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

BULLETIN 1155 MARCH 11, 1957.

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1. APPELLATE DECISIONS - 315 PARK AVE., INC. v. PATERSON AND GOLDBERG; MEER v. PATERSON AND GOLDBERG.

315 PARK AVE., INC.,
Appellant,
-vs-
BOARD OF ALCOHOLIC BEVERAGE CONTROL FOR THE CITY OF PATERSON, and DAVID GOLDBERG,
Respondents.

NADHIM E. MEER,
Appellant,
-vs-
BOARD OF ALCOHOLIC BEVERAGE CONTROL FOR THE CITY OF PATERSON, and DAVID GOLDBERG,
Respondents.

CONCLUSIONS AND ORDER

Burton B. Wiener, Esq., Attorney for Appellant 315 Park Ave., Inc.
Saul M. Mann, Esq., Attorney for Appellant Nadhim E. Meer.
James D. Ward, Esq., by Joseph R. Brumale, Esq., Attorney for Respondent Board of Alcoholic Beverage Control.
Jacob G. Goldfarb, Esq., Attorney for Respondent David Goldberg.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

"These appeals, consolidated for hearing and determination, were taken from the action of respondent Board in approving by a 2-to-1 vote an application for transfer of a plenary retail consumption license from Cornelius Timmerman to David Goldberg and from premises 390 Union Avenue to 307 Park Avenue, Paterson.

"The petitions of appeal contend, in substance, that (1) the neighborhood wherein the proposed premises is located is residential in nature, (2) there are presently sufficient outlets to serve the needs and convenience of the residents therein, (3) the property in the said neighborhood will depreciate in value, and (4) the respondent Board abused its discretion in voting for said transfer.

"The matter herein was heard *de novo*, pursuant to Rule 6 of State Regulation No. 15.

"During the course of the hearing it was alleged by the attorney for appellant Meer that Cornelius Timmerman, the transferor of said license, was not living at the time the Board acted on the transfer in question. By stipulation of the attorneys for the respective parties it was agreed that said Cornelius Timmerman had died at 6:00 p.m. on August 8, 1956 and that the meeting of respondent Board at which the transfer was approved took place after 8:00 p.m. on said day. It was also stipulated that the members of respondent Board had no knowledge that Cornelius Timmerman had died prior to their action.

"A liquor license confers a special privilege upon the holder thereof. Death instantly terminates the privilege just as effectively as a revocation. The rights conferred by a license are intimately personal and do not survive death. R. S. 33:1-26 expressly provides that no one except the licensee himself shall exercise the rights and privileges of a license and that under no circumstances is a license or rights thereunder to be deemed property subject to inheritance.

"The Alcoholic Beverage Law, however, makes it possible to revive the license for one purpose, notwithstanding the death of the licensee, for it provides that in case of death the issuing authority may in its discretion extend the license for a limited time, not exceeding its term, to the Executor or Administrator of the deceased licensee. The revival is thus limited to the single purpose of reissuing it to the personal representative of the deceased if the issuing authority sees fit. (See Re Brennan, Bulletin 113, Item 1.)

"Thus, under the circumstances appearing in the instant matters, I recommend that the action of the respondent Board be reversed. In view of the foregoing recommendation it will be unnecessary at the present time to pass on the grounds urged for reversal by appellants in their petitions of appeal."

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulation No. 15.

After carefully considering the record in this case, I agree with the conclusions in the Hearer's Report and adopt them as my conclusions herein. Hence, I shall reverse the action of respondent Board.

Accordingly, it is, on this 14th day of January, 1957,

ORDERED that the action of the respondent Board be and the same is hereby reversed.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - SHENISE v. JEFFERSON TOWNSHIP.

ARTHUR B. SHENISE, trading as ART'S TAVERN,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF JEFFERSON,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Sidney Simandl, Esq., Attorney for Appellant.
Schenck, Price, Smith & King, Esqs., by Alten W. Read, Esq., Attorneys for Respondent.
William Gelfond, Esq., Attorney for Objectors.

BY THE DIRECTOR:

This is an appeal from respondent's action on May 21, 1956, whereby it denied appellant's application for a transfer of his plenary retail consumption license (for the 1955-56 licensing year) from premises at Hopper's Corner and County

Road #69 to premises to be constructed at County Road #69 and Maple Avenue, Oak Ridge, Jefferson Township.

The minutes of the meeting held by respondent on May 21, 1956, disclose that Committeeman Edwin Riker moved that the application in question be denied on the ground that "the new location was less than a mile from the Milton Inn Tavern and a violation of Jefferson Township Ordinance No. 79." Committeeman Riker and Committeeman Norman Bott voted in favor of said motion, and Mayor Wilbur S. Willis did not vote. It further appears that a public hearing on said application had previously been held by respondent on May 15, 1956. Ordinance No. 79 of the Township of Jefferson was adopted April 5, 1954, and reads as follows:

"In addition to the limitation as to the number of licenses and transfers to be permitted, no transfer of a presently existing license shall be granted from its present location to a newly constructed or heretofore unlicensed premises, unless the premises to which the transferee desires to transfer shall be at least one mile from any other presently established licensed premises."

The petition of appeal herein alleges, in substance, that the action of respondent was erroneous because (1) the distance from the nearest entrance of Marsh's Tavern (also known as Milton Inn Tavern) to the nearest entrance to the premises sought to be licensed, measured in the normal way that a pedestrian would properly walk, is at least one mile; (2) the ordinance in question is discriminatory, unreasonable and confiscatory, and (3) the action of respondent was not carefully considered and decided on the evidence presented nor was the same decided on a measurement made in accordance with the request of appellant's attorney and the attorney for the Township.

The evidence herein discloses that, for a period of approximately ten years, appellant held a plenary retail consumption license for the premises at Hopper's Corner and County Road #69. Approximately 300 feet from said premises and on the opposite side of County Road #69 at its intersection with Sparta Road is Marsh's Tavern. Appellant was unable to obtain a renewal of his lease on the Hopper's Corner property at its expiration on April 16, 1956. He then purchased a plot of ground at County Road #69 and Maple Avenue, obtained a building permit and began erection of a building to be used for tavern purposes. At the hearing Mayor Willis testified that, acting as an individual, he had informed appellant as he was "starting work there" that, in his opinion, appellant's new premises were beyond a mile from Marsh's Tavern. Appellant testified that, at the time of hearing, his new building was not completed but that he had already spent a substantial sum of money in purchasing the property and starting the erection of the building. Mrs. Shenise testified that the premises to which the transfer is sought are located near Moose Lake, and that her husband intends to operate a restaurant and bar and grill.

There is a considerable amount of testimony in the case as to the exact distance between the entrance to Marsh's Tavern and the entrance to the new premises being erected by appellant. It appears that appellant engaged the services of Raymond Sharp (who, incidentally, is the Township Engineer) to make said

measurements, and a diagram prepared by Mr. Sharp and introduced into evidence shows that the distance between the two entrances, as measured by him, is 5,301 feet. On the other hand, a diagram prepared by George W. Rude, Civil Engineer and Surveyor (who was employed by Mr. Distasi, the owner of the property at Hopper's Corner and County Road #69), indicates that the distance between the entrance to Marsh's Tavern and the entrance to the premises being erected by appellant is 5,115 feet.

The Hearer's Report, dated August 20, 1956, deemed Mr. Rude's measurement correct and recommended affirmance of respondent's denial on the ground that its grant of the transfer would have been in violation of Ordinance No. 79. Exceptions were taken to the Hearer's Report (Rule 14, State Regulation No. 15) and oral argument thereon was heard by me on October 9, 1956.

Although the evidence on the point is conflicting, it may well be true that the nearest entrance to Marsh's Tavern is slightly short of one mile from the nearest entrance to appellant's proposed premises as measured pursuant to the method set forth in R. S. 33:1-76 with respect to distance from a church or school to premises sought to be licensed -- the method of measurement employed in numerous decisions including Aldarelli v. Asbury Park, Bulletin 186, Item 12; Rapetti v. Atlantic City, Bulletin 627, Item 7; Ted's Bar & Grill, Inc. v. Newark et al., Bulletin 841, Item 8, aff'd in Hopkins v. Newark et als., 4 N. J. Super. 484; Newark Tavern Assn., Inc. v. Newark et al., Bulletin 910, Item 4. However, in view of the pertinent conflicting evidence and in the light of more basic considerations hereinafter appearing, I make no finding with respect to the specific distance.

The recognized proper purpose of distance-between-premises ordinances is not to protect licensees against too-close competition but, in the public good, to prevent too great a concentration of licensed places in one neighborhood. (Re The Great Atlantic & Pacific Tea Company, Bulletin 1092, Item 1.)

On August 12, 1953, respondent's attorney wrote to the Division as follows:

"The Township of Jefferson...is plagued by too many taverns and retail consumption licenses. It is endeavoring to reduce the number and presently has a limiting ordinance in effect, dated October 15, 1945. This ordinance divides the Township into two districts and in Section 12 provides that so long as the outstanding licenses exceed 10, no new license would be issued or transferred subject to the limitations therein set forth. Section 14 of the ordinance provided that in the second district the limitation would be 3 licenses, subject to the same conditions. The problem of transfers is continuing to cause trouble and the Committee wishes to add further qualification that no transfer of a presently existing license will be granted to a newly constructed or heretofore unlicensed premises unless the premises to which the transferee desires to transfer shall be at least one mile from any other presently established licensed premises.

"The Committee is very firmly of the opinion that unless some strict limitations are imposed it will be many years before they will be able to reduce the number of licensed

places to the statutory minimum based on population which, of course, is even more stringent than the ordinance limitations.

"No decision has been found by your Department which would bar the Committee from imposing these limitations. Will you not, at your convenience, advise if a properly drawn ordinance embodying the same is submitted to you for your approval such approval will be forthcoming."

The Division's responsive letter of August 28, 1953 reads as follows:

"...The pertinent ordinance provisions [which stem from the ordinance adopted July 6, 1937 and Ordinance #22, adopted May 20, 1940, as amended by Ordinance #32, adopted June 21, 1943] are found in Sections 11 through 14 of the ordinance adopted November 5, 1945, as amended by Ordinance #47, adopted February 16, 1948, and Ordinance #48, adopted April 5, 1948.

"Serious question as to the validity of municipal regulations effecting discrimination in favor of particular persons or property and purporting, in effect, to prohibit all place-to-place transfers [in derogation of R. S. 33:1-26] was raised in the late Commissioner Burnett's letter, to you, dated March 2, 1940 [Re Schenck, Bulletin 389, Item 12, copy enclosed]. The serious question and other questions raised in the enclosure were brought to your renewed attention in this writer's letter of August 13, 1945 when the 1945 ordinance was in the works.

"Furthermore, as stated by the late Commissioner Burnett in Kirschhoff v. Millville and Beckett, Bulletin 254, Item 8:

'Indubitably, reduction of the number of licenses in a municipality, when too many are deemed to be outstanding therein, is a praiseworthy end. But this objective may not be achieved in complete disregard of individual interests. Conway v. Haddon, Bulletin 251, Item 3. Licensees invest time, effort and money in their licensed businesses. The statute provides for a method whereby, through transfer of license within the sound discretion of the issuing authority, they may sell their businesses and may remove them to new sites. In fairness, they should not be denied this privilege and be forced to the alternative of remaining in their liquor business willy-nilly and at the same location or else surrendering their investment, merely because the municipal authorities erred in previously granting too many licenses and now wish to correct that mistake by destroying transferability....'

"A number of New Jersey municipalities have adopted distance-between-premises ordinances which, in nearly all instances were urged and sponsored by the licensees. The minimal distance, exceptions and other provisions vary greatly in the different municipal regulations on the subject. Most minimal distances are in feet -- Jersey City's being 500 feet; Newark's 750 feet. As a practical matter these regulations effect a substantial

stricture when many licenses are outstanding and desirable locations are few. The one-mile minimal distance mentioned in your letter is far, indeed, in this connection. It might effect a virtual freeze as to presently licensed premises.

"We have had a lot of experience with distance-between-premises ordinances. Generally, they have been troublesome. Often we come upon efforts to amend where the circumstances indicate that the purpose is to take care of a particular favorably considered licensee who finds himself boxed by the ordinance stricture.

"With or without a distance-between-premises ordinance an appeal from municipal denial of a transfer application will be considered and determined on the merits. Of course the burden of proof will be on the appellant but if the municipal action is found unreasonable the denial will be reversed...."

Presumably, the grant of appellant's application would not have contravened the Township's geographical limitation ordinance.

Except as provided in its Section 6 (R. S. 33:1-12.18) and Section 8 (R. S. 33:1-12.20), Section 2 of the State Limitation Law (R. S. 33:1-12.14) prohibits issuance of a <u>new</u> plenary retail consumption license in a municipality <u>unless</u> and until the number of such licenses existing in the municipality is fewer than one for each 1,000 of its population as shown by the latest Federal Census. Jefferson Township's 1950 Federal census population is only 2,744 and, not counting the Shenise license, thirty-four (34) plenary retail consumption licenses are issued and outstanding there; but the State Limitation Law's Section 4 (R. S. 33:1-12.16) provides that "Nothing in this act shall prevent the renewal of licenses existing on the effective date of this act, <u>or the transfer of such licenses or the renewal of licenses so transferred</u>." (Underscoring added.) Thus in specifically excepting transfers of existing licenses the State Limitation Law does not support but, instead, controverts any contention in favor of a regulation attempting to do away with existing licenses by virtually and practically destroying their transferability.

Appellant first acquired his license by transfer, from Frank and Irene Distasi, on April 16, 1946. The Distasis leased the premises to appellant for a term of 10 years, commencing April 16, 1946. The lease included the following paragraph:

"On the termination of the tenancy for any reason, the tenant agrees to consent in writing to the transfer of said license to the landlord and agrees that he will not assign said license to any other person without the written consent of the Lessor."

The quoted portion of the lease agreement is against public policy and is unenforceable. (<u>Walsh v. Bradley</u>, 121 N. J. Eq. 359; <u>Rawlins. v. Trevethan</u>, 139 N. J. Eq. 226.)

Mr. Distasi, the principal objector to grant of appellant's application herein denied, refused to extend the lease on any terms.

Three persons who reside in the neighborhood of the proposed premises testified, at the hearing, in objection to the transfer sought. They expressed the opinion that there are too many licensed places in the Township; that they wish to keep the section "residential;" and that there is no public need for a license in the area. One of the three objected, also, on the ground that "the road is very narrow and it is a hazard." The evidence reveals that there are numerous other business places in the immediate vicinity of appellant's proposed premises. At the hearing, on recross-examination of appellant's wife, the attorney appearing for the Township asked: "Do you think there is a public need and necessity of a license in Jefferson Township when there are thirty-five licenses?" The Hearer interposed the significant comment: "This is not a new license, you know. This is a transfer of an existing license." Furthermore, and also significant, is the fact that the proposed premises are on a well-traveled road; that they are far from other licensed premises; that the Township's summer population, as estimated by the Mayor, is around 25,000; and, as testified to by appellant's wife: "... there is a lake right in back, Moose Lake. We are going to have a restaurant and a bar and grill. It is not just a bar. There certainly should be need for food up there. That is what they need." Considering all the evidence there is at least a fair showing of public convenience and necessity.

Unlike the Township's Ordinance No. 79, most distance-between-licenses ordinances contain, in fairness, a provision permitting transfer to premises within a designated distance from the premises from which transfer is sought. When appellant learned that his lease would not be renewed he had difficulty finding a new location before he purchased the plot at County Road #69 and Maple Avenue. Appellant testified that he was unable to find any other place within a mile from existing licensed premises: "That is the only place on the traveled road. The rest of them would be in the woods." The Township issued appellant a building permit for the premises in question. From premises across the road from Marsh's Tavern (some 300 feet away) appellant sought transfer to premises approximately one mile from Marsh's Tavern, and apart from Marsh's Tavern the nearest otherlicensed premises are well over a mile away. The Mayor measured the distance, by car, from Marsh's Tavern to appellant's proposed place. The distance "just topped a mile" and he so advised appellant shortly after construction had been started.

As noted, respondent Committee's sole ground of denial was that the transfer would contravene Ordinance No. 79. I find the ordinance to be unreasonable and inapplicable with respect to the transfer sought and the denial thereof will be reversed. (Cf. Re The Great Atlantic & Pacific Tea Company, supra.)

The 1955-56 license year has expired and appellant has not filed application for 1956-57 renewal. Furthermore, a recent inspection reveals that it may take from one to two months' work to complete the premises at County Road #69 and Maple Avenue. If appellant were seeking a new license for premises other than those at County Road #69 and Maple Avenue I should not hesitate to make a favorable determination, upon appellant's request therefor, under the State Limitation Law's Section 6 (R. S. 33:1-12.18) if application for such new license were filed within thirty days from the date hereof (see VanHouten v. Deal and Tetti, Re Case No. 3, Bulletin 895, Item 1). However, under the pertinent order of reversal herein,

the transfer of appellant's license will be deemed effective as of June 30, 1956, for the sole purpose of permitting grant of his application for 1956-57 renewal thereof. Furthermore, under the circumstances and pursuant to the powers granted to me by R. S. 33:1-39, I shall enter an order permitting appellant to file application for 1956-57 license, for the premises at County Road #69 and Maple Avenue, and such application shall be deemed an application for renewal if filed within thirty days from the date hereof (see Wardach and Jaskulski v. Camden and Oreb, Bulletin 487, Item 4; and cf. Harty v. Delaware Township, Re Case No. 2, Bulletin 722, Item 5) and respondent shall grant such renewal application as hereinafter set forth.

Accordingly, it is, on this 17th day of January, 1957,

ORDERED that respondent's action denying appellant's application for transfer of his 1955-56 License C-30 to premises at County Road #69 and Maple Avenue be and the same is hereby reversed; and it is further

ORDERED that any application filed by appellant within thirty days from the date hereof with respondent for premises at County Road #69 and Maple Avenue, Oak Ridge, Jefferson Township, shall be deemed a renewal application, and that respondent grant such renewal application subject to the special condition that the premises at County Road #69 and Maple Avenue are first duly completed in keeping with the plans and specifications filed with the application for transfer.

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - THE GRAND UNION COMPANY v. WEST ORANGE.

THE GRAND UNION COMPANY, Appellant, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE TOWN OF WEST ORANGE, Respondent.	ON APPEAL CONCLUSIONS AND ORDER

Hanlon, Argeris, Crahay & Smock, Esqs., by William F. Hanlon, Esq., Attorneys for Appellant.
William E. Kennedy, Esq., Attorney for Respondent.
Philip Singer, Esq., Attorney for an Objector.
Leonard Brass, Esq., Attorney for Essex County Retail Liquor Stores Association.
Samuel Moskowitz, Esq., Attorney for New Jersey Retail Liquor Stores Association.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

"This is an appeal from respondent's action whereby on July 14, 1956, it denied appellant's application for a person-to-person and place-to-place transfer of Plenary Retail Distribution License D-9 from Philip Yuttal to appellant and from premises at 26 Washington Street to premises located at 20 South Valley Road, in the Town of West Orange. The premises in question are separated by a distance of approximately two miles.

"The petition of appeal herein alleges that the action of respondent was erroneous in that it was arbitrary, discriminatory, unreasonable, capricious and contrary to law.

"The answer alleges that a consideration of the testimony given and the evidence presented at the hearing before respondent failed to disclose any need for an additional plenary retail distribution license in the neighborhood to which the appellant seeks the transfer and further states that said neighborhood is adequately served by establishments presently holding licenses.

"The hearing herein was heard de novo pursuant to Rule 6 of State Regulation No. 15 and thereafter memoranda of facts and law were filed by the attorneys for the respective parties hereto and the objectors.

"At the hearing appellant produced the Town Clerk who testified that the population of West Orange is between 34,000 and 35,000; that 16 plenary retail distribution and 57 plenary retail consumption licenses have been issued in the Town; that the nearest licensed package store is located about 1500 feet from the proposed site of transfer which is in a well developed residential area known as the First Ward; that on September 11, 1956, after the denial of appellant's application, respondent transferred a plenary retail distribution license from within a few doors of appellant's property to a shopping center under construction in the Fourth Ward, a distance of approximately two miles; and that appellant's site is near the boundary line of the City of Orange. Appellant also produced appellant's District Sales Manager who testified that he made a survey of customers' needs by asking 'a few customers that would come into the store if there was the necessity for us to carry such an item (liquor) and, of course, on all occasions they agreed that it would make it a lot easier and more convenient on their part and it would be a one stop shopping'. On cross-examination he stated that he made no inquiry as to the number of licenses in the neighborhood and that he didn't know the difference between the types of licenses.

"Respondent produced a member of its three-man Excise Board who testified that he and another member conducted the hearing on appellant's application for transfer of the license in question and 'after much consideration and much testimony and an investigation of our own, we felt that there was not sufficient need demonstrated for another application (license) in that area'; that there are fifteen or eighteen liquor establishments in the area considering those in the City of Orange; and that the area is adequately served. Three objectors who reside within a half mile of the proposed site and a licensee who conducts his business about 1500 feet therefrom testified that there is no need for another license in the area. They further corroborated the testimony of the Excise Board member respecting the number of available liquor outlets in the vicinity.

"It has long been established that the number of licenses which should be permitted in any particular area and the determination as to whether or not a license will be transferred to a particular location are matters within the sound discretion of the issuing authority and that the Director's function on appeal is not to substitute his opinion for that of the issuing authority but rather to determine if proper cause exists for its opinion and, if so, to affirm, irrespective of his personal views. Rothman v. Hamilton, Bulletin 1091, Item 1; Food Fair Stores of New Jersey, Inc. v. Union, Bulletin 1129, Item 1.

"It has also been established that respondent may consider the availability of licensed premises in an adjacent municipality in determining the public need or necessity for a license at a particular location within its borders. Richardson v. Montgomery, Bulletin 898, Item 1.

"Having considered the facts and circumstances of the instant case and having perused the memoranda submitted by counsel, I find that the burden resting upon appellant to establish that respondent's action was an unreasonable and arbitrary exercise of its discretion has not been sustained. I recommend, therefore, that respondent's action be affirmed."

After the Hearer filed his report the attorneys for appellant, pursuant to Rule 14 of State Regulation No. 15, filed written exceptions thereto and written argument thereon. The attorney for respondent, who had filed a memorandum of law prior to the filing of the Hearer's Report, filed no answering argument and Philip Singer, Esq., attorney for an objector, who had also filed a memorandum prior to the Hearer's Report, advised me that he did not intend to file an answering argument "since I have already made my position clear both at the hearing and in my trial memorandum."

I have carefully considered the entire record in this case, including the Hearer's Report and the exceptions and written argument filed on behalf of appellant. I agree with the statement of facts and conclusions of law set forth in the Hearer's Report and adopt them as my conclusions herein. Hence I shall affirm respondent's action.

Accordingly, it is, on this 22nd day of January, 1957,

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

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against MONETTI CONSTRUCTION CO. T/a MONETTI'S BAR & GRILL 148 Palm Street Newark 6, N. J., Holder of Plenary Retail Consumption License C-856, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Michael L. Mango, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On December 26, 1956, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Pvt. Frank ---, U. S. Army, age 18, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

"2. On Wednesday, December 26, 1956, between 10:30 p.m. and 11:05 p.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of three separate orders of alcoholic beverages at retail in their original containers for consumption off your licensed premises; in violation of Rule 1 of State Regulation No. 38."

The file herein discloses that on Wednesday, December 26, 1956, at about 10:10 p.m., three ABC agents entered the licensed premises, took seats at the bar and observed that the premises were occupied by a bartender and nine patrons, one of whom appeared to be a minor. On the bar in front of the apparent minor stood an empty whiskey shot-glass, a bottle of whiskey and a highball-glass about half-full. Thereafter, between the hours of 10:30 p.m. and 11:00 p.m., the agents saw the bartender make two individual sales of alcoholic beverages in their original containers for off-premises consumption. About ten minutes before 11:00 p.m. the agents also saw the youth consume part of another mixed drink of whiskey and ginger ale prepared and served to him by the bartender who accepted fifty cents in payment of the same. At about 11:00 p.m. one of the agents asked the bartender for a couple of quart-bottles of beer for home consumption. The bartender thereupon went to the cooler where he obtained two quart-bottles of Rheingold beer, wrapped them in a paper bag, handed the package to the agent and accepted ninety cents in payment thereof. The agent then left the premises and re-entered immediately. At this point the three agents identified themselves to the bartender who gave his name as Nicholas Donofrio, admitted serving the minor the alcoholic beverages and making the aforementioned illegal off-premises sales. Upon interrogation the minor stated he was eighteen years of age; that he was served two mixed drinks of whiskey and ginger ale by the aforesaid bartender, and that no one questioned him about his age. Thereafter the minor gave a sworn written statement incorporating the aforesaid facts.

Defendant has no prior record. I shall suspend its license for fifteen days on Charge 1 (Re Mondelli, Bulletin 1142, Item 8) and for an additional fifteen days on Charge 2 (Re Czaplicki, Bulletin 1137, Item 3), making a total suspension of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 9th day of January, 1957,

ORDERED that Plenary Retail Consumption License C-856, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Monetti Construction Co., t/a Monetti's Bar & Grill, for premises 148 Palm Street, Newark, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. January 14, 1957, and terminating at 2:00 a.m. February 8, 1957.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - CLUB LICENSE - FALSE ANSWERS IN APPLICATION FOR LICENSE - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE; CANCELLATION PROCEEDINGS - LICENSE IMPROVIDENTLY ISSUED - LICENSE CANCELLED.

In the Matter of Disciplinary Proceedings against

INTERNATIONAL WORKER'S ORDER #3083
52 Mereline Avenue
West Paterson
PO RD 1, Little Falls, N. J.,

Holder of Club License CB-1, issued by the Borough Council of the Borough of West Paterson.

CONCLUSIONS AND ORDER

Irving I. Rubin, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant, while not entering a formal plea, advised that it did not wish to contest either the disciplinary charges or the cancellation proceedings. The disciplinary charges read:

"1. In your application dated June 8, 1956, filed with the West Paterson Borough Council, upon which you obtained your current club license, you falsely stated 'No' in answer to Question 29, which asks: 'Has any individual, partnership, corporation or association, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact the Hilltop Pleasure Club had such interest in that it was the real and beneficial owner of the licensed business and received all of the proceeds therefrom after payment of the alcoholic beverage bills; said false statement being in violation of R.S. 33:1-25.

"2. From about August 15, 1955 until the present time, you knowingly aided and abetted the Hilltop Pleasure Club to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive club licenses; in violation of R. S. 33:1-52.

"3. In your aforesaid application, you falsely stated 'Yes' in answer to Question 20, which asks: 'Has the club been in exclusive continuous possession and use of club quarters for at least three (3) years immediately prior to this application?', whereas in truth and fact you had not been in exclusive possession and use of club quarters since about August 15, 1955; said false statement being in violation of R. S. 33:1-25."

The ground upon which the cancellation proceedings is based reads:

"Said license was improvidently issued in violation of R. S. 33:1-12(5) and Rule 2 of State Regulation No. 7 in that, at the time of issuance of such license and prior thereto, you were not a bona fide club."

The file in this case discloses that the International Worker's Order #3083 was organized January 23, 1936 and obtained a club license for the above premises on July 1, 1937 and a renewal thereof in each successive year. Applications for the same were made to the local issuing authority. About four years ago, members of the subject organization discontinued its normal operations (paying dues, holding regular meetings and electing officers) and formed a club known as Russian National Home. In April or May of 1955 some of the members of the defendant club formed the Hilltop Pleasure Club. On August 15, 1955, the latter club, by virtue of a written lease executed by the International Worker's Order #3083 and the Russian National Mutual Aid Society, as landlords, took possession of the building on which the licensed business is conducted. Since August 15, 1955, part of the proceeds resulting from the operation of the licensed business was deposited in the bank account of the Russian National Home, aforesaid, against which checks were drawn to pay for the alcoholic beverages sold on the licensed premises. The balance of the proceeds was turned over to the treasurer of the Hilltop Pleasure Club. On June 14, 1956 the licensee filed an application for a renewal of its license for the succeeding year. Said application was signed by Wassel Ospevich, as secretary and treasurer, who states that he does not hold said offices but signed as such merely to obtain a renewal of the license. Basil Dvoretsky, whose name appears in the application as president of the defendant club, says he actually is not its president but only signed in that capacity to obtain a renewal of the license for the 1956-57 period.

It is quite apparent from the foregoing that the defendant is not the owner and operator of the licensed business. I, therefore, shall cancel the license now held by the defendant. Re Eight Aces, Bulletin 1072, Item 5.

In view of the result herein, it is unnecessary to fix a penalty for the violations set forth in the disciplinary charges. Re Cape May County Tuna Club, Bulletin 1115, Item 2.

Accordingly, it is, on this 7th day of January, 1957,

ORDERED that Club License CB-1, issued by the Borough Council of the Borough of West Paterson to International Worker's Order #3083, 52 Mereline Avenue, West Paterson, be and the same is hereby cancelled and declared null and void, effective immediately.

WILLIAM HOWE DAVIS
Director.

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

In the Matter of Disciplinary Proceedings against MAE LAVERTY COHN T/a MIDWAY BAR 504 Main Street Paterson, N. J., Holder of Plenary Retail Consumption License C-321, issued by the Board of Alcoholic Beverage Control for the City of Paterson.	CONCLUSIONS AND ORDER

Mae Laverty Cohn, Defendant-licensee, Pro se.
Dora P. Rothschild, appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that on Friday, December 21, 1956, she sold during prohibited hours alcoholic beverages in their original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

The file herein discloses that on Friday, December 21, 1956 at about 8:20 a.m., an ABC agent entered the licensed premises which was occupied by four patrons, a bartender and cashier. While ordering a second glass of beer, the agent also asked the bartender for a pint of Schenley Whiskey. The bartender, after a short conversation with the cashier, husband of the licensee, handed the agent a pint bottle of Schenley whiskey, requested him to "hide" it and then deposited $2.85 (the proceeds of the sale) in the cash register. At about 8:30 a.m., the agent placed the aforesaid pint bottle in his pocket and left the premises to which he immediately returned with another agent. Both agents identified themselves to the cashier and the bartender who stated that he made the aforesaid illegal sale with the approval of the cashier.

Defendant has no prior adjudicated record. I shall suspend her license for fifteen days. Re DiMattia, Bulletin 1141, Item 10. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 21st day of January, 1957,

ORDERED that Plenary Retail Consumption License C-321, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Mae Laverty Cohn, t/a Midway Bar, 504 Main Street, Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. January 28, 1957, and terminating at 3:00 a.m. February 7, 1957.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary Proceedings against

MAE LAVERTY COHN
T/a MIDWAY BAR
504 Main Street
Paterson, N. J.,

Holder of Plenary Retail Consumption License C-321, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

ORDER

BY THE DIRECTOR:

An Order having been entered herein on January 21, 1957, suspending defendant's license for a period of ten days commencing at 3:00 a.m. January 28, 1957, and terminating at 3:00 a.m. February 7, 1957; and

Application being made by said defendant to postpone the effective date of said suspension to February 11, 1957; and good cause appearing for the granting of said application,

It is, on this 24th day of January, 1957,

ORDERED that the suspension of ten days heretofore imposed in this proceeding, instead of commencing at 3:00 a.m. January 28, 1957, shall, in lieu thereof, commence at 3:00 a.m. February 11, 1957, and terminate at 3:00 a.m. February 21, 1957.

WILLIAM HOWE DAVIS
Director.

8. STATE LICENSES - NEW APPLICATION FILED.

National Beer Distributors
18-20 Mellon Street
Trenton, N. J.
Application filed March 6, 1957 for place-to-place transfer to include additional space on State Beverage Distributor's License SBD-21.

WILLIAM HOWE DAVIS
Director.

9. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - SALE FOR OFF-PREMISES CONSUMPTION IN OTHER THAN ORIGINAL CONTAINER - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

NATHAN ROSMAN & JACK ROSMAN
642 Communipaw Avenue
Jersey City, N. J.,

Holders of Plenary Retail Consumption License C-262, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS AND ORDER

Nathan Rosman and Jack Rosman, Defendant-licensees, Pro se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

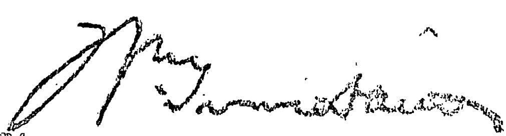
Defendants have pleaded non vult to charges alleging that (1) they sold an alcoholic beverage in its original container during prohibited hours for off-premises consumption, in violation of Rule 1 of State Regulation No. 38; (2) they sold an alcoholic beverage in other than its original container for off-premises consumption in violation of R. S. 33:1-2; (3) they sold alcoholic beverages at a price below the established minimum therefor, in violation of Rule 5 of State Regulation No. 30.

The file herein discloses that on Friday, August 17, 1956, ABC agents entered defendants' licensed premises and at about 11:20 p.m., purchased from the bartender two 4/5 quart bottles of wine to take out. One of the bottles had the seal broken and the bartender so advised the agent before making the sale. The agents paid $2.20 for the articles in question (the minimum price for which was $2.26), and left with the merchandise. Returning to the licensed premises, the agents identified themselves to the bartender who verbally admitted the violations.

Defendants have no prior adjudicated record. Under the circumstances, I shall suspend their license for fifteen days on Charges (1) and (2), cf. Re Doornbos, Bulletin 1118, Item 8, and ten days on Charge (3), Re Berberian, Bulletin 1130, Item 5, making a total of twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 8th day of January, 1957,

ORDERED that Plenary Retail Consumption License C-262, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Nathan Rosman & Jack Rosman, 642 Communipaw Avenue, Jersey City, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. January 15, 1957, and terminating at 2:00 a.m. February 4, 1957.



New Jersey State Library

William Howe Davis
Director.