Deputy Director Stockburger

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

BULLETIN 1755 September 28, 1967

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ITEM

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Department of Law and Public Safety
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1100 Raymond Blvd. Newark, N.J. 07102

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1. APPELLATE DECISIONS - DELROZ, INC. v. WEST ORANGE.

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| Cases Nos. 3213, 3214<br>Delroz, Inc. t/a Twins Lounge,<br><br>Appellant,<br><br>v.<br><br>Board of Alcoholic Beverage Control of the Town of West Orange,<br><br>Respondent. | ) | ON APPEAL<br>CONCLUSIONS<br>AND ORDER |

Rinaldo and Rinaldo, Esqs., by Matthew T. Rinaldo, Esq., Attorneys for Appellant.
Louis Lando, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Two separate appeals were instituted by appellant against the Town Council of the Town of West Orange (acting as the Board of Alcoholic Beverage Control) from consecutive suspensions of license for sixty days each, commencing September 28, 1966, after it was found guilty of a charge of sale of alcoholic beverages to a minor on June 27, 1966, and its plea of non vult to another charge of sale of alcoholic beverages to another minor on August 30, 1966. Since the issues are interrelated, involve the same parties and were resolved at one hearing date, the appeals have been consolidated for hearing and will be the subject of a single report.

By orders dated September 23, 1966, respondent's orders of suspension were stayed pending the determination of these appeals and until the further order of the Director.

In its petitions of appeal, appellant alleged that the action of respondent as to the first charge was erroneous because (a) the decision was contrary to the weight of the evidence, (b) it was based upon "hearsay and other improper evidence", (c) appellant was not afforded "a proper hearing" and (d) the penalty imposed was "inordinately harsh and excessive and arbitrary." With respect to the second charge, appellant alleged that the action of respondent was erroneous because (a) appellant "erroneously and mistakenly entered a plea of non vult or nolo contendere or guilty ... and requests that it be permitted to retract same", (b) the decision was contrary to the weight of the evidence, (c) appellant did not have a proper hearing, and (d) the penalty imposed was "inordinately harsh and excessive and arbitrary."

In separate answers to the two petitions respondent admitted the jurisdictional facts contained therein and defended as follows: With respect to the first petition it denied the

substantive allegations. With respect to the second petition it stated that the plea (of non vult or guilty) "was made with the advice of counsel."

These were appeals de novo with full opportunity for counsel to be heard, to present evidence under oath and cross-examine witnesses pursuant to Rule 6 of State Regulation No. 15.

I

I shall first consider the jurisdictional question raised in the second petition of appeal wherein appellant asserts that its plea to the charge of alleged sale on August 30 was "erroneously and mistakenly" entered and requests permission to retract the plea. The record discloses the following:

Appellant was represented at the hearing before respondent on September 13, 1966 by Joseph D'Alessio, an attorney-at-law. According to the minutes of the said hearing Mr. D'Alessio stated that he had looked over the charge relating to the alleged sale and service to a minor on August 30 (which was the subject of the second charge) "and looked at the minor involved and although there was a misinterpretation [apparently meaning misrepresentation] of age by the minor and an affidavit signed by the minor, he didn't look anywhere near twenty-one and therefore he stated he would like to change the plea from not guilty to guilty." The Board accepted the confessive plea to the second charge.

At this plenary de novo hearing appellant's present attorney argued that the plea was "mistakenly and erroneously" entered at the September 13 hearing because there was insufficient time for deliberation with counsel; that appellant's counsel "superimposed his will upon that of the licensee and did not adequately discuss the matter with the licensee prior to the entry of the plea."

In support of those contentions Robert S. Weinstein, president of the corporate appellant, gave the following account: He originally entered a plea of not guilty to both charges and was present at the hearing before respondent when his attorney made the statement set forth hereinabove. He did not intercede because "He is my lawyer so I figured he knew right." He explained that Mr. D'Alessio informed him that he was going to make that statement because "They're going to give you a break on the second case if you plead guilty to it." He agreed to the entry of the said confessive plea because he thought he would get leniency.

After carefully considering the facts with respect to this allegation, I am persuaded that appellant, through its authorized representative, knowingly and understandingly entered the confessive plea to the second charge. It is inconceivable to me that Mr. D'Alessio would have made that statement without the full direction and approval of his client. Weinstein was seated next to him and heard him represent that the plea was entered by authority of Weinstein, and with his consent. If Weinstein conceived that D'Alessio was acting without authority, it would have been the natural thing for him to stand up and voice his disapproval. My impression of Weinstein as he testified before me was that he is an intelligent and articulate witness who fully understood and acquiesced in the actions of his attorney.

Furthermore, Mr. D'Alessio was not called by appellant as a witness at this appeal hearing, although there is no evidence to suggest that he was unavailable; nor was there indication that any effort was made to obtain from D'Alessio any corroboration of appellant's contention.

During the pendency of the hearing on appeal appellant's attorney informed the Director that letter applications for a re-hearing on this charge had been made to the respondent on October 22 and November 30, 1966. Again, on January 6, 1967, in a letter requesting a further adjournment of the appeal hearing, appellant's attorney stated that the respondent had not responded to or acted on his request for such re-hearing. It must therefore be assumed that the respondent refused to reconsider the said applications. Since this matter is now being considered on appeal, such infirmity is cured and appellant is not prejudiced thereby.

The controlling principle upon such application was set forth in In re 17 Club, Inc., 26 N.J. Super. 43, 52, involving an appeal from the action of the Director in refusing permission to a licensee to retract its plea of non vult after revocation of its license. The court stated:

> "The allowance by the Director of a formal hearing on the petition to reinaugurate the proceedings was essentially a discretionary matter. Cf. Clark v. State, 57 N.J.L. 489 (Sup. Ct. 1895), affirmed 58 N.J.L. 383 (E. & A. 1895); State v. Piracci, 14 N.J. Super. 319 (App.Div. 1951); State v. Pometti, 23 N.J. Super. 516 (App. Div. 1952). Our courts do not after the imposition of sentence interfere with the denial of a motion to withdraw a plea of nolo contendere unless it is necessary to do so to correct manifest injustice ...."

The same principle is applicable to such actions by a local issuing authority. Schepis v. Paterson, Bulletin 1469, Item 2.

In any event, there is not a scintilla of evidence in this case to indicate that Mr. D'Alessio superimposed his will upon the licensee as alleged. Accordingly I conclude that the action of respondent in accepting the plea entered and imposing the sixty-day suspension based thereon was in all respects reasonable and an exercise of its proper discretion. The request to retract the plea should be denied.

II

In order to be fully satisfied and convinced that, notwithstanding my recommendation hereinabove, substantial justice was accorded appellant in the imposition of the suspension complained of, respondent was directed to have the witnesses then present at the appeal hearing testify with respect to the second charge. In the best tradition of fair play, it was sought to ascertain whether there was sufficient evidence, even on the basis of a not guilty plea, to sustain the charge and whether appellant knowingly entered the plea of guilty. Appellant "struck out" on both counts.

Michael --- (a 19-year-old minor) testified that on August 30, 1966, he purchased two six-packs and a quart of

Schaefer beer at the licensed premises. He was served the same by Robert Rutledge (a bartender on duty) whom the minor identified as the person who had served him on at least a half-dozen prior occasions. He denied being asked about his age or being required to sign any written representation of age at that or any prior time. On an earlier occasion he was requested to produce some type of identification and believed he showed a draft card.

He further explained that on the date in question, upon leaving the tavern, he was apprehended by local police officers and returned in their company to the tavern. Rutledge was questioned about the sale and readily admitted selling the alcoholic beverages to him.

Police officer John DiMarsico testified that he was patrolling the area in the immediate vicinity of the licensed premises in a police car, accompanied by Officer Medvin, when he observed the minor emerge from the tavern carrying packages. He further observed that the minor appeared to be nervous and placed the packages in brush across the street from the tavern. Upon questioning the minor, he ascertained that he had just purchased alcoholic beverages at appellant's tavern and returned with the minor to the tavern where he questioned Rutledge. Rutledge admitted selling the beer to this minor.

Robert Rutledge, testifying on behalf of appellant, admitted the sale of alcoholic beverages to the minor on August 30 and stated that he recalled this minor's being present in the said premises on one prior occasion. At that time he believed that the minor was questioned by Weinstein but was not present during that conversation; nor did Weinstein advise him of the substance of the conversation. He also admitted that the minor never produced any identification or proof of age to him at any time.

Robert Weinstein, testifying with reference to the incident on August 30, gave the following account: He first saw this minor some time in March or the first week in April when Michael came to the tavern and sought the purchase of liquor. Weinstein requested identification and, not being satisifed with examining the minor's driver's license, had him sign a form representing that he was of age.

He explained that he did not intend to appeal this matter and therefore threw away the form; that he does not have the representation of age signed by the minor, nor did he produce it. He further stated that since that time he served this minor on a number of occasions but was not present on August 30 when the incident took place.

I am satisfied from an evaluation of the testimony herein and find as a fact that there was a sale of alcoholic beverages to a minor on August 30, in violation of Rule 1 of State Regulation No. 20. Appellant's witness Rutledge has admitted the sale and has also acknowledged that no written representation of age was made by the minor, in violation of R.S. 33:1-77. See Special Note in explanation of Rule 1 of State Regulation No. 20 (p. 85 of the 1967 pamphlet Rules and Regulations).

Additionally, I have had the opportunity to observe this minor as he testified before me and I fully subscribe to the statement of appellant's counsel made at the hearing before

respondent when he acknowledged that the minor did not look "anywhere near twenty-one." No one could have mistaken this minor for a person of statutory maturity. Hence, on the record I conclude that appellant is guilty of the second charge.

III

In support of the charge alleging sale to a minor on June 27, 1966, Joe --- testified as follows: He is eighteen years of age and on June 27 drove to the licensed premises with several companions. Entering the premises alone, he purchased two containers of beer for off-premises consumption. Upon emerging from the tavern and walking toward the car, he was intercepted by a local police officer who confiscated the beer. Some time thereafter Robert Rutledge (a bartender employed by appellant) visited him at his place of employment and induced him to sign a statement to the effect that he was over twenty-one years of age. This alleged statement was not produced or offered in evidence. The minor added that he was never requested to sign any statement at the licensed premises at any time, including the date on which he allegedly purchased the beer.

Anthony X. Zullo (a local police officer) testified that, while on duty on the evening of June 27, 1966 in the company of Officer Giazullo, he observed the minor Joe --- emerge from the subject licensed premises carrying several containers of beer and proceed toward a vehicle in which five other teenagers from fourteen to sixteen years of age were seated. Upon confrontation, Joe admitted that he had purchased beer at appellant's tavern. Joe and the five young minors were taken to police headquarters where Joe admitted he was eighteen years of age.

Zullo returned to the tavern and informed Weinstein of the violation. When he requested the name of the bartender, Weinstein stated that he did not know the full name or address of the bartender other than that he was known as "Bucky" and that "the bartender went home."

Robert Rutledge, testifying on behalf of appellant, stated that he had seen the minor Joe at the licensed premises prior to June 27 but that he had never served him alcoholic beverages. He denied selling any beer to the minor and added that the only thing he sold him, if anything, was a bag of potato chips on that date. He did not sell beer to this minor because he knew where the boy was employed and that he was in fact a minor. With reference to the incident of the minor's place of employment, Rutledge denied having the minor sign any statement but did tell his employer that the minor "was trying to get us closed up."

Robert Weinstein testified that he is the president of the corporate appellant which has held a license at these premises since March 1966. He occasionally worked as a bartender and is the manager of the premises. He remembered the minor Joe coming into the tavern on several occasions but he was refused any liquor because he could not establish his age. On June 27 Rutledge was on duty as a bartender and was relieved by this witness at about 11:30 p.m. The minor came into the premises and bought a couple of bags of potato chips but was not sold any alcoholic beverages.

I have carefully examined and evaluated the testimony herein and am inclined to the conviction that the version of

what occurred given by the minor stands in a better light than that of appellant's witnesses. The minor is a person of rather limited intelligence, who often appeared confused, especially under vigorous cross examination. Nevertheless, the dominant thrust of his testimony was unshaken, namely, that on June 27, 1966 he purchased containers of beer at appellant's premises and was not required to make any written representation concerning his age. His testimony was fortified by the corroborative testimony of the police officer who saw him emerge with the containers. These empirical facts clearly sustain the charge.

The testimony of appellant's witnesses lacks conviction, and I must frankly comment that in my opinion Weinstein has not made a virtue of candor.

I find that the guilt of appellant on this charge has been established by a fair preponderance of the credible evidence, indeed by substantial evidence. I therefore conclude that appellant has not met the burden of establishing that the action of respondent in finding it guilty of the first charge was erroneous.

IV

In both petitions of appeal appellant argues that the penalty imposed was excessive and unreasonable and thus constitutes an abuse of discretion. As noted hereinabove, respondent suspended appellant's license for two periods of suspension of sixty days, to run consecutively.

Preliminary to discussing this matter, it should be emphasized that a liquor license is a mere privilege. Paul v. Gloucester County, 50 N.J.L. 585; Mazza v. Cavicchia, 15 N.J. 498 (1954).

The prevention of the sale of alcoholic beverages to minors not only justifies but necessitates the most rigid control. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502; In re Schneider, 12 N.J. Super. 449; Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373. Under the Alcoholic Beverage Law, local issuing authorities are invested with the authority to suspend or revoke liquor licenses, after hearing, for certain enumerated violations, including that charged herein. R.S. 33:1-31. The penalty to be imposed in disciplinary proceedings instituted by a municipal issuing authority rests within its sound discretion in the first instance, and the power of the Director to reduce the penalty on appeal must be sparingly exercised and only with the greatest caution. Harrison Wine and Liquor Company, Inc. v. Harrison, Bulletin 1296, Item 2; Benedetti v. Trenton, Bulletin 1040, Item 1, aff'd 35 N.J. Super. 30. Penalties may vary in different municipalities and according to the circumstances surrounding the offenses. Pawelek v. Sayreville, Bulletin 456, Item 10. The fact that a penalty may be considered relatively severe does not of itself justify reduction on appeal. The Ebony Corporation et al. v. Trenton, Bulletin 958, Item 1.

It seems clear to me that respondent takes a very serious view, and quite properly, of teenage drinking and the sale and service of alcoholic beverages to minors on licensed premises. Where, as here, two similar offenses occurred within a period of two months, it was not unreasonable to impose the foregoing penalties. In fact respondent may well have decided that appellant's conduct justified revocation. Cf. In re 17 Club, Inc.,

supra. In any event, the record considered, it cannot be convincingly maintained that, as a matter of substantial justice, appellant has been prejudiced in the circumstances presented.

In the light of the broad discretion vested in a local issuing authority, I conclude that the action of respondent was not the result of intentional discrimination or other arbitrary action.

Accordingly, it is my conviction that the said penalties were not so severe as to form a basis for modification on appeal.

It is therefore recommended that an order be entered affirming respondent's actions, dismissing the appeals and fixing the effective dates for the suspensions imposed by respondent, stayed pending the entry of an order herein.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, exceptions to the Hearer's report with supportive argument were filed by the attorney for the appellant, and answer to the said exceptions was thereupon filed by the attorney for respondent.

In the said exceptions, appellant's attorney argues that the Hearer abused his discretion by disallowing a retraction of a plea of non vult to the charge made by the appellant at the hearing before the respondent with reference to the alleged sale of alcoholic beverages to a minor on August 30, 1966.

My reading of the record satisfies me that the plea was entered on behalf of the appellant and with its consent by its attorney, Mr. Joseph D'Alessio. Mr. D'Alessio acted upon the express instructions of Robert F. Weinstein, president of the corporate appellant, and I am not persuaded that Weinstein was either confused or under any misapprehension at the time of the entry of the said plea.

In the language of the court in In re 17 Club, Inc., 26 N.J.Super. 43, 51:

> "It is not apparent that any microbe of deception, coercion, or unfairness on the part of the representatives of the Division wormed its way into the premeditations of those acting for the licensee. Cf State v. Miller, 16 N.J.Super. 251 (App.Div. 1951); State v. Lenkowski, 24 N.J.Super. 444 (App.Div. 1953). To the contrary, it is manifest that the course ultimately pursued by the licensee had been duly premeditated and freely chosen."

An further:

> "Our courts do not after the imposition of sentence interfere with the denial of a motion to withdraw a plea of nolo contendere unless it is necessary to do so to correct manifest injustice."

I do not find any injustice manifested by or reflected in the factual complex herein.

Notwithstanding, however, the Hearer permitted testimony to be adduced with respect to the said charge and found, after a fair consideration of all the evidence, that the appellant was, in fact, guilty thereof.

The appellant further takes exception to the alleged failure of respondent to produce certain witnesses with reference to the charge relating to the sale to a minor on June 27, 1966. In support of this charge, the respondent produced the minor who allegedly purchased the alcoholic beverages and a police officer who observed the minor emerge from the subject licensed premises carrying containers of beer. The respondent did not consider it necessary to elicit the testimony of the other teenage companions of the said minor, who were seated in a motor vehicle parked in the vicinity of the said premises during this incident.

Appellant's attorney argues that the respondent's failure to produce these witnesses establishes an inference that the "testimony elicited from the eye witnesses would have contradicted the testimony of the respondent's witnesses." He adds that the "applicable principle of law is that where a party has a witness or witnesses available and where they possess peculiar and particular knowledge of the facts essential to a party's case, in this instance five eye witnesses, the failure to call such witnesses gives rise to an inference that, if called, the testimony elicited would be unfavorable to said party, i.e., he could not contradict testimony of the appellant's witnesses. Jacoby vs. Jacoby 6 N.J. Misc. 86; Re Cork 'N Bottle, Inc., Bulletin 1232, Item 3."

Appellant's attorney clearly misconceived both the above stated principle of law and its pertinent applicability. In Cork 'N Bottle, Inc., the licensee elected to present no evidence whatsoever in contradiction of the facts alleged by various witnesses produced by the Division. The then Director stated:

> "A presumption arises by the failure to explain or refute testimony involving the defendant's licensed premises that the defendant abstained from calling witnesses because of the fact that such witnesses could not contradict said testimony given by the Division's witnesses. The rule of law appears to be that where a party has a witness or witnesses available and where they possess peculiar knowledge concerning 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 thereform would be unfavorable to said party."

Obviously, this principle relates to the failure of a party to call witnesses to refute the testimony of his adversary, and does not have any relevance to the testimony which, in the opinion of the respondent, would be merely cumulative.

The appellant further asserts that the Hearer committed error in refusing to allow testimony concerning any criminal complaints, penalties or proceedings pending against the minor for his alleged participation in the purchase of alcoholic beverages on June 27, 1966. He reasons that this questioning was "relevant to the credibility of the witness Joe which was sharply in dispute."

The Hearer properly refused the offer of such testimony for the reason that the outcome of criminal proceedings relating to witnesses is irrelevant and immaterial in disciplinary proceedings. These proceedings are directed against the licensee, and are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252; Re Costanzo, Bulletin 1599, Item 3.

Thus, whereas in a criminal case guilt must be established beyond a reasonable doubt, the establishment of guilt in disciplinary proceedings requires proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373. It is apparent, therefore, that the outcome of criminal proceedings bears no relationship to and is of no evidentiary concern in the consideration of this appeal. So far as the credibility of the witness is concerned, that may be affected by the proof of a criminal conviction, which has not even been suggested as being present herein.

Appellant additionally takes exception to the Hearer's finding that the suspension imposed by the respondent was reasonable under the circumstances and, therefore, did not constitute an abuse of discretion. In subscribing to the Hearer's findings in this respect, it is well to set forth the language of the court in Butler Oak Tavern v. Division of Alcoholic Beverage Control, supra:

> "The Director is not inalterably bound by any doctrine of stare decisis in the imposition of penalties. The liquor control laws and regulations must be administered in the light of changing conditions. Prior measures of enforcement may have failed their mark. Recurrent instances of particular violations must be dealt with accordingly. The penalty imposed upon appellant may reflect an administrative attitude that more stringent enforcement is necessary."

As the Hearer noted, the power of the Director to reduce or modify penalties imposed by a municipal issuing authority has always been, and will always be, sparingly exercised, and only with the greatest caution. Chancery Lane, Inc. v. Trenton, Bulletin 1673, Item 1; Russo v. Lincoln Park, Bulletin 1177, Item 7; cf. In re Larsen, 17 N.J.Super. 564, and cases cited therein.

I have examined the other exceptions set forth by the appellant's attorney and find that they either relate to factual matters which have been fully considered by the Hearer, or are without merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, the exceptions thereto with supportive argument filed on behalf of the appellant, and the answer to the exceptions filed by the respondent, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 31st day of July, 1967,

ORDERED that the action of respondent in each case be and the same is hereby affirmed, and that the appeals herein be and the same are hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-37, issued by the Board of Alcoholic Beverage Control of the Town of West Orange to Delroz, Inc., t/a Twins Lounge, for premises 31-33 Harrison Street, West Orange, be and the same is hereby suspended for one hundred twenty (120) days, commencing at 2:00 a.m. Monday, August 7, 1967, and terminating at 2:00 a.m. Tuesday, December 5, 1967.

JOSEPH P. LORDI
DIRECTOR

2. APPELLATE DECISIONS - CHATHAMS AND OEHME v. WALLINGTON.

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| Ruthie K. Chathams and Gunter P. Oehme, t/a Ruthie and Paul's Hideaway Bar, | ) | |
| Appellants, | ) | ON APPEAL CONCLUSIONS AND ORDER |
| v. | ) | |
| Borough Council of the Borough of Wallington, | ) | |
| Respondent. | ) | |

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Robert P. Swartz, Esq., Attorney for Appellants.
Robert D. Gruen, Esq., by Morton R. Covitz, 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 Borough Council of the Borough of Wallington (hereinafter Council) wherein by resolution dated March 22, 1967 it unanimously denied an application for person-to-person transfer from Gunter P. Oehme (one of the appellants) to the appellants of a plenary retail consumption licensed for premises 19 Main Avenue, Wallington.

In their petition of appeal appellants allege that the action of the Council was "erroneous in that the denial was arbitrary, capricious and unreasonable."

The answer of the respondent admits the jurisdictional facts set forth in the petition and defends its action as (1) a "proper exercise of discretion based upon valid reasons" and (2) because the appellants "failed to qualify for the transfer of the aforesaid license."

This is an appeal de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to be heard, to present evidence under oath and cross-examine witnesses.

The transcript reflects the following: Ruthie K. Chathams is a plenary retail consumption licensee of premises located in Clifton. Both appellants were stockholders and principal officers in Ruthie and Paul's Hideaway Bar, Inc., which made application for a person-to-person transfer from the appellant Gunter Oehme for the subject premises. In

October 1966 this application was considered by the Council and was denied. Mrs. Chathams testified that the reasons given for the denial were that (1) Questions 34 and 41 of the application were answered falsely in that they failed to state that Mrs. Chathams' license in Clifton was suspended by the local issuing authority upon her plea of guilty of June 25, 1962 to a charge of unlawful sale for off-premises consumption; (2) the Chief of Police recommended the denial of the said application. Mrs. Chathams then stated that she transferred her stock in the corporation without any monetary consideration to a Mr. Jaigua, who is apparently going to hold the stock for her until the present application is approved.

Appellants then filed the present application as a partnership and, after a hearing before Council, the application for transfer of this partnership was also denied for the reason that the Chief of Police similarly recommended such denial to the Council. Mrs. Chathams further testified that, except for the suspension of her license in 1962, she has no further adjudicated record of liquor law violations and her license in Clifton has been renewed to this date.

Stanley Nowak (a police captain of the City of Clifton), testifying in behalf of the appellants, stated that Mrs. Chathams was a co-licensee on March 21, 1962 when her license was suspended in that community. Since that time he has recommended approval of the renewal of her liquor license. On cross examination he admitted that on seven or eight occasions incidents came to the attention of the Clifton Police Department with reference to Ruthie's tavern operated by the licensee in the City of Clifton, and he documented details of those incidents. On several of these occasions the police responded to the personal summons by Mrs. Chathams to her premises. It should be noted that on at least one occasion (on June 17, 1964) a stabbing occurred in her tavern, as a result of which two of the participants were charged with atrocious assault and battery. Other incidents related to complaints of noisy parties, fights and disturbances, and her employees were specifically warned about a recurrence of such activities.

Captain Edward Janiec, of the Wallington Police Department, testified that he has personally made an investigation of the record of the licensed premises operated by Mrs. Chathams in Clifton, and it was his opinion that, based on the "facts in their file of the occasions and severity of the repetition", he felt that this transfer application should not be granted. He added that there is a possibility of some of the undesirable customers of Mrs. Chathams coming to these premises in Wallington, and "we tried to prohibit that" and "primarily the constant visitation by the police to any given tavern where there are rebuttals of inconsistencies, and if they are coming into our town out of another town that is one hard and fast rule we try to live up to."

Before analyzing the testimony herein, it might be well to set forth certain operative principles which serve as guidelines in determining whether or not a transfer, just as in the original issuance of a license, should be granted. The transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4. No one has a right to demand a license. A license

is a special privilege granted to the few, denied to the many. Paul v. Gloucester County, 50 N.J.L. 585. In considering the subject of licenses, the Supreme Court, in Blanck v. Magnolia, 38 N.J. 484, 490, stated:

> "The right, most extensive in nature, to regulate the field of intoxicating liquors is within the police power of the State, and this power is practically limitless. Borough of Fanwood v. Rocco, 33 N.J. 404, 411 (1960); Meehan v. Board of Excise Commissioners, 73 N.J.L. 382, 386 (Sup. Ct. 1906), affirmed 75 N.J.L. 557 (E. & A. 1908). From the earliest history of our State, the sale of intoxicating liquor has been dealt with by the Legislature in an exceptional way. Because of its sui generis nature and significance, it is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other administrative agencies, cannot be indiscriminately applied. Paul v. Gloucester County, 50 N.J.L. 585, 595 (E. & A. 1888). This field is peculiarly subject to strict governmental control. Franklin Stores Co. v. Burnett, 120 N.J.L. 596, 598 (Sup.Ct. 1938). Consistent therewith is the Legislature's mandate that 'This chapter is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed.' R.S. 33:1-73.
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> * * * * *
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> "The test in the establishment and issuance of liquor licenses is whether the public good requires it. Paul v. Gloucester County, supra, 50 N.J.L. 585. In Zicherman v. Driscoll, 133 N.J.L. 586, 588 (Sup. Ct. 1946), the court said: 'The common interest of the general public should be the guide post in the issuing and renewing of licenses.'"

It is entirely competent for a municipal issuing authority to confine its selection of licensees to those who have clearly demonstrated that they are worthy to receive the privilege of a license and its determination should be given considerable weight on appeal. Eana, Inc. v. Pleasantville, Bulletin 1024, Item 2; Clark v. West Orange, Bulletin 631, Item 7.

The Council had an opportunity to observe the demeanor of Mrs. Chathams as she testified, and I have had a similar opportunity to observe her demeanor and to evaluate her credibility and veracity. I am not persuaded that she was entirely forthright, or that she evidenced good faith. For example, at one point she states that she is a fifty per cent. owner of the corporation that owns the building at which these premises are located but that, subsequent to the denial of the application of the corporation, she divested herself of all of the stock without any consideration therefor. She was then asked:

> "Q What did he pay you for the stock?
> A I gave it to him.
> Q He agreed to give it back?
> A No, he didn't."

This is contradicted by the following:

"Q If you are successful in the transfer of this license to yourself are you going to get your stock back?
A Sure."

And further:

"Q How are you going to get it back?
A I ask him to give it back. I don't have to have it back.
Q Do you expect to get it back?
A I ask him."

The witness also admits that she did not answer truthfully Question 34 referred to hereinabove, stating that she just made a mistake in answering that question. I, however, know that, even in the present application, she falsely answered Question 41 which reads as follows:

"Have you or has any person mentioned in this application ever had any interest, directly or indirectly, in any alcoholic beverage license or permit in New Jersey or any other state which was surrendered, suspended, revoked or cancelled? _____ If so, state details with respect to each surrender, suspension, revocation or cancellation" (emphasis added),

by answering:

"Clifton, New Jersey surrendered by Ruthie K. Chathams voluntarily."

It is also significant to note that the appellants are presently operating under the trade name Ruthie and Paul's Hideaway Bar, although obviously Mrs. Chathams (whose first name is Ruthie) is not a co-licensee. Her explanation that the appellants can use any trade name, while perhaps technically correct, impressed me, as it must have impressed the Council, as being a transparent attempt to create a false image to the public. Although she is not a co-licensee, she admits that she is a very active participant in the business -- signs checks, orders merchandise, pays bills -- and her name is obviously on the premises holding out to the public as Ruthie and Paul's Tavern.

As the attorney for the Council points out, her operation in Clifton leaves much to be desired. While it is true that she has an adjudicated record of only one violation, the fact is that there have been numerous incidents which required the summoning of and action by the police.

This Borough has had its own problems common to many municipalities in the strict enforcement of taverns and, in the exercise of its discretion, felt that it did not want this type of operation extended to this community. The Council felt mandated to weigh very carefully and with abundant scrutiny the worthiness of its applicants, operating on the traditionally sound principle that "an ounce of prevention is worth a pound of cure." Thus it determined that the association of Mrs. Chathams with a license in Wallington would be inimical to the best interests of the community. Such determination should not be disturbed by the Director in the absence of evidence which clearly indicates abuse or arbitrariness. In an appeal of this kind it must be shown that such refusal was the result of intentional discrimination or other arbitrary

action. Such was not established here. Cf. Federici's Hideaway, Inc. v. Belleville, Bulletin 1595, Item 2; Chestnut Wines & Liquor, Inc. v. West Orange, Bulletin 1740, Item 1. As Justice Field stated in Crowley v. Christensen, 137 U.S. 86, 92:

> "...There is no inherent right in a citizen to thus sell intoxicating liquors by retail .... As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority...."

It is clear that the Council was not impressed with the appellants both because of the false answers in the application and also because of the record of Mrs. Chathams' operations of her licensed premises in Clifton. The facts compel the conclusion that the Council acted circumspectly and with full regard for the best interests of the community in denying this application. I further find that the appellants have failed to establish that the action of the Council was arbitrary or unreasonable.

It is therefore recommended that the Council's action in denying appellants' application for said transfer be affirmed, and that the appeal herein be dismissed.

## Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the conclusions and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 28th day of July 1967,

ORDERED that the action of respondent Borough Council in denying the transfer of the appellants' license 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 - GAMBLING (HORSE RACE AND NUMBERS BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 70 DAYS, LESS 5 FOR PLEA.

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| In the Matter of Disciplinary Proceedings against | ) | |
| Stephen Galamb, Jr.<br>t/a Galamb's Tavern<br>27-33 Dayton Avenue<br>Passaic, N. J. | ) | CONCLUSIONS AND ORDER |
| Holder of Plenary Retail Consumption License C-23 issued by the Board of Commissioners of the City of Passaic | ) | |

Diamond & Karas, Esqs., by Lawrence Diamond, Esq., Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) and (2) on May 31 and June 2, 1967, he permitted the acceptance of horse race and numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for ten days effective November 5, 1962, for sale of alcoholic beverages during hours prohibited by State Regulation No. 38, and for twenty days effective March 2, 1965, for possession of alcoholic beverages not truly labeled. Re Galamb, Bulletin 1485, Item 10; Bulletin 1609, Item 8.

The license will be suspended for sixty days (Re Farkas, Bulletin 1727, Item 5), to which will be added ten days by reason of the record of suspensions of license for two dissimilar violations within the past five years (Re Bozzone, Bulletin 1577, Item 8), or a total of seventy days, with remission of five days for the plea entered, leaving a net suspension of sixty-five days.

Accordingly, it is, on this 1st day of August, 1967,

ORDERED that Plenary Retail Consumption License C-23, issued by the Board of Commissioners of the City of Passaic to Stephen Galamb, Jr., t/a Galamb's Tavern, for premises 27-33 Dayton Avenue, Passaic, be and the same is hereby suspended for sixty-five (65) days, commencing at 3:00 a.m. Tuesday, August 8, 1967, and terminating at 3:00 a.m. Thursday, October 12, 1967.

JOSEPH P. LORDI
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

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| In the Matter of Disciplinary Proceedings against | ) |
| The 331 Broad Ave. Corp.<br>331 Broad Avenue<br>Palisades Park, N. J. | ) CONCLUSIONS AND ORDER |
| Holder of Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Palisades Park. | ) |

Patrick J. Tansey, Esq., Attorney for Licensee
Leon Chorkavy, Jr., Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on May 2, 1967 it possessed alcoholic beverages in two 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 fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Hrabowecky, Bulletin 1735, Item 6.

Accordingly, it is, on this 7th day of August 1967,

ORDERED that Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Palisades Park to The 331 Broad Ave. Corp., for premises 331 Broad Avenue, Palisades Park, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, August 14, 1967, and terminating at 2 a.m. Thursday, August 24, 1967.

Joseph P. Lordi
Director