Mr. Gossweiler

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

BULLETIN 1385 April 19, 1961

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ITEM

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

BULLETIN 1385 April 19, 1961

1. APPELLATE DECISIONS - MARCHI ET ALS. v. CLIFTON AND MILANESE.

JOSEPH MARCHI, JOSEPH PACCIORETTI, HERMAN STRUNK, ALBERT EDGAR, MARGARET GREEN, LAWRENCE TUMMINELLO, H. A. PASINO, R. J. DOLACK, MAURICE DIRIENZO,

Appellants,

v.

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF CLIFTON, AND RAYMOND MILANESE, t/a BERTLIN'S,

Respondents.

ON APPEAL
CONCLUSIONS
AND ORDER

John G. Dluhy, Esq., Attorney for Appellants.
Edward F. Johnson, Esq., by Manfred Triebel, Esq., Attorney for Respondent Municipal Board.
Philip Rubin, Esq., Attorney for Respondent Raymond Milanese.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board whereby it granted respondent-licensee's application for a renewal of his plenary retail consumption license C-96 for premises 391 River Road, Clifton, and for a place-to-place transfer of said license from 391 River Road to 331 River Road, Clifton, subject to the following conditions:

> '*** that the license shall not be endorsed and effective unless and until the premises are duly completed in accordance with plans and specifications on file, to the satisfaction of this issuing authority, and subject to the special condition that the premises be in compliance with zoning regulations, and subject further to the special condition, as agreed upon by the licensee, that no liquor or foodstuffs shall be served or consumed on the grounds outside of the proposed building of the licensed premises.'

"Appellants in their petition of appeal allege that the action of the Board was erroneous for the following reasons:

> '(a) That the transfer was made subject to a special condition; namely, that the premises be in compliance with zoning regulations, whereas the proofs showed that the premises to which the transfer was granted were located in a residence B zone in which zone the operation and location of a tavern business is prohibited, and that the Board of Adjustment had previously rejected applicant's request for a variance, and that said conditioned action is illegal and void.
>
> '(b) That the location and operation of a tavern business at this point will permit a nuisance, a menace to vehicular traffic; will not promote the general welfare

of the immediate residential neighborhood and will depreciate values of the homes therein located.

'(c) That the action was premises on certain conditions, restrictions and requirements of the City of Clifton regarding the construction of the building and other installations as well as the parking area surrounding the same, at the grade level of the new River Road, which grade level is approximately twenty feet below the present grade of the property, and further that such action was in violation of ordinances of the City of Clifton.

'(d) That the said actions were discriminatory in that, at the same meeting or meetings of the Respondent Board it rejected two other applications for place to place transfers in the area in question on the ground that such place to place transfers would violate the ordinances of the City of Clifton if the transfers to premises in residential zones were approved, whereas in the subject appeal the said Board took the exact opposite position and granted the transfer in spite of the fact that applicant's property is in the residence zone.

'(e) The actions of the Respondent Board were not in the best interests of public safety, health and the general welfare of the community and, consequently, the actions constituted an abuse of discretion.

'(f) That the subject matter of the license in question was destroyed by condemnation proceedings instituted by the State of New Jersey under which the applicant's premises, formerly known as 391 River Road, Clifton, New Jersey, were taken for a new state highway; the building thereon was removed and the premises were not capable of use as a tavern, and at the time of the said Board action they constituted part of a right of way for said highway. Consequently, there was nothing upon which this Board could act.

'(g) The said actions were illegal and void as they are conditioned and are not effective except upon separate, distinct and favorable actions by other public bodies, each exercising discretionary powers.

'(h) The Respondent Board was without power to grant the applications in violation of the municipal ordinances.

'(i) The Board, in arriving at its determination, considered reports which were not in evidence, without opportunity being afforded to Appellants to examine the same or to produce proofs to contradict their contents.

'(j) The actions were illegal and void as they constitute a delegation of the Board's powers, and are otherwise arbitrary, capricious, unreasonable and discriminatory.'

"The answer of the respondent Board denies aforesaid allegations and further states that:

'Respondent conducted a public hearing on June 27, 1960, at which time the applicant and the objectors were heard and arguments pro and con were received. Respondent Board, on June 27, 1960, advised those in attendance that the Board would make a personal inspection of the proposed transfer site on June 30, 1960 at 2 P.M. and would return to the City Hall to arrive at a decision.

On June 30, 1960, the personal inspection was made and following said inspection, the applications were granted as indicated.'

"Respondent-licensee in his answer concurs in effect with the answer of the Board.

"One of the appellants (Margaret Green) testified she resides at 9 Johnson Street; that her property adjoins the proposed site (331 River Road) on the north; that the neighborhood consists of one and two family homes situated on a plateau about twenty feet above the level of River Road; that on June 27, 1960, at the meeting before the local Board, she objected to the proposed transfer of Milanese's license to 331 River Road; that Milanese's business would create a danger to the children in the neighborhood who play at the corner of Johnson Street and Dyer Avenue (vicinity of proposed site); that 391 River Road was over 200 feet from her home; and that the kitchen of the proposed building will be fifty feet from her home and will also be facing it. Mrs. Green further testified that, when she attended the local Board meeting, she was aware of the fact that the City was in the process of adopting a new zoning ordinance.

"Walter E. Albrecht, testifying for appellants and respondents, stated that he is employed by the City of Clifton as its building inspector and zoning officer; that on June 30, 1960, the area in question was zoned for one and two family homes; that no tavern was permitted in the area at the time; that effective August 1, 1960, an ordinance was passed which permitted the proposed licensed premises to operate at 331 River Road; that on September 8, 1960, he issued a building permit to respondent Milanese based on the plans and specifications (approved by him); that the plans were in conformity with the building code and zoning ordinance with respect to the construction of the building and the parking area then in effect; that his permit included the parking of eighty-one cars on the premises; that the seating capacity of the proposed building is 143; that the required number of parking lots under the ordinance for the proposed building is 61, and that the plans and specifications required Milanese to lower the level of the proposed site to River Road.

"Arthur Argauer, testifying for the appellants, stated that his parents reside at 59 Dyer Avenue (about 200 feet from the proposed site); that on June 27, 1960, he had appeared at the local Board hearing and objected to the application of respondent Milanese because the noise that would emanate from that type of business would disturb his parents and because many of the children in the neighborhood have made a playground of the area surrounding the proposed site.

"Edith Manion (City Clerk of Clifton) was called by appellants and it was stipulated by counsel that the Milanese property at 391 River Road was condemned by the State and torn down prior to June 30, 1960.

"Irene Sommers (Secretary of respondent Board) testified that on June 27, 1960, a hearing was held by the Board on respondent Milanese's application; that Mr. Dluhy and appellants voiced their objections to the application; that the meeting was adjourned to 4 p.m. on June 30, 1960; that in the interim the members of the Board made an inspection of the proposed site; that at the adjourned meeting the Board passed the aforesaid resolutions. Mrs. Sommers further testified that a report in which the Chief of Police advised the Board that the granting of the transfer would not create a traffic hazard was in the Board's file since June 24, 1960; that it was not read to the objectors; that the Board does not make a practice of

reading all of its correspondence at public meetings and that, between June 24 and June 27 aforesaid, the file was made available to Mr. Dluhy. In addition, Mrs. Sommers testified that the application of John Freudenberg (a licensee) for a place-to-place transfer was denied by the Board on June 27, 1960, because his proposed site was in a residential zone (1021-1031 Paulison Avenue -- not in the area of respondent Milanese's new location); that the application was incomplete with respect to the plans for the proposed building, and that the advertisement of the notice of application did not meet the requirements of the State Regulation.

"Joseph Marchi (one of the appellants) testified that he is a wood carver; that he resides at 27 Dyer Avenue; that he is the owner of four lots, two of which are vacant and abut the Milanese property on one side and the property of the High Grade Fuel Company on the other side, and that the properties in the area consist of one and two family houses.

"Mr. Marchi further testified the traffic at the present time along River Road fronting the Milanese property is heavy and congested; that the traffic is heaviest over week-ends; that this condition is due (1) to the overflow of traffic at the parking lot of Rutt's Hut (restaurant and tavern located diagonally across from the Milanese property); (2) that River Road is now closed off because of highway construction (Route 21), and (3) the bend in River Road at the proposed site.

"Robert J. Dolack (one of the appellants) testified that he is a design draftsman; that for the past two months he has resided at 50 Dyer Avenue; that he objects to the proposed transfer because he anticipates disturbances from bands of music and patrons visiting the premises and from the parking of cars; that the smokestacks and ventilating systems of the proposed building, as planned, will be on the level with his house, and that he will get the odors emanating from the kitchen.

"Benjamin D. Blackman (a member of the local Board), testifying for the City, stated that he and Commissioner Corradino voted in favor of the application, and the third commissioner voted against it.

"On cross-examination Mr. Blackman testified that he surveyed the topography of the area in question; that he did not consider it dangerous; that the ingress and egress to the proposed site will not create a traffic hazard; that, prior to passing the aforesaid resolutions, the local Board referred to the letter of the Chief of Police; that it was not read at the public hearing and that the Board considered the fact that Milanese's property (391 River Road) was taken by the State for highway purposes.

"Thomas J. McEvoy (Chairman of the local Board), testifying for the respondent municipality, stated that his sole reason for voting against the transfer was that it was contrary to the zoning ordinance then in effect.

"On cross-examination Mr. McEvoy, after corroborating the statements of Mr. Blackman with respect to the letter of the Chief of Police, testified that the proposed site would create a traffic hazard in the area and that he did not raise this question at the local Board's meetings when Milanese's application was discussed by the Board.

"Wallace J. Schonwald (a professional engineer) testified that he was in charge of planning Route 21 Freeway for the State Highway Department; that the Freeway will alleviate the traffic in the area in question; that the purpose of the Freeway is to divert the flow

of traffic from River Road; that the proposed site will set back about forty to fifty feet from relocated River Road, from which automobiles will enter the proposed licensed premises; that the possibility of accidents at this point is highly remote, and that no traffic hazard will be created; that relocated River Road will be thirty-six feet wide, as opposed to twenty feet for River Road (old) and that the flow of traffic at Rutt's Hut will not create a traffic hazard in the area in question.

"Charles Arangio (a government employee), testifying for appellants, stated that he resides at 12 Jefferson Street; that his property abuts the Milanese land and that he does not object to Milanese's proposed business at the site.

"Lincoln Milanese testified that he is the son of respondent Raymond Milanese (73 years old), and that he is in charge of his affairs; that ever since 1933 respondent Milanese has operated a tavern and restaurant at 391 River Road (about 150 feet from the proposed site (a portion of River Road which has been relocated as a result of the construction of Route 21)); that premises 391 River Road have been taken by the State for highway purposes (Route 21); that the proposed site is located on Dyer Avenue, vacated by the municipality over objections of Mrs. Green and other neighbors in the area. The witness further testified that the kitchen of the proposed building will contain a filter system which will destroy the kitchen odors before they reach the outside atmosphere, and that no award has been made for the respondent's condemned property.

"Appellants contend that the aforesaid conditions imposed upon the issuance of the license rendered the resolutions adopted by the local Board on June 30, 1960, invalid.

"As to the first condition, the appellants concede that the issuance of a license conditioned upon the completion of a building according to plans and specifications is a proper act of the issuing authority.

"With respect to the second condition, appellants contend that the resolution in effect leaves open the determination of compliance with zoning regulations. Whether there is or is not compliance, when and by whom such determination is to be made, is left to some other subordinate municipal official or Board to conclude and that, under the circumstances, the resolution enjoining the Clerk from endorsing the license until some unnamed Board or official makes a favorable determination is a violation of Title 33, citing Zicherman v. Driscoll, 133 N.J.L. 586 (Sup.Ct. 1946); Drozdowski v. Sayreville, 133 N.J.L. 536 (Sup.Ct. 1946). I do not find that these cases support appellants' contentions.

"Furthermore, in the recent case of Lubliner v. Paterson, 59 N.J. Super. 419 (App. Div. 1960), where the appellants (who were objectors to the transfer of a license) contended that the approval of the transfer was illegal and erroneous because the Paterson Zoning Ordinance prohibits a tavern at the location in question, the Court, at page 433, said:

> '*** but even if it does that does not make the grant of the transfer improper or its approval by the Director error. The issuance of a license or the grant of a transfer does not permit the licensee to operate without complying with all applicable statutes and ordinances, including zoning ordinances, building codes, health codes and the like. It may be that Hutchins will need a variance or other relief before he can operate a tavern at 39 Carroll Street,

> but he is not required to obtain it before the grant of the transfer.***'

"On appeal of this case, Justice Jacobs, after observing that appellants had abandoned their zoning contention, significantly comments:

> '*** In dealing with that (zoning) contention the Appellate Division properly pointed out that the grant of Mr. Hutchins' application would in nowise permit him to operate in contravention of any applicable zoning provisions; if he ever attempts to so operate, relief is readily available. See Garrou v. Teaneck Tryon Co., 11 N.J. 294 (1953).' Lubliner v. Paterson, 33 N.J. 428 (Sup.Ct. 1960).

"The record discloses that the local Board was cognizant of the fact that respondent Milanese desired to transfer his license to premises not then zoned to permit its use as a tavern, and the Board was also aware of the fact that a proposed master plan was before the Clifton City Council which, if approved, would permit the use at the new location.

"Moreover, where the action of the governing body was not arbitrary or unreasonable, the well-established general rule is that it is not the status of the law prevailing at the time of the application for a license or permit that controls, but the status of the law prevailing at the time the decision of the Court or agency is involved. Ming's Chinese Restaurant, Inc. v. Teaneck, Bulletin 1279, Item 2; Socony-Vacuum Oil Co., Inc. v. Mount Holly Township, 135 N.J.L. 112 (Sup.Ct. 1947); Franklin Stores Co. v. Elizabeth, Bulletin 61, Item 1; Bock Tavern, Inc. v. Newark, Bulletin 952, Item 1; Cohen v. Wrightstown, Bulletin 1064, Item 1; Tice v. Woodcliff Lake, 12 N.J. Super. 20, 25 (App.Div. 1951).

"Appellants contend that the action of the Board was discriminatory for the reason that it denied a place-to-place transfer of another license, affected by highway condemnation, because the proposed site was in a residential area and would be in violation of the zoning ordinance. There is no merit to this contention. It appears that the Board denied aforesaid application because the license application was incomplete with respect to plans and specifications and applicant had only inserted one advertisement by the date of hearing.

"Appellants next contend that, although the statute permits the issuing authority, subject to rules and regulations, to impose conditions upon a license, R.S. 33:1-32, such conditions must first be approved by the Director and that this procedure was not followed in the subject matter nor was approval obtained either prior or subsequent to this action. However, failure to obtain prior approval of conditions imposed upon the issuance of a license does not render the resolution of the local issuing authority void. In an appeal by an aggrieved person the conditions would be considered on their merits nunc pro tunc. Cf. Klein and Tucker v. Fairlawn, Bulletin 1200, Item 1, and the cases cited therein.

"It has been uniformly held that the failure to submit special conditions for approval by the Director prior to the issuance of a license is a mere technicality and, when raised, will be considered on the merits nunc pro tunc. DeLuccia v. Paterson, Bulletin 1240, Item 1, and cases cited therein (affirmed by the Superior Court, Appellate Division, March 17, 1959, reprinted in Bulletin 1271, Item 1).

"The appellants contend that on June 30, 1960, the date of the resolution, the proposed site was in a residential zone and, hence, the transfer of the license violated the zoning ordinance. I find no merit in this contention. See Ming's Chinese Restaurant, Inc. v. Teaneck, supra.

"The next point raised by appellants is that of notice to the public of the proposed action of the Board. The procedure under the rules of the Division is that public notice of an application for person-to-person and/or place-to-place transfer of a license be given by placing said notice in the newspaper. See Rule 1 of State Regulation No. 2, and Rule 2 of State Regulation No. 6. There is no contention by the appellants that Milanese has not complied with these rules.

"Appellants further contend that the local issuing authority was influenced in its decision by matters outside the record of the hearing. My examination of the record does not disclose such to be the fact. The record discloses that a full and complete hearing was held in the matter, and that the appellants were afforded every opportunity to be heard. Nor do I find that any competent evidence was produced at the within hearing to support the contention of the appellants that the action of the local Board was discriminatory.

"Appellants contend that the Board mistakenly considered this case as a hardship on the theory that the licensee would not receive compensation for his business. There is no merit to this contention.

"Appellants next contend that the resolutions in question are invalid because they violate a City ordinance which prohibits excavating or removal of soil except upon first obtaining permission therefor from the Municipal Council, and that the local Board was in error as it had no jurisdiction to grant the transfer unless the ordinance was first complied with. There is no merit to this contention. See Lubliner v. Paterson, supra. Petrangeli v. Barrett, 33 N.J. Super. 378 (App Div. 1954) is cited by the appellants for the rule that a municipality may not disregard its own ordinances in granting a license. It is my opinion that this case is not applicable to the subject matter in question.

The appellants contend that the local Board

> '*** in making its determination and adopting the resolutions in question, considered a letter or report from the Chief of Police that the location of this tavern and restaurant will not create a traffic hazard, and that such report was not made known to the appellants who appeared as objectors, nor to the public and that such consideration without notice and an opportunity to be heard on that issue is contrary to the principle of the Mazza Case.'

I do not find that the Mazza case can be applied in this case. There was nothing secretive about this letter. The letter was in the Board's file which is a public record and was available to anyone upon request. Moreover, the letter was placed in evidence at the within hearing (de novo) and was fully explored.

"Appellants' contention that a liquor outlet at the proposed site will create a traffic and parking hazard in the area is not convincing. Their testimony on this point is insufficient to overcome the testimony of Mr. Schonwald and the report of the Chief of Police.

"It is clear from the testimony and the applicable law

touching on the aforesaid issues that the resolutions adopted by the local Board at its meeting on June 30, 1960, are valid.

"After considering all the evidence herein, the exhibits and briefs filed on behalf of the litigants, I conclude that appellants have failed to sustain the burden of establishing that the action of the respondent Board was erroneous, arbitrary or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15. It is recommended, therefore, that the conditions imposed upon the issuance of the license be approved nunc pro tunc, and that an order be entered affirming the action of the local Board and dismissing the appeal."

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

After carefully considering the evidence and exhibits herein and the briefs submitted to the Hearer, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 13th day of March 1961,

ORDERED that the conditions imposed by the respondent Board upon the issuance of the license to respondent Raymond Milanese, t/a Bertlin's, be and the same are hereby approved nunc pro tunc; and it is further

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

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - FILIPPI WINES & LIQUORS, INC. v. CLIFFSIDE PARK.

FILIPPI WINES & LIQUORS, INC., t/a "PEPPER BOX", Appellant,	)	ON APPEAL ORDER
v.	)	
BOROUGH COUNCIL OF THE BOROUGH OF CLIFFSIDE PARK, Respondent.	)	

Leon S. Wolk, Esq., Attorney for Appellant.
Edward A. Smarak, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it suspended appellant's plenary retail consumption license C-32, issued for premises 771 Palisade Avenue, Cliffside Park, for a period of forty-five days. The suspension was imposed after appellant was found guilty of a charge alleging that it allowed, permitted and suffered a brawl upon its licensed premises in violation of Rule 5 of State Regulation No. 20.

Upon the filing of the appeal an order was entered on March 3, 1961, staying the effect of respondent's order of suspension (which had been scheduled to become effective at midnight March 5, 1961) pending determination of the appeal.

Prior to the date fixed for hearing, the attorney for appellant advised me in writing that his client desired to withdraw its appeal and that he had notified the attorney for respondent that his client desired to do so.

No reason appearing to the contrary,

It is, on this 13th day of March 1961,

ORDERED that the appeal be and the same is hereby dismissed, and that the forty-five-day suspension imposed by respondent, and stayed during the pendency of these proceedings, is hereby restored to become effective at 3 a.m. Monday, March 20, 1961, and to terminate at 3 a.m. Thursday, May 4, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - VIOLATION OF STATE REGULATION NO. 38 - HINDERING INVESTIGATION - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against	)
NATHAN EPSTEIN t/a ONYX CLUB 534 Madison Avenue Paterson 4, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-130 (for the 1959-60 and 1960-61 licensing years), issued by the Board of Alcoholic Beverage Control for the City of Paterson.	)

Riskin and Joseph, Esqs., by Philip W. Riskin, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charges:

'1. On Sunday, May 8, 1960, at about 3:20 p.m., you allowed, permitted and suffered the removal from your licensed premises of an alcoholic beverage in an opened container, viz., an alcoholic beverage in an opened pint bottle labeled Seagram's Ancient Bottle Golden Distilled Dry Gin; in violation of Rule 1 of State Regulation No. 38.

'2. On Sunday, May 8, 1960, between 3:20 p.m. and 3:40 p.m., you, through agents, servants and persons employed on your licensed premises in your behalf, failed to facilitate and hindered and delayed and caused the hindrance and delay of an investigation, inspection and examination at your licensed premises then and there being conducted by investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey; in violation of R.S. 33:1-35.'

"At the hearing held herein two ABC agents (hereinafter identified as Agent C and Agent G) testified that they arrived in the vicinity of defendant's premises at about 2:50 p.m. Sunday, May 8, 1960; that Agent C entered the premises and that Agent G remained in the car.

"Agent C testified that, shortly after he took a seat at the bar, he heard a male patron order a pint bottle of Seagram's Seven Crown whiskey from a bartender who was identified later as Gerald Shepperson; that he saw said bartender get a pint bottle of the brand ordered, open the bottle, pour a shot into a glass, put the cap back on the bottle and hand the bottle to the patron. He further testified that the patron paid $3.25, put the bottle in his trouser's pocket, drank the shot and left the premises with the bottle.

"Agent C further testified that at about 3:15 p.m. he asked another bartender the price of a pint of Seagram's Golden Gin to take out; that said bartender spoke to Shepperson who told him that the cost of the item was $3.25 'and you must take a shot on the premises'; that the other bartender got a pint bottle of the brand ordered, opened the bottle, poured a shot into a glass, put the cap back on the bottle and handed the bottle to the agent, telling him that 'the rules of the house is that you have to take a shot before you could take it out.' Agent C testified that, after paying $3.25, he put the bottle in his trouser's pocket, drank the shot, left the premises with the bottle and contacted Agent G.

"Both agents testified that they then entered the premises and identified themselves to Shepperson by showing him their credential folders; that Shepperson, at their request, identified himself and exhibited a copy of the license application but failed to give them the name of the other bartender although he was twice requested to do so. Agent G testified that he asked the other bartender to identify himself and received no reply. The agents were unable to ascertain the name of the other bartender at any time during their investigation.

"On behalf of defendant, Gerald Shepperson denied that he sold a pint bottle of Seagram's Seven Crown whiskey to a patron on the afternoon in question. He testified that the other person who sold the bottle to Agent C was Carl Howard (employed as a clean-up man on Sundays); that, when Howard asked the price of Seagram's Golden Gin, he told him that a pint costs $3.25 'but he has to drink it on the premises.' He further testified that, when the agents returned to the premises, they did not show him any credential folders or other identification (although he admitted he showed them a copy of the license application as they requested), and that he telephoned to the Paterson Police Department at about the time the agents were leaving the premises.

"Carl Howard testified that Shepperson told him that the patron (Agent C) could have the bottle 'so long as he don't remove it from the premises.'

"Walter Benson and Leo Coggins testified that they were patrons in the premises on the afternoon in question. Benson testified that he heard Shepperson tell Howard that 'he can't take it out of the premises.' Coggins testified that he heard Shepperson tell Howard that 'he would have to consume it on the premises.'

"On cross-examination Agent C testified that, at the time of the hearing herein, he had been under suspension about two months on a charge of extortion (in another case) and that no date had then been fixed for his trial on said charge. This affects his credibility but, after observing his conduct on the stand, I believe he is telling the truth. There is a sharp dispute between Agent C and defendant's

witnesses as to exactly what Shepperson told Howard and Shepperson denies the sale of the pint bottle of Seagram's Seven Crown whiskey. However, I find as a fact from the testimony of Agent C that Shepperson sold the pint bottle of whiskey to the other patron and that Howard then sold the pint bottle of gin to Agent C. I find as a fact that in both instances a shot was poured from the bottle, the cap was replaced on the bottle and the purchaser then permitted to remove the opened container from the premises, in violation of Rule 1 of State Regulation No. 38. It is interesting to note from the evidence that the contents of each bottle could have been sold by the drink for $6.40, instead of the $3.25 charged for an unopened container. I also find as a fact that both agents identified themselves to Shepperson and Howard, and that each of these employees failed to facilitate the investigation by failing to reveal Howard's name, as requested by the agents.

"After reviewing the evidence, exhibits and the memorandum of law submitted by defendant's attorney, I recommend that defendant be found guilty as charged. Defendant has a prior record. Effective November 21, 1955, his licensed was suspended for ten days for sales to minors (Bulletin 1090, Item 8). It is further recommended, therefore, that an order be entered suspending the license which defendant now holds for a period of fifteen days on Charge 1 (Re Foster's Tavern, Inc., Bulletin 1235, Item 6); for a further period of ten days on Charge 2 (Re Club Harlem Inc., Bulletin 1327, Item 5), and a further period of five days for a dissimilar violation within the past five years (Re Pisano, Bulletin 1293, Item 12), thus making a total suspension of thirty days."

Pursuant to the provisions of Rule 6 of State Regulation No. 16, a copy of the Hearer's Report was sent to the attorneys for defendant-licensee. Thereafter they advised me, in writing that they did not intend to file exceptions to the Hearer's Report and requested that the closing penalty be imposed immediately.

After carefully considering the evidence, exhibits herein and the memorandum of law submitted by defendant's attorneys, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 9th day of March 1961,

ORDERED that plenary retail consumption license C-130, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Nathan Epstein, t/a Onyx Club, for premises 534 Madison Avenue, Paterson, be and the same is hereby suspended for thirty (30) days, commencing at 3 a.m. Monday, March 20, 1961, and terminating at 3 a.m. Wednesday, April 19, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

4. APPELLATE DECISIONS - EPSTEIN v. PATERSON (CASE NO. 1).

Case No. 1 NATHAN EPSTEIN, trading as ONYX CLUB, Appellant, v. BOARD OF ALCOHOLIC BEVERAGE CONTROL FOR THE CITY OF PATERSON, Respondent.	ON APPEAL CONCLUSIONS AND ORDER

Riskin and Joseph, Esqs., by Philip W. Riskin, Esq., Attorneys for Appellant.
William Rosenberg, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby it suspended appellant's license for twenty days, effective at 3 a.m. July 5, 1960. Appellant's premises are located at 534 Madison Avenue, Paterson.

"The suspension was imposed by resolution dated June 22, 1960, after respondent found appellant guilty of the following charge:

> 'That on April 15, 1960 you did serve, sell and deliver an alcoholic beverage to one Waverly ---, a person under the age of 21 years, and allowed and suffered the consumption of such beverage in or upon your licensed premises, in violation of N.J.S.A. 33:1-77 and Rule 1 of State Regulation 20 of the Rules and Regulations of the Division of Alcoholic Beverage Control.'

"Upon the filing of the appeal an order was entered, dated July 1, 1960, staying respondent's order of suspension until further order herein. R.S. 33:1-31.

"The petition of appeal alleges, in substance, that the action of respondent was erroneous because (a) improper and illegal evidence was considered as to the age of the alleged minor, and (b) an alcoholic beverage was not served, sold or delivered to the alleged minor and he was not permitted to consume an alcoholic beverage on the premises.

"As to (a): At the hearing herein Waverly --- testified, on behalf of respondent, that he was born on December 17, 1939, in Virginia, and testified as to his father's name and his mother's maiden name. There was also introduced into evidence a photostat of a Certificate of Birth issued by the Commonwealth of Virginia which completely corroborates the testimony of Waverly --- as to the date of his birth and the names of his parents. This evidence was sufficient to establish his age. See Wigmore on Evidence, Sec. 667. In fact, the testimony as to his age given by Waverly --- at the hearing below was sufficient. State v. Huggins, 83 N.J.L. 43. I conclude that there is not merit as to allegation (a).

"As to (b): Waverly --- testified that he entered appellant's premises on April 15, 1960, at about 8 p.m.; that he bought a bottle

of beer, for thirty-five cents, from Gerald Shepperson who was tending bar; that he had taken a sip from the bottle before two police officers entered and asked him his age; that he told the officers he was 22 but that they doubted it and took him to his sister's home where he and his sister stated to the officers that he was 20 years of age.

"Officer William E. Dolan of the Paterson Police Department testified on behalf of respondent that he and another officer entered appellant's premises at about 8:25 p.m. on the evening in question and observed Waverly --- drinking from a bottle. He further testified that they seized the bottle and took the young man to his sister's home. The bottle was introduced into evidence.

"On behalf of appellant Gerald Shepperson testified that he and John Adamson were tending bar on the evening of April 15; that he did not sell or serve any beer to Waverly --- and, in fact, did not see him on the premises. John Adamson testified that he did not sell or serve any beer to Waverly and both testified that they had been previously warned not to serve him. I find there was sufficient believable evidence to support the finding of fact that an alcoholic beverage was sold to the minor and that he was permitted to consume it on the premises.

"After reviewing the evidence and exhibits, I conclude that appellant has not sustained the burden of proof in establishing that the action of respondent was erroneous. Rule 6 of State Regulation No. 15. It is recommended, therefore, that an order be entered affirming respondent's action, vacating the order dated July 1, 1960, and fixing the effective dates for the twenty-day suspension imposed by respondent."

Pursuant to the provisions of Rule 14 of State Regulation No. 15, copies of the Hearer's Report were sent to the attorneys for appellant and attorney for respondent. Thereafter the attorneys for appellant advised me in writing that they did not intend to file exceptions to the Hearer's Report.

After carefully considering the evidence and exhibits herein, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein. The action of respondent will be affirmed and the suspension imposed by respondent will be reinstated to commence at the conclusion of the suspension imposed in Re Epstein, decided herewith.

Accordingly, it is, on this 9th day of March 1961,

ORDERED that the action of respondent be and the same is hereby affirmed; and it is further

ORDERED that the twenty-day-suspension heretofore imposed by respondent, and stayed during the pendency of this appeal, be and the same is hereby reimposed against appellant's License C-130, for premises 534 Madison Avenue, Paterson, to commence at 3 a.m. Wednesday, April 19, 1961, and to terminate at 3 a.m. Tuesday, May 9, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (PROCURING FEMALES TO ENGAGE IN ACTS OF ILLICIT SEXUAL INTERCOURSE) - OBSCENE LANGUAGE - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against

CLUB 49, a N. J. CORPORATION
4901 Broadway
Union City, N. J.

Holder of Plenary Retail Consumption License C-169, issued by the Board of Commissioners of the City of Union City.

CONCLUSIONS AND ORDER

Defendant-licensee, by Joseph Vaccaro, President.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On December 8, 22 and 23, 1960, and prior thereto, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language in and upon your licensed premises, viz., in that you, through your president, Joseph Vaccaro, made offers to male patrons and customers on your licensed premises to procure and did procure females to engage in acts of sexual intercourse and/or perverted sexual relations with said male patrons and customers, participated in and allowed, permitted and suffered the making of overtures and arrangements in and upon your licensed premises by said females with male patrons and customers for acts of illicit sexual intercourse and/or perverted sexual relations, as aforesaid and allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20."

On December 8, 1960, at about 12:20 a.m., ABC agents engaged in a conversation with a bartender named Joe (later identified as Joseph Vaccaro, president of the subject corporate defendant-licensee of the within premises) during which Joe stated that he had some girls who work out of these licensed premises and who would engage in sexual intercourse "for $10.00 during the week, but not week-ends". He mentioned the names of Barbara and Rose Marie and stated that having these women in the premises was good for business.

On December 22, 1960, at about 9:50 p.m., ABC agents revisited the defendant's license premises and overheard the same bartender in a telephone conversation wherein he stated that one Helen would engage in perverted sexual relations and suggested to the party at the other end to go to her home for that purpose. Later that evening he told Agents M and R that if any patrons express a desire to engage in sexual intercourse, he arranges to have them go to the addresses of certain women for that purpose.

Joe then offered to and did arrange for Agent R to have perverted sexual relations with one Helen, who was seated at the bar. Joe held a whispered conversation with Helen after which he advised Agent R that "it's all set up". Agent R gave Helen $5.00 which Helen acknowledged was in accordance with the "set-up" arranged by Joe, and Helen then insisted that she have a few more drinks before leaving the tavern.

At about 1:15 a.m. on December 23, 1960, Helen and Agent R left the said licensed premises and were then intercepted by Agents D and S, accompanied by officers of the Union City Police Department. Upon questioning, Helen produced the $5.00 bill (the serial number of which had been previously recorded). All then proceeded to the tavern where Joseph Vaccaro, president of the corporate defendant-licensee, as aforementioned, admitted the truth of the basic charge upon which the confessive plea was accepted herein.

The privilege of selling alcoholic beverages at retail to the public--one granted to the few and denied to the many (Paul v. Gloucester, 50 N.J.L. 585)-- must be exercised in the public interest. It has long been established that solicitation for immoral purposes and the making of arrangements for illicit sexual intercourse cannot and will not be tolerated on licensed premises. The public is entitled to protection from these sordid and dangerous practices (Re 17 Club, Inc., Bulletin 949, Item 2; In Re 17 Club, Inc., 26 N.J. Super. 43 (App. Div. 1953)).

In the case now under consideration, the president of defendant corporate-licensee not only permitted the arrangement to be made on the licensed premises, but actually procured the female in question for the purpose of engaging in perverted sexual relations with the agent. Considering the facts and circumstances in this case, the only proper and justifiable penalty is revocation of defendant's license. Re Merjack Corporation, Bulletin 998, Item 1; Re Club Hi Li, Inc., Bulletin 1198, Item 3.

Accordingly, it is, on this 13th day of March 1961,

ORDERED that Plenary Retail Consumption License C-169, issued by the Board of Commissioners of the City of Union City to Club 49, A N. J. Corporation, for premises 4901 Broadway, Union City, be and the same is hereby revoked, effective immediately.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against

CHESTER J. & MARY B. GODISH
t/a JOHNNY'S OLD OAK TAVERN
372 Broad Street
Newark 4, N. J.

Holders of Plenary Retail Consumption License C-372, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

William Osterweil, Esq., Attorney for Defendant-licensees.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that they possessed on their licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

On November 30, 1960, an ABC agent tested defendants' open stock of assorted brands of liquor and seized a quart bottle labaled "Lord Calvert Premium Blended Whiskey, 86 Proof" for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of the seized bottle were off in color, low in acids and high in solids when compared with an analysis of a sample of the genuine product.

Defendants have a prior adjudicated record. Effective August 31, 1959, their license was suspended by the local issuing authority for ten days for an "hours" violation. The minimum suspension in a case of this kind involving one bottle is ten days. Re O'Dell, Bulletin 1371, Item 6. In view of defendants' prior dissimilar violation occurring during the past five years, I shall suspend defendants' license for a period of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 13th day of March 1961,

ORDERED that Plenary Retail Consumption License C-372, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Chester J. & Mary B. Godish, t/a Johnny's Old Oak Tavern, for premises 372 Broad Street, Newark, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, March 20, 1961, and terminating at 2 a.m. Thursday, March 30, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

7. STATE LICENSES - NEW APPLICATIONS FILED.

Narragansett Brewing Company, t/a G. Krueger Brewing Company
Cranston Street at Garfield Avenue, Cranston, Rhode Island
Application filed April 13, 1961 for person-to-person transfer of Limited Wholesale License WL-22 from G. Krueger Brewing Company.

Henrich & Krauszer, Inc., Vineyard Road, Edison Township, N. J.
Application filed April 14, 1961 for place-to-place transfer of State Beverage Distributor's License SBD-69 from 805-811 Georges Road, North Brunswick, N. J.

William Howe Davis
Director