

Harold Miller DP
41 Sheffield St.
Jersey STATE, OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 924

FEBRUARY 4, 1952.

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

BULLETIN 924

FEBRUARY 4, 1952.

1. WHOLESALE LICENSEE - ALLEGED DISCRIMINATION BY DISTILLER - PETITION
FOR RELIEF UNDER R. S. 33:1-93.1 ET SEQ. DENIED.

In the Matter of a Petition by)

PHILLIP HOFFMAN)

T/a THE HOFFMAN IMPORT AND)

DISTRIBUTING COMPANY)

34 Exchange Place)

Jersey City, N. J.,)

ON PETITION
CONCLUSIONS

Pursuant to the Provisions of)

R. S. 33:1-93.1 to R. S. 33:1-93.5)

inclusive (P.L. 1942, c. 264).)

Drenk & Walton, Esqs., by George H. Walton, Esq. and Louis B. LeDuc,
Esq., Attorneys for Petitioner.

Osborne, Cornish & Scheck, Esqs., by Emanuel P. Scheck, Esq.,
Attorneys for Park & Tilford Distillers
Corporation.

BY THE DIRECTOR:

The petitioner seeks relief under the provisions of P.L. 1942, c. 264 (R.S. 33:1-93.1 to 93.5) which prohibits discrimination by distillers in the sale of alcoholic beverages to wholesale licensees.

The essential facts are undisputed and may be simply stated. For more than ten years prior to 1949, Park & Tilford Import Corporation, a distiller of alcoholic beverages, predecessor of the present respondent, Park & Tilford Distillers Corporation, sold its products directly to retailers in this state pursuant to a New Jersey whole-sale license. During that period its distribution covered the entire state, with the exception of one other wholesaler located in Monmouth County. Difficulties encountered in effecting efficient deliveries of its products caused the respondent in 1949 to appoint several wholesalers as its representatives in the central, southern and western portions of the state. It retained for itself, however, the exclusive distribution of its products in the northerly counties.

In December 1949, the respondent authorized the petitioner to handle the sale of its products in Hudson County. This authorization was never reduced to writing. It is conceded that no time period was fixed for its duration, and I am satisfied from the evidence that the authorization was on a "trial basis" only. In December 1950, pursuant to a change of policy decided upon by the management of the present respondent, this authorization was cancelled and respondent thereafter refused to honor several orders placed with it by the petitioner. At the same time it also revoked its arrangements with two other wholesalers -- one for Hudson County and the other for Passaic County -- and once again preempted the entire northern portion of the state for itself.

The sole issue is whether the respondent's refusal to sell its products to the petitioner is "arbitrary" within the meaning of R.S. 33:1-93.2.

It may be said, parenthetically, that I am not concerned with the question whether the petitioner may have any remedy in the civil courts against the respondent for any alleged breach of the contractual arrangements between them. That is not within my province. I

am limited by the terms of the statute (R.S. 33:1-93.1 to 93.5) to a determination of whether the "refusal to sell is arbitrary or not". A careful perusal of the record convinces me that the respondent's refusal to sell its products to the petitioner, and other wholesalers similarly situated, emanated from a bona fide decision of its management that its best business policy necessitated that it handle exclusively the distribution of its products in the northerly counties of this state. That is a decision which must be left to the respondent and where, as here, no unlawful discrimination appears against the petitioner and the refusal to sell is motivated as aforesaid, the law affords him no relief at my hands.

Accordingly, it is, on this 4th day of June, 1951,

ORDERED that the petition herein be and the same is hereby dismissed.

ERWIN B. HOCK
Director.

2. COURT DECISIONS - HOFFMAN v. HOCK AND PARK & TILFORD DISTILLERS CORPORATION - ORDER OF DIRECTOR AFFIRMED BY SUPREME COURT.

PHILLIP HOFFMAN, trading as THE
HOFFMAN IMPORT AND DISTRIBUTING
COMPANY,

Plaintiff-Appellant,

-vs-

ERWIN B. HOCK, Director of Alcoholic
Beverage Control, and DIVISION OF ALCO-
HOLIC BEVERAGE CONTROL, DEPARTMENT OF
LAW AND PUBLIC SAFETY, PARK & TILFORD
IMPORT CORPORATION, and PARK & TILFORD
DISTILLERS CORPORATION,

Defendants-Respondents.

Argued November 26, 1951; decided January 21, 1952.

On appeal from an order of the Director of the Division of Alcoholic Beverage Control.

Mr. Louis B. LeDuc argued the cause for the appellant.

Mr. Emanuel P. Scheck argued the cause for the respondent, Park & Tilford Distillers Corporation. Mr. A. H. Cornish on the brief (Messrs. Osborne, Cornish & Scheck, attorneys).

The opinion of the court was delivered by

ACKERSON, J.

The plaintiff, Phillip Hoffman, trading as The Hoffman Import and Distributing Company, is a licensed distributor or wholesaler of alcoholic beverages in New Jersey. He has operated either as a wholesaler or retailer in northern New Jersey since 1933. However, his present business as distributor or wholesaler of liquor under the above mentioned trade name, was begun in Jersey City in 1944. The defendant, Park & Tilford Import Corporation, licensed by New Jersey as a wholesaler and importer of liquor, including nationally advertised brands, was apparently a subsidiary of and the outlet through which the defendant Park & Tilford Distillers Corporation, a licensed

distiller and rectifier of alcoholic beverages in New York, sold and distributed its product in the State of New Jersey. In the summer of 1950, however, the first mentioned corporation was merged with and succeeded by the latter Park & Tilford Distillers Corporation. Accordingly relief in this suit is now sought only against the last named corporation which, although primarily a distiller, is also a licensed distributor of its own product in this State and hereafter we may refer to both corporations generally as Park & Tilford or as the defendant.

In the years from 1937 to 1949 Park & Tilford distributed its own products throughout the state directly to retailers through its own salesmen and not through distributors, jobbers or wholesalers with one exception, a distributor in Monmouth County located at Asbury Park. However, commencing in May, 1949, Park & Tilford began changing this method of direct selling (referred to as a "direct operation") by appointing on a "trial basis" local distributors as its representatives in several areas of the State. At that time it appointed a distributor in Atlantic City to cover the southern end of the State. Later in the same year it appointed two distributors in Trenton for the Mercer County area and in 1950 it appointed a distributor in Phillipsburg to handle the western part of the State in that area. In December, 1949, it authorized the plaintiff, Hoffman, and the Gilhaus Beverage Company to act as its distributors for Hudson County with the understanding that Park & Tilford would also continue direct distribution there by its own salesmen which it proceeded to do. In 1950 the National Wine and Liquor Company was appointed a distributor for Passaic County.

Hoffman's authorization as a distributor was never reduced to writing, no length of time was fixed for its duration and it is conceded that it was only on a "trial basis", although plaintiff maintains that this had reference to sales volume. During the year 1950 plaintiff devoted the major part of his selling effort to the distribution of Park & Tilford's product with the result that some 960 additional accounts were opened up for those products and his total purchases from the defendant in this period amounted to \$308,130.84. Comparison of this figure with the plaintiff's total sales receipts for the year 1950 discloses that he dealt principally in the Park & Tilford product. Nevertheless, Hoffman insists that he lost money in handling it because of initial promotional expenses which loss he expected to make up by profits accruing in subsequent years.

However, in October of 1950, a policy committee of the sales division of the defendant, Park & Tilford, began to reconsider the method of its distribution and decided to return to its former policy of handling its own product in northern New Jersey without the use of other distributors. Accordingly, in December, 1950, the plaintiff was informed that his distributorship would terminate as of December 31, 1950. At approximately the same time the other distributorships which had been authorized in Hudson and Passaic Counties, on a trial basis, were likewise terminated and Park & Tilford thereafter resumed its prior practice of exclusive and direct sale of its product to retailers in the northern counties of the State and to date no wholesaler has been appointed to any of the distributorships so terminated. No reason was given for the abrupt termination of the plaintiff's distributorship except that it was based upon "Company policy" prompted by economical considerations and the desire to get the best possible distribution in the State.

After the termination of his distributorship the plaintiff placed two orders with Park & Tilford for specified quantities of its nationally advertised brands of liquor, the first being accompanied by a check to cover payment. Defendant refused to fill these orders and the check was returned. Thereupon plaintiff instituted

the present proceeding before the Commissioner (now Director) of the Division of Alcoholic Beverage Control for a determination of the question of whether or not the aforesaid refusals to sell were discriminatory and arbitrary within the intendment of Chapter 264 of the Laws of 1942 (N.J.S.A. 33:1-93.1-5), a supplement to the Alcoholic Beverage Act, R.S. 33:1-1 et seq., and if found to be so, then for an order requiring the defendant to fill said orders pursuant to the remedy therein provided. The pertinent provisions of the aforesaid supplement are as follows:

1. There shall be no discrimination in the sale of alcoholic liquors by distillers, importers, and rectifiers of nationally advertised brands of alcoholic liquors to duly licensed wholesalers of alcoholic liquors in this State.

2. In the event any distiller, importer, or rectifier shall refuse to sell to any individual wholesaler any amount of alcoholic liquor or comply with the provisions of this act, then the wholesaler shall petition the Commissioner of Alcoholic Beverage Control setting forth the facts and demanding a hearing thereon to determine whether such refusal to sell is arbitrary or not.

3. If the Commissioner of Alcoholic Beverage Control is satisfied with the ability of the wholesaler to pay for such merchandise as ordered, he shall order the distiller, importer, or rectifier to complete said sale of alcoholic liquor to the wholesaler.

4. In the event the distiller, importer, or rectifier refuses to complete the sale or comply with the terms of the order of the Commissioner, the Commissioner shall issue an order to every licensed wholesaler prohibiting the purchase by such wholesaler of any alcoholic liquor product of the said distiller, importer or rectifier directly or indirectly until there is strict compliance by the distiller, importer, or rectifier with the order of the Commissioner of Alcoholic Beverage Control.

The title of "Commissioner" was changed to "Director" by P. L. 1948, c. 439, sec. 16, p. 1712 (N. J. S. A. 52:17B-16).

After a hearing the Director, on the basis of the facts hereinabove related, concluded that the refusal of Park & Tilford to sell its products to the petitioner, and other wholesalers similarly situated, emanated from a bona fide decision of its management that its best business policy necessitated that it handle exclusively the distribution of its products in the northerly counties of this State. That * * * where, as here, no unlawful discrimination appears against the petitioner and the refusal to sell is motivated as aforesaid, the law affords him no relief at my hands." The Director specifically noted that " * * * the question whether the petitioner may have any remedy in the civil courts against the respondent for any alleged breach of the contractual arrangements between them" was not within his province to decide. Said he, "I am limited by the terms of the statute * * * to a determination of whether the refusal to sell is arbitrary or not".

From this adverse determination the plaintiff appealed to the Appellate Division of the Superior Court and the cause, while there pending, was certified here on our own motion.

The basic problem thus presented is to ascertain whether or not the aforesaid supplementary statute, P.L. 1942, c. 264 (N.J.S.A. 33:1-93.1-5) applies to the factual circumstances hereinabove disclosed so as to entitle plaintiff to an order from the Director requiring the distiller, Park & Tilford, to fill plaintiff's aforesaid orders for liquor. This, of course, requires an inquiry into the intent and scope of the statute and particularly as to the significance of the words "discrimination" and "arbitrary" as they are used therein.

The plaintiff's argument assumes two aspects. First, he contends that the statute itself supplies, without extrinsic aid, the precise meaning of the foregoing words and the offense intended to be inhibited thereby. The argument proceeds by recognizing that Section 1, while providing that "there shall be no discrimination in the sale * * * by distillers, * * to duly licensed wholesalers * * *", nevertheless, supplies no key to the exact bounds intended by the word "discrimination". Plaintiff suggests, however, that the use of the word "arbitrary" in Section 2 supplies the intent that an arbitrary refusal to sell is the "discrimination" mentioned in Section 1, and, while it must still be determined when a refusal to sell is "arbitrary" and when it is not, the master key to this problem is supplied by Section 3 where it is provided that the Director "If * * satisfied with the ability of the wholesaler to pay for such merchandise as ordered, * * * shall order the distiller, * * to complete said sale * * *". Thus, argues the plaintiff, we are supplied with a clear and definitive meaning of what constitutes an "arbitrary" refusal to sell amounting to the "discrimination" prohibited by Section 1 of the statute. This point is summarized in plaintiff's own words as follows: "Knowing that the wholesaler is able to pay for the merchandise ordered, a refusal by the distiller to supply such merchandise is arbitrary, and being arbitrary, constitutes the discrimination forbidden by section 1." It is urged that the objective sought to be achieved by the statute is an unrestricted market for the wholesale distributor in return for the substantial license fee that he pays to the State.

Thus, according to the plaintiff's theory of construction, the ability of the wholesaler to pay for the product ordered becomes the sole test of the obligation of the distiller to supply it -- assuming only that he has the product to sell -- and, when such ability to pay is shown to exist, a refusal to supply such product results automatically in the penalty provided in the Act, regardless of any other factor or consideration involved in the case. Where the supply is limited, plaintiff reads into the statute, by implication, an exception not found therein that an equal allocation of the product on hand must be made among the distributors seeking to buy it.

Such a construction is obviously without merit for it completely overlooks the plain duty placed upon the Director by the Act to determine whether or not a refusal to sell is arbitrary and discriminatory. Obviously, if the ability of the wholesaler to pay were the sole test intended, there would be no element of discrimination to consider nor of arbitrariness to be determined by a hearing and such a requirement would become superfluous. Such an interpretation would therefore violate one of the cardinal rules of statutory construction that full force and effect must be given, if possible, to every word, clause and sentence of a statute. Oldfield v. New Jersey Realty Co., 1 N. J. 63, 68 (1948). A construction that will render any part of a statute inoperative, superfluous or meaningless, is to be avoided. 2 Sutherland, Statutory Construction, 3rd ed., § 4705, p. 339. Viewed in this light the "ability of the wholesaler to pay", mentioned in Section 3 of the statute, is merely an additional requirement to the making of an order for the relief demanded in the event that, under all of the relevant facts, the primary question of arbitrary discrimination, required to be determined by Sections 1 and 2, has been decided in favor of the petitioning wholesaler.

The second or alternate phase of the plaintiff's argument is devoted to the contention that even under the general application of the words "discrimination" and "arbitrary", according to the dictionary and case definition thereof, the acts of the distiller herein complained of fall within the interdiction of the supplementary statute. In so arguing the plaintiff seems to proceed upon the

theory that the Director is clothed by the statute with broad equitable powers to enjoin any unfair, unjust, overbearing or differential treatment by distillers in the distribution of their nationally advertised brand of liquors and to maintain an absolutely free and unrestricted market for wholesalers who may desire to benefit from the good will built up by the distiller of the brand at the cost of such national advertising even though such distiller may choose to act as his own exclusive distributor. Additionally it is contended that the statute is available for the protection of wholesalers who have developed a market for such a brand of liquor. Specifically it is said that in the instant case the defendant's resumption of its former practice of acting as its own exclusive distributor in the specified territory and refusing to continue the sale of its product to the plaintiff, in effect, has resulted in the appropriation of plaintiff's market for such product in violation of the principles of fair dealing which the statute was intended to prevent.

In support of this theory plaintiff attempts to read into the statute the explanatory statement of the purpose of the legislation which was appended to the bill by the sponsor thereof at the time of its introduction in the legislature. This statement related that the purpose of the bill was " * * * to insure an equitable basis for competition between all licensed wholesalers of alcoholic beverages in New Jersey and to prevent any monopolistic freezing out of one wholesaler by another by preventing the sale of certain products to him". It is well settled, however, that such a statement, not being in the nature of a preamble to a statute, is "not to be considered an index of legislative intent in judicial exposition of the enactment". Raymond v. Township of Teaneck, 118 N. J. L. 109 (E. & A. 1936); Flagg v. Johansen, 124 Id. 456, 459 (Sup. Ct. 1940); Keyport Steamboat Co. v. Farmers Transportation Co., 18 N. J. Eq. 13, 24 (Ch. 1866), aff'd., Ibid, p. 511 (E. & A. 1866); Cf. Bass v. Allen Home Improvement Co., 8 N. J. 219 (1951).

In any event it is the legislative intent which ultimately controls and we find nothing in the Act, nor for that matter in the aforesaid statement, revealing an intent to give to the Director the broad sweep of power for which the plaintiff contends. The plaintiff, according to his interpretation of the statute, would have the Director pass upon purported equitable, contractual and ethical obligations of the distiller to sell its product to various wholesalers and thus confer upon the Director a duty and power to regulate the distribution of the product far beyond the scope of the terms of the statute itself.

What then is the scope of the Director's power? We think the answer is to be found in the construction of the statute contended for by the defendant, and adopted by the Director in the instant case, namely, that what is prohibited by this legislation is an act of arbitrary discrimination between wholesalers by a distiller in the sale of a nationally advertised product and that in order to grant the relief provided for the Director not only must find that the complaining wholesaler or distributor is able to pay for the product ordered but that the distiller's refusal to sell to him is discriminatory and arbitrary and the inquiry must be limited solely to such considerations.

Has there been such discrimination here within the intendment of the statute? We think not. We see no evidence anywhere in the statute of an intention to prevent a distiller, importer or rectifier from selling its own product directly to retailers if its business policy so dictates, provided it takes out a wholesale license pursuant to R. S. 33:1-2, 9, 11. In the instant case Park & Tilford took out such a license, not because it desired to be an independent wholesaler, but because it could not otherwise, as a distiller, sell its own product directly to retail liquor dealers.

Nor do we find any purpose in the statute to prohibit such a producer from acting as the exclusive distributor or wholesaler of its own product. If a contrary purpose were intended it should have been clearly expressed and not left to mere conjecture. "We are enjoined to interpret and enforce the legislative will as written, and not according to some supposed unexpressed intention." Camden v. Local Government Board, 127 N. J. L. 175, 178 (Sup. Ct. 1941); Burnson v. Evans, 137 Id. 511, 514 (Sup. Ct. 1948).

The apparent scope of the statute in question is to be found in Section 1 thereof which bars "discrimination in the sale of alcoholic liquors by distillers, * * * of nationally advertised brands" thereof "to duly licensed wholesalers of alcoholic liquors * * *". Thus it is still open to the distiller to sell directly to retail dealers if licensed so to do. It may, of course, sell indirectly through the medium of duly licensed wholesalers, if it so chooses, but in the latter event it may not discriminate between such wholesalers.

In this view it does not matter that here the plaintiff, Hoffman, had developed a market in the area before the distiller took over; that was a matter for contractual protection and involves legal or equitable remedies which, under the plain intent of the statute, the Director was without authority to apply.

Therefore, on the record before us, there was no discrimination within the intendment of the statute. The defendant, Park & Tilford, made a policy decision to resume its former practice of selling its product directly to retailers and eliminating entirely the use of distributors or wholesalers in the northern part of the State. Accordingly it terminated the distributorship which it had given to the plaintiff in Hudson County on a trial basis and at the same time summarily terminated all other distributorships which it had created in the northern part of New Jersey. The fact that the distiller, Park & Tilford, still operates through wholesalers in the southern and western parts of the State, whose authorizations are limited to such areas, does not make its action with respect to the crowded northern counties, where retailers are closer together and more easily reached, an arbitrary or unfair discrimination against its former distributors in such counties whose authorizations had been confined thereto.

As the Director properly observed, we are not concerned here with possible remedies, if any, the plaintiff may have relating to fair trade practices or breach of contract, our inquiry being limited solely to the applicability of the statute in question. The arrangement between the parties hereto was on a trial basis and if the plaintiff desired a more substantial agreement to protect his initial investment he should have contracted therefor.

These conclusions render it unnecessary to consider the questions raised by the defendant with respect to the constitutionality of the aforesaid supplemental statute.

The order of the Director of the Division of Alcoholic Beverage Control dismissing the plaintiff's petition (complaint) is accordingly affirmed.

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3. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1951 TO DECEMBER 31, 1951

	1st Quarter July, Aug., Sept.			2d Quarter Oct., Nov., Dec.			Total
ARRESTS:							
Total number of persons arrested	71			76			147
Licensees and employees	19			20			39
Bootleggers	52			56			108
SEIZURES:							
Motor vehicles - Boats	1			0			1
- Cars	2			5			8
- Trucks	2			3			5
Stillis - over 50 gallons	3			5			8
- 50 gallons or under	6			6			12
Alcohol - gallons	124.42			0			124.42
Mash - gallons	19,528.64			2,938.00			22,466.64
Distilled alcoholic beverages - gallons	20.20			219.69			239.89
Wine - gallons	176.36			4.90			181.26
Brewed malt alcoholic beverages - gallons	195.94			74.51			270.45
RETAIL LICENSEES:							
Premises inspected	2,073			1,855			3,928
Premises where alcoholic beverages were gauged	2,254			2,775			5,029
Bottles gauged	38,643			43,610			82,253
Premises where violations were found	752			497			1,249
Violations found	786			579			1,365
Type of violations found:							
Unqualified employees	72			84			156
Regulation #38 sign not posted	21			7			28
Other mercantile business	10			3			13
Disposal permit necessary	6			3			9
Gambling devices	6			1			7
Improper beer taps	3			6			9
Probable fronts	2			3			5
Prohibited signs	2			0			2
Other violations	664			472			1,136
STATE LICENSEES:							
Premises inspected	95			69			162
License applications investigated	50			19			69
Complaints assigned for investigation	1,413			1,471			2,884
Investigations completed	1,507			1,469			2,976
Investigations pending	-			105			105
LABORATORY:							
Analyses made	354			374			728
Refills (from licensed premises) - bottles	11			6			17
Bottles from unlicensed premises	47			99			146
IDENTIFICATION BUREAU:							
Criminal fingerprint identifications made	55			61			116
Persons fingerprinted for non-criminal purposes	843			533			1,382
Identification contacts w/other enforcement agencies	606			461			1,067
Motor Vehicle identifications via N.J. State Police Teletype	30			23			53
DISCIPLINARY PROCEEDINGS:							
Cases transmitted to municipalities	37			40			77
Violations involved:							
Sale during prohibited hours	16			22			38
Sale to minors	12			13			25
Permitting bookmaking on premises	4			0			4
Possessing chilled beer (DL licensee)	3			0			3
Failure to afford view into premises during prohibited hours	2			4			6
Permitting gambling (cards, wager) on premises	1			1			2
Permitting lottery activity on premises	1			0			1
Sale to non-members by clubs	1			2			3
Permitting brawls on premises	0			2			2
Permitting hostesses on premises	0			6			6
Unemploying unqualified persons	0			2			2
Sale outside scope of license	0			1			1
Cases instituted at Division	57			50*			87
Violations involved:							
Sale to minors	11			10			21
Permitting immoral activity on premises	8			6			14
Sale during prohibited hours	4			1			5
Possessing illicit liquor	3			6			9
Mislabeled beer taps	2			1			3
Permitting hostesses on premises	2			2			4
Sale outside scope of license	2			1			3
Unauthorized transportation	2			1			3
Employing unqualified persons	2			2**			4
Fraud and front	1						1

*1 includes cancellation proceedings (limited distribution premises not operated as bona fide food store)

**1 includes cancellation proceedings (licensee not a bona fide club at time license application was made)

	1st Quarter July, Aug., Sept.	2d Quarter Oct., Nov., Dec.	Total
Disciplinary Proceedings (Cont'd)			
Cases instituted at Division (Cont'd)			
Violations involved:			
Sale below minimum resale price	1	8	9
Storage off licensed premises	1	1	2
Permitting pinball machines on premises	1	0	1
Permitting prostitutes on premises	1	0	1
Permitting female impersonators on premises	0	2	2
Failure to report retailer in default	1	0	1
Sale beyond scope of permit	1	0	1
Permitting bookmaking on premises	1	0	1
Aiding and abetting unauthorized transportation	1	0	1
Failure to afford view into premises during prohibited hours	1	0	1
Hindering investigation	1	0	1
Delivery without bona fide invoice	1	2	3
Sale to non-members by clubs	0	2	2
Permitting brawls on premises	0	2	2
Retailer bottling without license	0	1	1
Permitting gambling (cards) on premises	0	1	1
Sale to intoxicated persons	0	1	1
Permitting lottery activity on premises	0	1	1
Furthering illegal activity	0	1	1
Cases brought by municipalities on own initiative and reported to Division	19	27	46
Violations involved:			
Sale to minors	11	12	23
Permitting brawls on premises	5	4	9
Permitting bookmaking on premises	2	3	5
Sale during prohibited hours	1	5	6
Sale to intoxicated persons	1	3	4
Employing unqualified persons	1	1	2
Conducting business as a nuisance	0	3	3
Permitting immoral activity	0	2	2
Hindering investigation	0	1	1
Permitting hostesses on premises	0	1	1
Furthering illegal activity	0	1	1
Employee working while drunk	0	1	1
Fraud and front	0	1	1
Retailer soliciting passersby	0	1	1
CANCELLATION PROCEEDINGS INSTITUTED AT DIVISION	1	13	14
Violations involved:			
License issued in excess of statutory limitation	1	0	1
Limited distribution premises not operated as bona fide food stores	0	13	13
HEARINGS HELD AT DIVISION:			
Total number of hearings held	104	97	201
Appeals	15	8	23
Disciplinary proceedings	40	50	90
Eligibility	24	18	42
Seizures	7	18	25
Tax revocation	1	2	3
Applications for license	16	1	17
Miscellaneous	1	0	1
PERMITS ISSUED:			
Total number of permits issued:	7,332	3,444	10,776
Employment	2,109	460	3,113
Solicitors	2,939	174	551
Disposal of alcoholic beverages	293	258	2,072
Social affairs	1,086	986	1,368
Special wine	210	1,158	1,103
Miscellaneous	695	408	

ERWIN B. HOCK, DIRECTOR

Dated: January 14, 1952.

4. APPELLATE DECISIONS - SCHNEIDER v. DOVER TOWNSHIP.

SAM SCHNEIDER,)

Appellant,)

-vs-

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF DOVER,)

Respondent.)

Leo J. Berg, Esq., Attorney for Appellant.

Percy Camp, Esq., Attorney for Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

BY THE DIRECTOR:

This is an appeal from respondent's denial of appellant's application for renewal of his plenary retail consumption license for premises located at the northwest corner of Main and Water Streets, Dover Township, Ocean County.

The appellant urges that the respondent's action was an abuse of discretion and that it was taken without affording him a hearing.

In December 1950 the appellant's license was suspended for approximately six months as a result of charges alleging that he rented rooms for the purpose of illicit sexual intercourse. See Bulletin 892, Item 3. On appeal, the Appellate Division affirmed. See 12 N. J. Super. 449. The suspension, stayed pending the appeal, was thereupon reimposed to take effect April 23, 1951, and to terminate October 14, 1951. See Bulletin 904, Item 7.

In addition to the suspension itself, the respondent's refusal to renew was predicated upon the fact that it had received letters of protest from four local clergymen objecting to the renewal because of the proven misconduct at the appellant's premises.

The case of Zicherman v. Driscoll, 133 N. J. L. 586 (Sup. Ct. 1946) furnishes a complete answer to the appellant's charge of abuse of discretion. In that case, as here, there was involved a refusal to renew a license because of a prior suspension. In sustaining former Commissioner Driscoll's affirmance of the denial of renewal, the Court said (p. 587):

"The primary question presented is the right of a holder of a plenary retail consumption license to a renewal of that license for a subsequent term.

"The question of a forfeiture of any property right is not involved. R. S. 33:1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail, Crowley v. Christensen, 137 U. S. 86, and no person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 155 N.J.L. 254; Paul v. Gloucester, 50 Id. 585; Voight v. Board of Excise, 59 Id. 358; Meehan v. Excise Commissioners, 73 Id. 382; affirmed, 75 Id. 557. No licensee has vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. Allen v. City of Paterson, 98 Id. 661; Fornarotto v. Public Utility Commissioners, 105 Id. 28. We find no such abuse. The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses.

"There was abundant evidence before both the Municipal Board and the Commissioner to support their actions. Under R. S. 33:1-19 it was the duty of the Municipal Board to administer the issuance of such licenses and under R. S. 33:1-24 it was its duty to investigate applicants for licenses. Under the duty imposed upon it the Board is required to consider an applicant's past record as a licensee. ***

"Prosecutor argues further that there was both a suspension and a revocation of the license, a double penalty and as the statute R. S. 33:1-31 authorized a suspension or revocation such action was invalid. There was no revocation, the license was suspended and then not renewed for the next licensing period, an entirely different situation." (Emphasis by Court.)

Furthermore, the respondent was not required to afford a hearing upon the appellant's application. The Alcoholic Beverage Law provides for hearings, so far as here pertinent, only with respect to disciplinary proceedings to suspend or revoke a license. See R. S. 33:1-31. Supplementing the statute, Rule 8 of State Regulations No. 2, relating to applications for municipal licenses, provides that no local hearing need be held thereon if the issuing authority, on its own motion, after investigation, shall determine not to issue a license.

The action of respondent will be affirmed.

Accordingly, it is, on this 11th day of January, 1952,

ORDERED that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Director.

5. NOTICE - HEREIN OF APPLICATION FORMS FOR RETAIL LICENSES FOR THE LICENSE YEAR 1952-53.

January 14, 1952

TO ALL MUNICIPAL ISSUING AUTHORITIES:

No changes are contemplated in the application forms for retail licenses for the next fiscal year beginning July 1, 1952.

The form of application for municipal retail licenses and for Club licenses may be found in Bulletin 893, Items 2 and 3 respectively. The license certificate forms as prescribed in Items 4, 5, 6, 7 and 8 in Bulletin 833 will continue in effect except, of course, for the necessary changes in expiration date.

At this time I again wish to point out to all license issuing authorities the extreme importance in requiring that applicants answer all questions fully and completely. Under no circumstances should an application be passed upon unless each question is answered fully and completely.

I urge that all license issuing authorities take immediate steps to obtain a sufficient supply of application forms and license certificates at the earliest possible moment so that they will be available when the time comes for the renewal of licenses for the next fiscal year. When ordering your supply of application forms bear in mind, with respect to the quantity necessary, that retail licensees must be furnished with an additional copy in order to comply with Rule 16 of Regulations No. 20 which requires that a photostatic or true copy of the application is kept on the licensed premises available for inspection.

ERWIN B. HOCK
Director

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

PALACE DRUG STORES, INC.
172 Newark Ave.
Jersey City 2, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distri-
bution License D-16, issued by the
Municipal Board of Alcoholic
Beverage Control of the City of
Jersey City.

Palace Drug Stores, Inc., Defendant-licensee, by Morris Winograd,
Vice-President.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage
Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to a charge alleging that it sold alcoholic beverages below the minimum consumer resale price, in violation of Rule 5 of State Regulations No. 30.

On December 7, 1951, two ABC agents entered defendant's licensed premises and purchased from an employee of defendant a case of twelve 4/5 quart bottles of Old Forester Kentucky Straight Bourbon Whiskey for \$67.40. The minimum retail price, effective November 26, 1951, for a case of twelve 4/5 quarts of this brand of whiskey, less 5% discount permitted on case-lot purchases, should have been \$75.13.

Defendant has a prior record. Effective December 2, 1938, defendant's license was suspended for a period of ten days for a minimum resale price violation (Bulletin 284, Item 7); effective February 23, 1943, defendant's license was suspended for fifteen days for a minimum resale price violation (Bulletin 555, Item 4); and effective May 9, 1949, defendant's license was suspended for five days for a false statement in a license application (Bulletin 843, Item 10). Although two of these prior violations occurred more than five years ago they were substantially similar to the present violation.

In view of defendant's previous adjudicated record, I shall suspend its license for thirty days, less five days' remission for the plea entered herein, or a net suspension of twenty-five days.

Accordingly, it is, on this 14th day of January, 1952,

ORDERED that Plenary Retail Distribution License D-16, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Palace Drug Stores, Inc., 172 Newark Ave., Jersey City, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 9:00 a.m. January 21, 1952, and terminating at 9:00 a.m. February 15, 1952.

ERWIN B. HOCK
Director.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES AT LESS THAN PRICE LISTED IN MINIMUM RESALE PRICE LIST - PRIOR RECORD OF PRESIDENT OF DEFENDANT CORPORATION NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

BERGENFIELD LIQUOR SHOP, INC.)
8 So. Washington Avenue)
Bergenfield, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribi-)
bution License D-2, issued by the)
Borough Council of the Borough of)
Bergenfield.)

-----)
Defendant-licensee, by Norman Freidman, Treasurer and Secretary.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage
Control.

BY THE DIRECTOR: .

Defendant has pleaded guilty to a charge alleging that it sold an alcoholic beverage at retail at less than its price as listed in the minimum consumer resale price list then in effect, in violation of Rule 5 of State Regulations No. 30.

On December 6, 1951, an ABC agent requested Norman Freidman, on the licensed premises, to quote him a price for a case of Imperial Whiskey, to which Freidman replied that he could either give the agent an extra bottle or the agent could deduct the price of one bottle from the price of a case. The minimum price of this whiskey as listed in the then "Complete List of New Jersey Minimum Consumer Resale Prices of Alcoholic Beverages" was \$4.95 per quart bottle, with a discount of 5% permitted on case-lot purchases. Hence, the minimum resale price for a case, less the permissible discount, was \$56.43. When the agent agreed to buy the case, Mr. Freidman placed an extra quart bottle of Imperial Blended Whiskey in a bag and sold the case and the extra bottle to the agent for \$59.40. The minimum resale price for a case and an extra bottle was \$61.38.

Defendant corporation has no prior adjudicated record. However, the license for the premises in question was formerly held by Ike Freidman, t/a Bergenfield Liquor Shop. The former licensee is now the President of defendant corporation. On October 12, 1946, and October 21, 1946, Ike Freidman permitted the sale of alcoholic beverages to minors and knowingly employed his son, Norman Freidman (who was then a minor) to sell and serve alcoholic beverages. As a result thereof, the license then held by Ike Freidman was suspended by the local issuing authority for a net period of fifteen days, effective January 27, 1947. In view of the fact that the prior dissimilar violation occurred more than five years prior to the violation considered herein, such prior record will not be considered in fixing a period of suspension in the instant case. Re Block, Bulletin 916, Item 6. In this proceeding defendant's license will be suspended for a period of ten days, less five days for the plea, leaving a net suspension of five days.

Accordingly, it is, on this 9th day of January, 1952,

ORDERED that Plenary Retail Distribution License D-2, issued by the Borough Council of the Borough of Bergenfield to Bergenfield Liquor Shop, Inc., for premises 8 So. Washington Avenue, Bergenfield, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. January 14, 1952, and terminating at 9:00 a.m. January 19, 1952.

ERWIN B. HOCK
Director.

8. DISCIPLINARY PROCEEDINGS - ALLEGED SALE OF ALCOHOLIC BEVERAGES TO MINORS DISMISSED FOR LACK OF PROOF.

In the Matter of Disciplinary)
Proceedings against)

SAMUEL ROSENBERG)

435 High St.)

Newark 2, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-435, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)

Leo J. Berg, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charge:

"During the early morning hours of Friday, December 7, 1951, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Lawrence --- and Mauritz ---, persons under the age of twenty-one (21) years; in violation of Rule 1 of State Regulations No. 20."

At the hearing herein an ABC agent testified that he and another agent entered defendant's premises shortly after midnight on the morning of December 7, 1951. He further testified that, at about 1:45 a.m., the two minors, each of whom is seventeen years of age, entered the licensed premises with Daniel Martin, twenty-four years of age; that these three persons stood at the bar and held a conversation, which the agents could not overhear, with Michael Pumelia, the bartender; that, after the conversation, Daniel Martin "disappeared"; that the bartender then went to the spigot at the center of the bar and filled five containers with beer, placing two containers in one bag, two containers in the second bag and one container in the third bag; that the bartender then placed two of these bags on the bar in front of the minors and accepted money from Lawrence; that the bartender, after ringing up the sale, picked up the third bag and handed it to Daniel Martin, who had returned to the bar. Admittedly, the agents stopped the three people as they were leaving the premises. At that time Daniel Martin was carrying the bag containing one container of beer; Lawrence was carrying a bag containing two containers of beer, and Mauritz was carrying the third bag containing two containers.

On behalf of defendant, Lawrence --- testified that he is a skater traveling with a "roller derby" team; that Daniel Martin ordered five containers of beer in defendant's premises from the bartender and then went to the men's room, leaving the money on the bar; that the bartender placed two bags on the bar, whereupon he (Lawrence) picked up the money on the bar and handed it to the bartender; that, after Daniel Martin returned to the bar, the three bags were picked up by Martin and the two minors shortly before the agents stopped them as they were leaving the premises. Daniel Martin substantially corroborated the testimony of Lawrence, except that, because of his absence from the bar, he was unable to testify as to whether the bartender picked up the money from the bar or whether Lawrence picked up the money from the bar and handed it to the bartender. Michael Pumelia testified that he picked up the money from the bar and that Daniel Martin had ordered the five containers of beer.

After reviewing the testimony, I conclude that Daniel Martin ordered the alcoholic beverages and left the money in payment therefor on the bar. Under these circumstances it would sufficiently appear that the sale was made to Daniel Martin and not to the minors, even if Lawrence actually handed Martin's money to the bartender. It would also appear that the delivery of the bags was intended to be made to the purchaser. The situation might be different if the beer was served for consumption on the licensed premises, but the fact that the minors assisted the purchaser in carrying the original containers from the premises does not necessarily lead to the conclusion that the beer was served or delivered to the minors. Hence, I conclude that the Division has failed to establish by a preponderance of the evidence that defendant is guilty as charged. The charge, therefore, will be dismissed.

Accordingly, it is, on this 15th day of January, 1952,

ORDERED that the charge herein be and the same is hereby dismissed.

ERWIN B. HOCK
Director.

9. STATE REGULATIONS NO. 34 - RULE 10 DEALING WITH SAMPLES, AMENDED.

TO ALL MANUFACTURERS AND WHOLESALERS OF ALCOHOLIC BEVERAGES OTHER THAN MALT ALCOHOLIC BEVERAGES:

Administrative experience has demonstrated, particularly in the light of existing market conditions, that no useful purpose is presently served by the provisions of Rule 10 of State Regulations No. 34, which prescribes conditions under which samples of alcoholic beverages other than malt alcoholic beverages may be distributed to retailers.

Accordingly, effective immediately, Rule 10 of State Regulations No. 34 is amended as follows:

"Rule 10. Manufacturers and wholesalers of alcoholic beverages other than malt alcoholic beverages shall not give samples of such alcoholic beverages to retailers except pursuant to and within the terms and conditions of a special permit first obtained from the Director, to be issued upon the basis of a petition submitted by such manufacturer or wholesaler."

The attention of all concerned is particularly directed to the fact that the amendment of Rule 10 of State Regulations No. 34 does not authorize the distribution of samples of alcoholic beverages other than malt alcoholic beverages without restriction. All concerned are pointedly reminded that Rule 8 of State Regulations No. 34 still prohibits manufacturers and wholesalers of alcoholic beverages other than malt alcoholic beverages from furnishing, directly or indirectly, to any retailer any gift, rebate or allowance of money or any thing of value or other discount or inducement, including free goods, deals, combination sales and similar merchandising devices, except permissible discounts as and if scheduled by the manufacturer or wholesaler in the Wholesale Price List, State Regulations No. 21 and samples that may be distributed pursuant to special permit as provided in amended Rule 10 of State Regulations No. 34. Unless authorized by special permit as above indicated, the provisions of Rule 8 of State Regulations No. 34 will prohibit the distribution of any samples of alcoholic beverages other than malt alcoholic beverages to retailers.

ERWIN B. HOCK
Director.

Dated: January 25, 1952.
Filed with the Secretary of State
of New Jersey January 25, 1952.

10. STATE LICENSES - NEW APPLICATIONS FILED.

Robin Fils & Cie Ltd.

Star Route

Hammondsport, N. Y.

Application filed January 16, 1952 for Transportation License.

New Jersey Apple Growers, Inc.

Cottrell's Road, Madison Township

Browntown, P.O. R.D. 1, Box 240, Matawan, N.J.

Application filed January 25, 1952 for Limited Distillery License.

Dorn's Transportation Inc.

First Avenue

Rensselaer, N. Y.

Application filed January 28, 1952 for Transportation License.

Service, Incorporated

400 Sip Avenue

Jersey City, N. J.

Application filed January 28, 1952 for Transportation License.

Anthony Colaluca

Lincoln Blvd.

Middlesex Borough, N. J.

Application filed January 29, 1952 for transfer of State Beverage Distributor's License SBD-3 from Lehigh Valley Distributing Co., Inc., 405 Thomas St., Phillipsburg, N. J.



Acting Director.