Derby Club but he "never had words with him."

David Margolis, secretary of appellant corporation and manager of its licensed premises, testified that he never had in his employ a man named Charles Thomas. He further stated that he knew nothing of the alleged violation "until I received the notice from the A. B. C. Board, some six or seven months later." Margolis also said that appellant has both Gordon's and Seagram's gin in pints for sale at the premises.

Agent M, recalled on rebuttal, testified that the man who said at the first hearing that his name was Ruben Saunders, appeared to be the same man who on October 7, 1965, had identified himself as Charles Thomas. Furthermore, Agent M said he did not know William Burt, a prior witness, nor could he recall ever seeing him.

Before appellant proceeded with its defense at the hearing before respondent, appellant's attorney moved for dismissal of the charge, alleging that the two agents were uncertain as to time and the identity of the person who allegedly made the sale, that Agent T testified that he had purchased a pint of Gordon's gin whereas Agent M said it was Seagram's gin, and that no cash register slip indicating the said sale was produced. He further contended that "on the whole, the case is full of holes, no prima facie evidence established so that we could go on with our defense."

Commissioner MacDonald (acting chairman on June 22), although not expressly denying appellant's motion, stated "Let's hear your defense."

Although there may be some conflict as to time and brand name, there is no doubt that Agent T purchased a pint bottle of gin after 10:00 p.m. on the night in question and removed it from the licensed premises. Failure to identify the specific person who made the sale is not fatal in disciplinary proceedings against a licensee. Re LaCorte, Bulletin 469, Item 1; Ott's Incorporated v. Division of Alcoholic Beverage Control (App.Div. 1962), not officially reported, reprinted in Bulletin 1444, Item 1.

I am satisfied that the ruling of respondent under the circumstances was proper and the determination of the case should be decided on the merits thereof. While a finding of guilt should not be made where the evidence is in serious conflict, equally as consistent with innocence as with guilt, there is no denial by any person who was employed or by anyone present in appellant's licensed premises on the evening of October 7, 1965, that the violation occurred.

The applicable principle of law appears to be that where a party has a witness or witnesses available and where they possess peculiar knowledge of the facts essential to a party's case, the failure to call said witness or witnesses gives rise to an inference that, if called, the testimony elicited would be unfavorable to said party, i.e., he could not contradict the testimony of respondent's witnesses. Jacoby v. Jacoby, 6 N.J.Misc. 86; Re Cork 'N Bottle, Inc., Bulletin 1232, Item 3.

We are dealing here with a purely disciplinary measure and its alleged infraction. Such proceedings are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948). Thus, respondent need establish its case only by a fair preponderance of the credible evidence. Butler Oak Tavern v. Division of

Alcoholic Beverage Control, 20 N.J. 373. In other words, the finding must be based upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

Agent T had left the employ of the Division of Alcoholic Beverage Control before the first hearing date on March 23, 1966, but appeared and testified as a witness for respondent on June 22, 1966. The alleged violation had occurred on October 7, 1965. Agent T testified that he did not refresh his memory before testifying in the matter and then conceded that the purchase made by him was a pint of Seagram's gin rather than Gordon's gin, in accordance with the testimony of Agent M at the hearing. According to the transcript, the bottle of Seagram's gin and the analysis thereof by the Division chemist were produced by Agent M at the hearing before respondent. Neither witness produced on behalf of appellant was present on October 7, 1965. In so far as most of the testimony of William Burt (now an employee of appellant) is concerned, it has little probative value.

I am convinced that appellant has failed to prove by a fair preponderance of the evidence that respondent erred in its decision. Rule 6, State Regulation No. 15.

Appellant contends that the penalty imposed was harsh, excessive and unduly severe.

It appears herein that appellant has a prior adjudicated record. Effective April 5, 1965, its license was suspended for ten days by respondent after it pleaded non vult to a similar violation.

The minimum suspension for sale of an alcoholic beverage in its original container for off-premises consumption in violation of Rule 1 of State Regulation No. 38 is fifteen days. Re Vecchione, Bulletin 1684, Item 7. Where a prior similar violation occurs within five years, the penalty is doubled, or, as in the instant case, the suspension is for thirty days. Re Alsto Enterprises, Inc., Bulletin 1686, Item 5. It is apparent that the penalty imposed herein on appellant's license by respondent is comparable to that imposed for a second similar offense by this Division.

Under the circumstances and after scrutiny of the record and the various grounds of appeal, it is recommended that an order be entered affirming respondent's action, dismissing the appeal and fixing the effective dates for the thirty-day suspension stayed by the Director pending the entry of the order herein.

#### Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, the attorney for appellant filed exceptions to the Hearer's report and written argument in substantiation thereof.

I have considered all of the exceptions taken to the Hearer's report and find that either they have been answered by the Hearer or they are without merit.

After carefully considering all of the evidence adduced in this matter, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein. I shall, therefore, affirm the action of respondent and reimpose the suspension of the license.

Accordingly, it is, on this 4th day of January, 1967,

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-343, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to 93 Frelinghuysen Corp., t/a Ricky's Corner Bar, for premises 93 Frelinghuysen Avenue, Newark, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. Wednesday, January 11, 1967, and terminating at 2:00 a.m. Friday, February 10, 1967.

JOSEPH P. LORDI,  
DIRECTOR

2. APPELLATE DECISIONS - GARDNER v. ATLANTIC CITY.

Albert Gardner,	)	
	)	
Appellant,	)	On Appeal
v.	)	
	)	CONCLUSIONS
Board of Commissioners of	)	AND
the City of Atlantic City,	)	ORDER
	)	
Respondent.	)	

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Samuel Epstein, Esq. Attorney for Appellant  
Murray Fredericks, Esq., Attorney for Respondent  
Feinberg, Fishman & Ginsburg, Esqs., by Edward I. Feinberg, Esq.,  
Attorneys for Objectors

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the unanimous action of respondent whereby it denied an application for person-to-person and place-to-place transfer of a plenary retail distribution license from Eana, Inc., t/a Atlantic Liquors, to appellant and from premises northeast corner of New Jersey and Atlantic Avenues to premises to be constructed at 1724 Pacific Avenue, Atlantic City.

Appellant's petition of appeal alleges that due to construction of new motels in the area of the proposed premises, there is a need for the license in question and that the area opposite the location of the present licensed premises has been determined by the municipal governing body "to be a blighted area."

Respondent's answer, in substance, admits the various assertions in appellant's petition of appeal but leaves the appellant to his proof as to construction in the immediate area of the proposed premises. Further, respondent contends that there are sufficient liquor licenses already existing in the area of the proposed premises to meet the needs of those desiring to purchase alcoholic beverages.

Appellant testified that the proposed building to be erected and used as the licensed premises would be immediately

adjacent to "The Midtown Motor Inn", the holder of a plenary retail consumption license, and that the distance between the respective premises is approximately seventy-five feet.

Saul Singer, testifying on behalf of appellant, contended that the area to which the license transfer is sought has, during the past number of years, greatly increased in population due to construction of numerous motels. In his opinion, there is a need for a package goods store and a public convenience would be served by granting the transfer in question. He further testified that the section of Atlantic City under consideration is one of the most active in the city in so far as conventions and transient business are concerned, adding that "It's really the heart of the City." He was of the opinion that although across from the present licensed premises high-rise and garden-type apartments are going to be constructed, he felt there was no comparison in so far as the two areas are concerned. To his knowledge, no new licenses had been issued in the area of the proposed premises during the past ten years.

Bernard F. Murphy, supervisor of liquor licenses in the municipality, testified that if the transfer were granted, the proposed package store would be approximately fifteen feet from the Midtown Motel. He stated that directly across the street from the Midtown Motel, there is presently a tavern and that there are other liquor outlets open to the general public, both taverns and package stores, in the vicinity of the proposed premises.

Commissioner John O'Donnell testified that he voted to deny the transfer of the license, one reason being that there were many objections to the application from people in the neighborhood of the proposed premises. Commissioner O'Donnell stated, "It was the considered consensus of the mayor and the commissioners that no public convenience could be served by issuing another license in that neighborhood." In his opinion, there are sufficient licenses in the area of the proposed site to take care of the needs of visitors and residents.

Nick Tally, operator of a tavern in Atlantic City and the representative of Atlantic County licensees in the New Jersey Licensed Beverage Association, testified that in the area sought for the license transfer, there are a number of bars and package goods stores and, in his opinion, there are sufficient liquor outlets to take care of the visitors and residents of Atlantic City during the summer and winter months. In fact, he stated, "we have more licenses than we need."

Jack A. Karp, who operates a restaurant for which no liquor license is issued, testified in objection to the transfer of the license. He, too, was of the opinion that sufficient liquor licenses presently exist in the area.

Fred Oliver, proprietor of a package goods store, testified that his experience indicated that even in the summer time he had no need to employ help to assist in the operation of his business.

In order for appellant to be successful in this appeal, it is incumbent upon him to present proof that respondent abused its discretion in denying the application for the transfer. To meet this burden, it is necessary to show manifest error or some abuse of discretion on the part of respondent. Nordco, Inc. v. State, 43 N.J. Super. 277 (App.Div. 1957); Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955).

It has been consistently ruled that a transfer of liquor license is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. When denied on reasonable grounds, such action will be affirmed. Gentes v. Middletown, Bulletin 1327, Item 1; Biscamp and Hess v. Teaneck, Bulletin 821, Item 8. See also Biscamp v. Twp. Council of the Twp. of Teaneck, 5 N.J. Super. 172 (App. Div. 1949), where the transfer of a liquor license was denied because the issuing authority was of the opinion that there was no need or necessity for a liquor outlet in that particular location of the community.

Whether or not a license should be permitted at a particular location is within the sound discretion of the issuing authority. The Director's function on appeal is not to substitute his judgment for that of the issuing authority but, rather, to determine whether cause exists for its opinion and, if so, to affirm, irrespective of his personal views. Larion, Inc. v. Atlantic City, Bulletin 1306, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1.

It is apparent by the unanimous vote of the commissioners that appellant failed to satisfy them that a need existed for or that the public interest would best be served by the transfer of the license to the proposed site. There is nothing before me in the record which indicates that respondent's action in refusing to approve appellant's application was inspired by improper motives.

It was stipulated by the parties that the distance between the present location of the licensed premises and that sought at the proposed site is approximately one mile. Thus, in effect, the transfer would constitute the placing of another liquor outlet within the area in question.

In Fanwood v. Rocco, 59 N.J. Super. 306, 323 (App. Div. 1960), Judge Gaulkin stated:

"The Director may not compel a municipality to transfer licensed premises to an area in which the municipality does not want them, because there more people would be able to buy liquor more easily. Such 'convenience' may in a proper case be a reason for a municipality's granting a transfer but it is rarely, if ever, a valid basis upon which the Director may compel the municipality to do so."

Moreover, it was stated in Fanwood that: "No person is entitled to [the transfer of a license] as a matter of law" and "If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial."

After careful examination of the testimony and exhibits in this matter, I conclude that appellant has failed to sustain the burden that the action of respondent was erroneous, arbitrary, capricious and unreasonable, or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15.

It is recommended, therefore, that an order be entered affirming respondent's action and dismissing the appeal.

#### Conclusions and Order

Pursuant to the provisions of Rule 14, State Regulation No. 15, exceptions to the Hearer's report were filed by the appellant's attorney.

In the first exception it is contended that the testimony "was not taken stenographically and transcribed as the Rule apparently indicates and that in view of the failure to furnish said stenographic transcription of testimony the Director does not have available for his consideration, testimony deemed to be favorable to the appellant's cause." The true facts are, of course, that the testimony was taken and transcribed by a Certified Shorthand Reporter and that the transcript was received and examined by the Hearer who then submitted to me copies of his report together with the entire record, including the transcript. Possibly the exception's reference was, at least in part, to the absence from the record herein of a stenographic record of the hearing before the respondent. Hearings on appeal are de novo. A stenographic record of a hearing at the municipal level is not required nor do the Rules require that such a record, if taken, must be made a part of the record on appeal. The exception has no merit.

The second exception contends that the Hearer's synopsis of the testimony of Saul Singer, for the appellant, is prejudicial in that Mr. Singer's testimony went far beyond that set forth in the synopsis. A synopsis by the Hearer need not and, for good and sufficient practical reasons, should not set forth in full the testimony of witnesses for either side. With respect to Mr. Singer's testimony, I find the Hearer's synopsis not prejudicial but objective and fair, and I find no merit in the exception thereto.

The third exception is critical of that portion of the Hearer's report relative to the distance of a little more than a mile between the licensed premises (in a "blighted area") and the location sought. As contended in the exception, "The distance of a mile does not in any way describe the entirely different neighborhood, the one having no relation to the other, and that it would not be as the Hearer stated such a transfer or placing of another liquor outlet within the area in question." The distance between the two locations being more than a mile, the exception is clearly without merit and I so find.

The fourth exception states that the appellant submitted exhibits indicating the locations and expresses the earnest hope that I will be given the opportunity to avail myself of these prior to making a determination. The fear implicit in the hope bespeaks a serious misunderstanding. I make no determination of an appeal without first examining the entire record therein.

The fifth exception contends that the Hearer's synopsis of the testimony of Bernard F. Murphy, for the respondent, does not properly indicate the nature of the operation of Midtown Motor Inn (principally a restaurant and with the bar not visible from the outside) and, further, "that the Midtown furnished appellant with a waiver." Again, I find the Hearer's synopsis to have been fair and proper. The so-called "waiver" has no bearing and the exception has no merit.

The exceptions pray, further, that I afford oral argument before me "for the reason that many of the factual contentions and much of the testimony of the witnesses has not been made available to the Director and that if the Director's consideration is based solely on the Hearer's report the Director will

not have had available to him many of the facts and much of the testimony adduced at the hearing." I have hereinabove corrected, directly and pointedly, the misunderstanding in this regard. The request for oral argument is denied.

The exceptions conclude with the following paragraph:

"The Director's attention is invited to the attached ordinance enacted subsequent to the hearing which clearly indicates that the Board of the City of Atlantic City does recognize the advent of Motels in the City and by enacting said ordinance further discriminated between consumption and distribution license."

Sections 1 and 2 of the ordinance (No. 12 - 1966, adopted May 26, 1966) read as follows:

"Section 1. That in addition to the exceptions contained in Ordinance No. 8 of 1956, providing for the transfer of plenary retail consumption or plenary retail distribution licenses within 300 feet of premises for which a license of either type is outstanding, any plenary retail consumption license may be transferred to a hotel premise or a motel premises located in the City of Atlantic City containing at least 100 sleeping rooms, notwithstanding said premises are located within 300 feet of premises for which a license of either type has been issued and is outstanding.

"Section 2. Nothing contained in this Ordinance shall allow or permit the transfer to a hotel or a motel as described in Section 1, within 300 feet of a licensed premise of a plenary retail consumption license with the broad package privilege or a plenary retail distribution license."

The measure is not artistically worded, but Section 1 does run in favor of hotels and motels (although only if the premises contain at least 100 sleeping rooms); and Section 2 runs clearly in favor of plenary retail distribution licenses. The measure's intendment is clear and I see nothing wrong with it.

After carefully considering the entire record, including the transcript of testimony, the exhibits, the Hearer's report and the exceptions thereto, I concur in the conclusions of the Hearer and adopt his recommendation.

I find that the appellant has failed to sustain the burden (Rule 6, State Regulation No. 15) of establishing that the action of the respondent was erroneous and should be reversed.

Accordingly, it is, on this 29th day of December, 1966,

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

JOSEPH P. LORDI,  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 90 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 Ja-Da, Inc. )  
 t/a Brick's Tavern )  
 205-207 Presidential Blvd. )  
 Paterson, New Jersey, )  
 Holder of Plenary Retail Consumption License C-93, issued by the Board of Alcoholic Beverage Control for the City of Paterson. )  
 ----- )

CONCLUSIONS and ORDER

Louis M. Turco, Esq., Attorney for Licensee  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Sunday, September 18, 1966 it sold a pint bottle of wine for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Director for ten days effective April 5, 1965 for sale in violation of State Regulation No. 38 (Re Ja-Da, Inc., Bulletin 1614, Item 9), and by the municipal issuing authority for twenty days effective July 19, 1965 for sale in violation of State Regulation No. 38 and local hours regulation, and for fifteen days effective July 15, 1966 for sale in violation of local hours regulation.

The prior record of three suspensions of license for similar violation within the past five years considered, the license will be suspended for ninety days (cf. Re Starvaggi, Bulletin 1445, Item 3), with remission of five days for the plea entered, leaving a net suspension of eighty-five days.

In addition, the licensee is pointedly warned that any future similar violation may be deemed to be in callous disregard of the regulation and cause for outright revocation of the license.

Accordingly, it is, on this 29th day of December 1966,

ORDERED that Plenary Retail Consumption License C-93 issued by the Board of Alcoholic Beverage Control for the City of Paterson to Ja-Da, Inc., t/a Brick's Tavern, for premises 205-207 Presidential Blvd., Paterson, be and the same is hereby suspended for eighty-five (85) days, commencing at 3 a.m. Thursday, January 5, 1967 and terminating at 3 a.m. Friday, March 31, 1967.

JOSEPH P. LORDI  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS AND HORSE RACE BETS) - ORDER OF NOLLE PROS OF CHARGES AGAINST TRANSFEROR - LICENSE SUSPENDED FOR 60 DAYS - NO REMISSION FOR PLEA ENTERED AT HEARING.

In the Matter of Disciplinary Proceedings against Helen Alter Englund 1500 Knickerbocker Avenue Florence Township PO Roebing, N. J. Holder of Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Florence, transferred to Alter's Tavern, Inc. for the same address

CONCLUSIONS AND ORDER

Dimon, Haines and Bunting, Esqs., by John E. Dimon, Esq., Attorneys for Licensees. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

By charges dated May 3, 1966, licensee Englund was charged with permitting acceptance of numbers and horse race bets on the licensed premises on divers dates between June 21 and July 28, 1965, in violation of Rules 6 and 7 of State Regulation No. 20.

When it appeared that the license had been transferred on May 2, 1966 to licensee Alter's Tavern, Inc., supplemental charges alleging the same violations were preferred against it as transferee of the license, pursuant to Rules 1 and 2 of State Regulation No. 16.

At the hearing, the prosecuting attorney for the Division moved to nolle pros the charges against licensee Englund; and licensee Alter's Tavern, Inc. withdrew its not guilty plea and pleaded non vult to the charges against it.

Reports of investigation disclose that George A. Furth, a 50% stockholder and secretary-treasurer of Alter's Tavern, Inc., was employed as a bartender by licensee Englund during the period covered by the charges and that he was apparently fully aware of the occurrence of the alleged unlawful activity.

The motion to nolle pros the charges against licensee Englund is granted and, absent prior record of either licensee, the license of Alter's Tavern, Inc. will be suspended for sixty days (Re B & W Bar, Inc., Bulletin 1704, Item 4), without remission for the confessive plea entered at the hearing (Re Gatefern, Inc., Bulletin 1679, Item 5).

Accordingly, it is, on this 3d day of January, 1967,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Florence to Alter's Tavern, Inc. for premises 1500 Knickerbocker Avenue, Florence, be and the same is hereby suspended for sixty (60) days, commencing at 7:00 a.m. Monday, January 9, 1967, and terminating at 7:00 a.m. Friday, March 10, 1967.

JOSEPH P. LORDI, DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 55 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Chester Zaleski t/a 10th Avenue Tavern 350 Tenth Avenue Paterson, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-131, issued by the Board of Alcoholic Beverage Control for the City of Paterson

Samuel Raffaello, Esq., Attorney for Licensee. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to charges alleging that (1) on Sunday, September 18, 1966, he sold a four-fifth quart bottle of whiskey for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, and (2) in his current application for license, he partially failed to disclose his prior record of license suspension, in violation of R.S. 33:1-25.

Licensee has a previous record of suspension of license by the Director for ten days effective January 15, 1962, for sale in violation of State Regulation No. 38 (Re Zaleski, Bulletin 1434, Item 7), non-disclosure of which being the subject of the second charge, and by the municipal issuing authority for thirty days effective May 31, 1965, for local hours violation, hindering investigation and working while intoxicated.

The prior record of two suspensions of license for hours violations within the past five years considered, the license will be suspended on the first charge for forty-five days (Re Russo, Bulletin 1697, Item 4) and on the second charge for ten days (Re DiDonato's Bowling Center, Bulletin 1681, Item 4) or a total of fifty-five days, with remission of five days for the plea entered, leaving a net suspension of fifty days.

Accordingly, it is, on this 29th day of December, 1966,

ORDERED that Plenary Retail Consumption License C-131, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Chester Zaleski, t/a 10th Avenue Tavern, for premises 350 Tenth Avenue, Paterson, be and the same is hereby suspended for fifty (50) days, commencing at 3:00 a.m. Thursday, January 5, 1967, and terminating at 3:00 a.m. Friday, February 24, 1967.

JOSEPH P. LORDI DIRECTOR

6. MORAL TURPITUDE - POSSESSION OF MARIJUANA - CONVICTION HELD TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.

Re: Eligibility No. 753

Applicant seeks an advisory opinion as to whether or not he is eligible to be associated with the alcoholic beverage industry in this State in view of his conviction of a crime.

Applicant's criminal record discloses that on December 12, 1960 he was fined \$25.00 in a local magistrate's court for assault and battery and that on October 29, 1965, following a plea of guilty in the Somerset County Court for possession of marijuana, he was sentenced to serve two to three years in New Jersey State Prison and paroled on November 8, 1966.

At the hearing held herein applicant (29 years old) testified that he is a musician; that X, a member of a band in which he played a saxophone, introduced him to marijuana; that on occasions he had smoked a marijuana cigarette given to him by X; that thereafter he obtained employment with another band and met Y, a member thereof; that after numerous requests by Y, he had agreed to purchase marijuana for him; that he communicated with X and obtained the telephone number of B, X's supplier; that on March 24 and March 31, 1965 he bought a bag of marijuana from B's agent for \$25.00; that he had advanced the payments for Y; that he delivered the first of said purchases to Y upon receipt of which Y reimbursed him; that on March 31, 1965 he was arrested in possession of his second purchase and was thereby unable to make delivery to Y.

Applicant further testified that he had performed afore-said services as an accommodation for Y and that he thought Y might give him enough for one cigarette from the second purchase.

The crime of unlawful possession of marijuana may or may not involve moral turpitude. Where aggravating circumstances appear it has been held that such crime involves moral turpitude. Re Elig. No. 695, Bulletin 1391, Item 3.

Based on the charge, the guilty plea, the sentence of the court and the background facts (trafficking in marijuana) as testified by the applicant, it is my opinion the crime of which applicant was convicted on October 29, 1965 involves the element of moral turpitude.

Under the circumstances, I recommend that applicant be advised that (1) in the opinion of the Director, he has been convicted of a crime involving moral turpitude; (2) the Alcoholic Beverage Law of this State (R.S. 33:1-25) provides that no license of any class shall be issued to a person convicted of a crime involving moral turpitude, and (3) R.S. 33:1-26 and Rule 1 of State Regulation No. 13 provide that no licensee shall employ or have connected with him, in any business capacity whatsoever, a person so disqualified.

I. Edward Amada,  
Attorney

Approved:

Joseph P. Lordi  
Director

Dated: January 4, 1967

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

In the Matter of Disciplinary Proceedings against  
 Maesm, Inc.  
 t/a Maesm Tavern  
 258 Johnston Avenue  
 Jersey City, N. J.,  
 Holder of Plenary Retail Consumption License C-431, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.  
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CONCLUSIONS AND ORDER

Licensee, by Eva Petrick, Secretary, Pro se  
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control  
 BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on November 4, 1966 it sold a pint bottle of whiskey for off-premises consumption during hours prohibited by Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Director for ten days effective July 26, 1965, for similar violation. Re Maesm, Inc., Bulletin 1634, 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 Alsto Enterprises, Inc., Bulletin 1686, Item 5.

Accordingly, it is, on this 3rd day of January 1967,

ORDERED that Plenary Retail Consumption License C-431, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Maesm, Inc., t/a Maesm Tavern, for premises 258 Johnston Avenue, Jersey City, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, January 9, 1967, and terminating at 2 a.m. Friday, February 3, 1967.

JOSEPH P. LORDI  
 DIRECTOR



9. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

PALACE BAR, INC. )  
t/a Palace Bar )  
1100 Springwood Avenue )  
Asbury Park, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-44, issued by the City Council of the City of Asbury Park. )

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Philip Newman, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

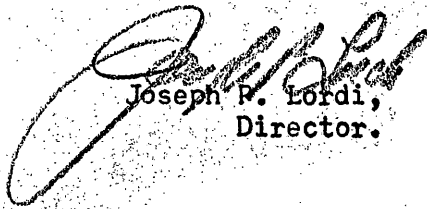
Licensee pleads non vult to a charge alleging that on November 12, 1966, it permitted removal from the licensed premises of an opened pint bottle of gin during hours prohibited by Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Director for fifteen days effective March 3, 1958 (Re Palace Bar, Inc., Bulletin 1218, Item 4) and by the municipal issuing authority for ten days effective September 20, 1966 both for violation of State Regulation No. 38.

The prior record of suspension of license for similar violation in 1965 within the past five years and in 1958 more than five but less than ten years ago considered, the license will be suspended for thirty-five days, with remission of five days for the plea entered, leaving a net suspension of thirty days. Re Coleman, Bulletin 1641, Item 4.

Accordingly, it is, on this 4th day of January, 1967,

ORDERED that Plenary Retail Consumption License C-44, issued by the City Council of the City of Asbury Park to Palace Bar, Inc., t/a Palace Bar, for premises 1100 Springwood Avenue, Asbury Park, be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m. Wednesday, January 11, 1967, and terminating at 3:00 a.m. Friday, February 10, 1967.

  
Joseph R. Lordi,  
Director.