

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

BULLETIN 945

OCTOBER 8, 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 945

OCTOBER 8, 1952.

1. COURT DECISIONS - STEIN v. PASSAIC ET AL. - ORDER OF DIRECTOR
AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket A-351-51 Sept. Term 1951

GUS STEIN,)	
)	
Appellant,)	
)	
-vs-)	On Appeal from Division of
)	Alcoholic Beverage Control,
BOARD OF COMMISSIONERS OF THE)	Department of Public Safety.
CITY OF PASSAIC and LOUIS FISHMAN,)	
)	DECISION
Respondents.)	
-----)	

Argued August 25, 1952 -- Decided September 4, 1952.

Before Judges SMITH, W.A., FREUND and GOLDMANN.

MR. DANIEL G. KASEN argued the cause of the appellant
(KASEN, SCHNITZER & KASEN, attorneys).

MR. WILLIAM N. GURTMAN argued the cause for the respondent,
Board of Commissioners of the City of Passaic.

MR. HENRY H. RUBENSON argued the cause for the respondent,
Louis Fishman (LEO J. BERG, attorney).

The opinion of the court was delivered
PER CURIAM

This case involves an appeal by Gus Stein, who is the holder of a liquor license for premises located at 118 Market Street in the City of Passaic, to review the action of the Director of Alcoholic Beverage Control in affirming the granting of a transfer to Louis Fishman of his plenary retail distribution license from 350 Passaic Street in Passaic to 110 Market Street in the City of Passaic. This application came before the Passaic City Commission sitting as an Excise Board on December 18, 1951. The Passaic City Commission heard testimony of the respondent, Fishman, and the appellant-objector, Stein, and their witnesses and, after hearing argument, the matter was laid over so that the Board could have the benefit of an advisory opinion as to the effect of a decision by the Director of Alcoholic Beverage Control in affirming the denial by the City of Passaic of a similar prior application. The City Commission of Passaic, after being advised that the approval by the Director of their action on the previous application did not bar their granting a transfer on the new application, by their order, granted the transfer involved in this case at a meeting held on January 8, 1952.

Following this determination, the appellant, Stein, appealed to the Director of Alcoholic Beverage Control and on that appeal a full hearing was had before the Acting Director of Alcoholic Beverage Control, the testimony of which hearing is before this court, and the action of the municipality was upheld for the reason that the appellant, Stein, had failed to sustain the burden of proof in showing that the action of the Board of Commissioners was arbitrary or unreasonable. It is this order of which review is sought in this action.

It is urged as a principal ground for reversal that the Board of Commissioners, in exercising their discretion in passing on the transfer of a liquor license, are bound by the interests of public necessity and convenience and that other considerations than public necessity and convenience were the bases of the Commissioners' decision, and that the Director's action in affirming the action of the Commission and approving the transfer should be reversed because he failed to make any finding as to the public interest.

The governing body of the municipality has a wide discretion in the issuance and transfer of liquor licenses, subject to review by the Director of Alcoholic Beverage Control. From our consideration of the facts in this case as disclosed by the record, we have come to the conclusion that the appellant has not successfully borne the burden of proving abuse of discretion by the City Commission or that due consideration was not given to the interests of public necessity and convenience by the City Commission or by the Director, and that, for this reason, the action of the Board and of the Director should be affirmed, with costs.

- - - - -

2. APPELLATE DECISIONS - STEIN v. PASSAIC AND FISHMAN (CASE NO. 2).

Case No. 2)	
GUS STEIN,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	O R D E R
BOARD OF COMMISSIONERS OF THE)	
CITY OF PASSAIC, and LOUIS FISHMAN,)	
)	
Respondents.)	

Kasen, Schnitzer & Kasen, Esqs., by Daniel G. Kasen, Esq., Attorneys
for Appellant.

William N. Gurtman, Esq., Attorney for Respondent Board of
Commissioners.

Leo J. Berg, Esq., Attorney for Respondent Louis Fishman.

BY THE DIRECTOR:

This is an appeal from the action of respondent Board of Commissioners whereby it renewed for the current fiscal year a plenary retail distribution license held by respondent Louis Fishman for premises at 110 Market Street, Passaic.

After the entry of Conclusions and Order in Stein v. Passaic and Fishman (Bulletin 929, Item 1), appellant appealed to the Appellate Division of the Superior Court from the decision filed therein. While said appeal was pending, respondent Board of Commissioners renewed for the current fiscal year the license held by respondent Louis Fishman and thereupon appellant filed this appeal from the action of the Board of Commissioners. On September 4, 1952, the appeal pending in the Appellate Division was dismissed. See Bulletin 945, Item 1.

Prior to the hearing scheduled to be held herein, the attorneys for appellant advised that, in view of the disposition of the prior case by the Appellate Division, they would not proceed with the hearing scheduled to be held herein. At said hearing no one appeared on behalf of any parties to the appeal. I shall, therefore, dismiss the appeal herein for failure to prosecute. Rule 10 of State Regulations No. 15.

Accordingly, it is, on this 30th day of September, 1952,

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

DOMINIC A. CAVICCHIA
Director

3. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JOHN SMITH)
44 Temple Street)
Paterson 2, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-51, issued by the Board of Alcoholic Beverage Control of the City of Paterson.)

-----)

Samuel Doan, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control..

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he sold, served and delivered alcoholic beverages to a minor, and allowed, permitted and suffered the consumption of alcoholic beverages by said minor on his licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file discloses that, between 9:00 p.m. on July 30, 1952 and 2:30 a.m., on July 31, 1952, David W. ---, 17 years of age, made three separate visits to defendant's licensed premises. On each occasion he ordered and was served glasses of beer by the same bartender, who charged him ten cents for each glass of beer. At no time was the minor questioned as to his age.

In mitigation, the licensee claimed that he was not at the licensed premises on the night in question; that he is elderly and in poor health; and that he cannot tend bar and therefore must rely upon hired bartenders. A licensee is, at all times, responsible for the conduct of his licensed premises, and it is no defense that violations may have been committed in his absence, or by his agent, servant or employee, or that he did not participate in the violations, or that they were committed contrary to his instructions. Rule 31 of State Regulations No. 20; Re Frisco Club Corp., Bulletin 942, Item 3. As was said in Re Paton, Bulletin 898, Item 3, "He (a licensee) cannot hide behind his employees".

Defendant has a prior record. His license was suspended by the local issuing authority for a period of ten days, effective February 14, 1944, for sale during prohibited hours in violation of local regulation; and by the then Acting Director for a period of thirty-five days, effective March 18, 1952, for sale of alcoholic beverages in original containers for off-premises consumption during prohibited hours, in violation of State Regulation, sale of alcoholic beverages during prohibited hours in violation of local regulation, and violation of the local "screen" regulation (Re Smith, Bulletin 929, Item 2). In view of the age of the minor (17) I shall suspend the license for fifteen days (Re Warhol, Bulletin 914, Item 9), adding five days for the prior record. Cf. Re Moryl, Bulletin 901, Item 7. This effects a total suspension of twenty days. However, five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 10th day of September, 1952,

ORDERED that Plenary Retail Consumption License C-51, issued by the Board of Alcoholic Beverage Control of the City of Paterson to

John Smith, 44 Temple Street, Paterson, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 a.m. September 17, 1952, and terminating at 3:00 a.m. October 2, 1952.

DOMINIC A. CAVICCHIA
Director.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - PREMISES NOW CLOSED - SUBSEQUENT ORDER TO BE ENTERED FIXING EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary Proceedings against)

NORECE CORPORATION)
T/a THE STOCKTON HOTEL)
1st Ave., Trenton Blvd. to)
Neptune Place)
Sea Girt, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Seasonal Retail Consumption License CS-2, issued by the Borough Council of the Borough of Sea Girt.)

Warren & Stein, Esqs., by George Warren, Esq., Attorneys for Defendant-licensee.

William F. Wood, Esq., appearing for Division of Alcoholic Beverage Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it possessed on its licensed premises alcoholic beverages in bottles bearing labels which did not truly describe the contents thereof, in violation of Rule 27 of State Regulations No. 20.

On July 25, 1952 an ABC agent examined 84 opened bottles of alcoholic beverages on defendant's licensed premises and seized two 4/5 quart bottles labeled "Canadian Club Blended Canadian Whisky 90.4 Proof" when his field tests indicated a variance between the descriptions on the labels of the bottles and the contents thereof. Subsequent analysis by the Division chemist disclosed that the contents of the seized bottles were not genuine as labeled.

Defendant's assistant manager, in charge of the purchasing and dispensing of alcoholic beverages at the licensed premises, disclaimed any knowledge of the discrepancies. Nevertheless the licensee is responsible for any "refills" found in its stock of liquor. Re Bertola, Bulletin 921, Item 8.

Defendant has no prior adjudicated record. By letter dated July 22, 1947, defendant was warned with respect to possession of "refills" upon the licensed premises. However, in view of the lapse of time since the aforementioned warning, I shall suspend defendant's license for the minimum period of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re Gene Laurent's Maple Tree Inn, Bulletin 942, Item 12. Defendant holds a seasonal retail consumption license, the term of which will expire on November 1, 1952. I am advised that it has closed the licensed premises and will not reopen prior to the termination of its license. Therefore, no effective penalty can be imposed at the present time. Cf. Buena Vista Hotel Co. of Belmar, Bulletin 858, Item 1.

Accordingly, it is, on this 10th day of September, 1952,

ORDERED that Seasonal Retail Consumption License CS-2, issued by the Borough Council of the Borough of Sea Girt to Norece Corporation, t/a The Stockton Hotel, for premises 1st Ave., Trenton Blvd. to Neptune Place, Sea Girt, or any further license issued to said Norece Corporation or any license issued to any other person for the same premises, be and the same is hereby suspended for a period of ten days. Further order fixing the period of suspension will be entered if any license is issued to this defendant or to any other person for the premises in question.

DOMINIC A. CAVICCHIA
Director.

- 5. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING THAT FEMALE IMPERSONATORS WERE PERMITTED ON LICENSED PREMISES DISMISSED - CHARGE ALLEGING THAT BUSINESS WAS CONDUCTED AS A NUISANCE DISMISSED - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

THE TORCH (A Corp.))
258 Clinton Avenue)
Newark 8, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-835 for the 1951-52)
and 1952-53 licensing years, issued)
by the Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)

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

BY THE DIRECTOR:

Defendant pleaded not guilty to charges alleging that it (1) allowed, permitted and suffered female impersonators in and upon its licensed premises, in violation of Rule 4 of State Regulations No. 20 and (2) allowed, permitted and suffered the licensed place of business to be conducted in such manner as to become a nuisance, in that it permitted persons who appeared to be female impersonators and lesbians to frequent and congregate upon a portion of the licensed premises and otherwise conducted its licensed business in a manner offensive to common decency and public morals, in violation of Rule 5 of State Regulations No. 20.

Defendant pleaded non vult to a third charge alleging that it sold, served and delivered alcoholic beverages to a minor and allowed, permitted and suffered the consumption of alcoholic beverages by said minor on its licensed premises, in violation of Rule 1 of State Regulations No. 20.

As to charges (1) and (2): Certain circumstances create the suspicion that the violations charged may have occurred. But suspicion, no matter how reasonably inferable, is not a substitute for the quantum of proof necessary for a finding of guilt. Re Doyle, Bulletin 469, Item 2, and cases cited therein. A careful consideration of all of the testimony leads me to conclude that the violations charged have not been established. Consequently, I find defendant not guilty as to charges (1) and (2).

As to charge (3): The file discloses that, on the night of June 7, 1952, ABC agents, who were then in defendant's licensed

premises, observed one of the officers and stockholders of defendant corporation sell and serve a "shot" of whiskey to Michael ---, 19 years of age, which the minor partly consumed. The minor admitted that, over a period of several months, he had verbally misrepresented himself at the licensed premises to be 21 years of age and had exhibited an insurance card in substantiation of such claim. This does not constitute a defense under the provisions of R.S. 33:1-77, because, admittedly the minor did not falsely represent in writing that he was 21 years of age or over. Re Cedar Bar of Bergen County, Inc., Bulletin 942, Item 5. Defendant has no prior adjudicated record. There being no aggravating circumstances, I shall suspend the license for ten days. Five days will be remitted for the plea, leaving a net suspension of five days. Re Scatchard, Bulletin 937, Item 7.

Although this proceeding was instituted during the 1951-52 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1952-53. State Regulations No. 16.

Accordingly, it is, on this 10th day of September, 1952,

ORDERED that Plenary Retail Consumption License C-835, issued for the 1952-53 licensing period by the Municipal Board of Alcoholic Beverage Control of the City of Newark to The Torch (A Corp.), 258 Clinton Avenue, Newark 8, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. September 15, 1952, and terminating at 3:00 a.m. September 20, 1952.

DOMINIC A. CAVICCHIA
Director.

6. STATE BEVERAGE DISTRIBUTOR'S LICENSE - OBJECTIONS TO TRANSFER OF LICENSE HELD TO BE MERITORIOUS - APPLICATION FOR TRANSFER DENIED.

In the Matter of Objections to)
the Transfer of a State Beverage)
Distributor's License held by.)

MAURICE G. WARREN)
T/a CUMBERLAND BEVERAGE CO.,)

CONCLUSIONS

from 70 West Landis Avenue to)
202 and rear of 204 Elmer Street,)
Vineland, N. J.)

Moe A. Joseph, Esq., Attorney for Applicant.
William K. Dickey, Jr., Esq., Attorney for Fellowship Church of
Christ, Objector.

BY THE DIRECTOR:

Written objection filed on behalf of the membership of the Fellowship Church of Christ, 218 Elmer Street, Vineland, alleges, among other things, that the church operates a daily Bible school on the church premises, and that the premises to which the transfer is sought are within 200 feet of the church.

At the hearing held herein, Rev. Robert L. Finch, Pastor of the Fellowship Church of Christ, testified that the church was erected about the year 1891 on property known as 218 Elmer Street, Vineland. The Pastor further testified that about four years ago a full-time school was established in the church building; that this school had an enrollment of eighteen pupils last year and is expected to have eighteen pupils this year; that the pupils range in age from those

attending the second grade through the second year of high school; that the school has two teachers, and that the curriculum includes a music department.

A diagram presented at the hearing indicates that the distance between the nearest entrance to the church and the nearest entrance to the office of the proposed licensed premises at 202 Elmer Street (measured along the sidewalk from a point where the sidewalk intersects the walk leading to the church to a point where the sidewalk intersects the walk leading to the office at 202 Elmer Street) is approximately 183 feet. In even closer proximity to the nearest entrance to the church is a driveway leading to the rear of 204 Elmer Street. The applicant indicated at the hearing that he would agree to close this driveway by placing a chain or some other device in front of it. But even if applicant were to close this driveway the license could not lawfully be transferred to the premises in question if the entrance to the office building at 202 Elmer Street were to be used as the entrance to the licensed premises, because said office building entrance is within 200 feet of the nearest entrance to the church. The applicant further indicated at the hearing that he would be willing to close also the walk leading to the office building entrance and to use only a driveway on Second Street, which driveway is more than 200 feet from the nearest entrance to the church measured in the normal way that a pedestrian would properly walk from said driveway to the entrance of said church.

After considering all the evidence herein, I have concluded that the application for the transfer of the license should be denied because, in my opinion, the premises are in too close proximity to the church and school even if technically a violation of R. S. 33:1-76 might be avoided by shutting off the two existing entrances on Elmer Street. An issuing authority, in deciding whether a license or license transfer should be granted, may consider the proximity of a church or school even though the premises sought to be licensed are more than 200 feet distant therefrom. Persi v. Trenton, Bulletin 46, Item 13; Rafalowski v. Trenton, Bulletin 155, Item 8; Re Konke, Bulletin 212, Item 6. In reaching this conclusion I have considered the fact that there are numerous residences in the immediate neighborhood and that a large percentage of these residents object to the transfer of the license. At least two of these residents have advised me that they were annoyed by the manner in which the premises were conducted by a liquor licensee many years ago, as hereinafter set forth. In reaching this conclusion I have also considered the fact that these premises were occupied by Imperial Distributing Company, Inc., and later by Michael A. Buglio, Jr., t/a Imperial Distributing Company, holders of State Beverage Distributor's licenses continually from 1936 until July 1, 1946, when the Buglio license was transferred to other premises.

The attorney for the applicant stated at the hearing that the same church objected when these premises were originally licensed but that, after investigation was made by agents of this Division (then Department), the licensee was permitted to operate despite said objection. A search of the records of this Division fails to disclose that any written objection was filed by the church at that time and, admittedly, there was no previous hearing at which the representatives of the church or any other objectors were given an opportunity to be heard. It may be that Imperial Distributing Company, Inc., and Michael A. Buglio, Jr., were permitted to continue operation because the entrance on Second Street was technically more than 200 feet from the entrance to the church. However, alcoholic beverage activity formerly conducted at said premises ceased more than six years ago. The situation has since

changed somewhat by the establishment of the school. In any event, it appears that now, for the first time, formal objections have been made to the licensing of the property and the objections fully presented for consideration. A transfer of a license is not a right inherent in the license. If good cause appears, an application for transfer may be denied in the discretion of the issuing authority. In my opinion, the facts set forth herein constitute a good and valid cause for refusing applicant's application to transfer his license to these premises despite the fact that the premises were previously licensed.

For the reasons aforesaid, the application for transfer of the license will be denied.

DOMINIC A. CAVICCHIA
Director.

Dated: September 29, 1952.

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

In the Matter of Disciplinary Proceedings against
M. P. CORPORATION
T/a PADDOCK INTERNATIONAL
1643 Atlantic Avenue
Atlantic City, N. J.,

ON PETITION
O R D E R

Holder of Plenary Retail Consumption License C-97 for the 1951-52 licensing year and C-237 for the 1952-53 licensing year, issued by the Board of Commissioners of the City of Atlantic City.

Leo J. Berg, Esq., Attorney for Petitioner-licensee.

BY THE DIRECTOR:

It appearing that, by Order dated September 2, 1952, petitioner's license was suspended for a period of thirty-five days, commencing at 7:00 a.m. September 8, 1952, and terminating at 7:00 a.m. October 13, 1952, and

It further appearing from the verified petition of Morris Perlstein, President of M. P. Corporation, that, long prior to receipt of notice of said suspension, the M. P. Corporation had completed arrangements with the officers of a bank located in the State of Oklahoma for a dinner and cocktail party to be held on petitioner's licensed premises on September 28, 1952, during the course of the annual convention of the American Bankers Association, and

It further appearing from said petition that the bank has invited approximately 130 guests to the dinner and cocktail party and that the bank will be unable to obtain similar accommodations elsewhere in Atlantic City at this time of year, and

It appearing from the facts set forth in the petition that numerous innocent persons will suffer undue hardship if said affair is not held as scheduled,

It is, on this 11th day of September, 1952,

ORDERED that the suspension which became effective at 7:00 a.m. September 8, 1952, shall continue in effect until 7:00 a.m. September 28, 1952; that thereafter said suspension shall be lifted until 7:00 a.m. September 29, 1952, when it shall again become effective and continue in effect until 7:00 a.m. October 14, 1952.

DOMINIC A. CAVICCHIA
Director.

8. AUTOMATIC SUSPENSION - SALE TO MINORS - LICENSE PREVIOUSLY
SUSPENDED BY LOCAL ISSUING AUTHORITY - APPLICATION TO LIFT
GRANTED.

In the Matter of a Petition to)
Lift the Automatic Suspension of)
Plenary Retail Consumption License)
C-24, issued by the Municipal Board)
of Alcoholic Beverage Control of)
the City of Linden to)

ON PETITION
CONCLUSIONS AND ORDER

ALEXANDER J. & VICTOR T. JANUIK)
812 East St. George Avenue)
Linden, N. J.)

Louis Foxman, Esq., Attorney for Petitioner.

It appears from a verified petition filed herein by Alexander J. Januik that on September 12, 1952, he was sentenced in the Union County Court to pay a fine of \$250.00 after he had pleaded non vult to an indictment alleging that he had sold alcoholic beverages to minors. His conviction in the criminal proceedings has resulted in the automatic suspension of the license held by Alexander J. & Victor T. Januik for the balance of its term. R.S. 33:1-31.1. The license certificate was picked up by ABC agents on September 22, 1952, and no alcoholic beverage activity has been conducted on the licensed premises since that time. The petition herein prays that the automatic suspension of the license be lifted.

It appears from the records of the Division of Alcoholic Beverage Control that on July 14, 1952, the Municipal Board of Alcoholic Beverage Control of the City of Linden suspended the license held by Alexander J. & Victor T. Januik for a period of twenty days, less five days for the plea, after they had pleaded guilty in disciplinary proceedings to a charge of selling alcoholic beverages to minors, in violation of Rule 1 of State Regulations No. 20. As a result of said suspension, no alcoholic beverage activity was conducted at the licensed premises from 2:00 a. m. July 16, 1952, to 7:00 a.m. July 31, 1952.

The indictment in the criminal proceedings and the charge in the disciplinary proceedings were based upon the same facts. The case concerns the sale of beer to two minors, both of whom were then sixteen years of age.

A review of the facts of the case indicates that the suspension heretofore imposed by the municipal issuing authority was adequate under the circumstances of the case. Hence, the relief sought herein will be granted.

Accordingly, it is, on this 23rd day of September, 1952,

ORDERED that the automatic suspension of License C-24, held by Alexander J. & Victor T. Januik, for premises known as 812 East St. George Avenue, Linden, be and the same is hereby lifted and said license is hereby restored to full force and operation, effective immediately.

DOMINIC A. CAVICCHIA
Director.

By: Edward J. Dorton
Deputy Director.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

LOUIS FISHMAN)
110 Market Street)
Passaic, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-5, issued by the Board of Commissioners of the City of Passaic.)

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

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge that he sold alcoholic beverages at retail for a price below the minimum consumer price, in violation of Rule 5 of State Regulations No. 30.

The file herein discloses that on September 11, 1952, an ABC agent purchased from the defendant a 4/5 quart bottle of "Seagram's Seven Crown Blended Whiskey" for \$4.25. The minimum retail price for a 4/5 quart bottle of the brand of whiskey in question, as listed in the then current "Complete List of New Jersey Minimum Consumer Resale Prices of Alcoholic Beverages", was \$4.42. When the violation was called to the attention of the defendant by the ABC agent, the defendant contended that he had made a mistake. Defendant's explanation does not excuse him.

Defendant has no prior adjudicated record. I shall suspend defendant's license for a period of ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Town Hall Delicatessen, Inc., Bulletin 935, Item 10.

Accordingly, it is, on this 29th day of September, 1952,

ORDERED that Plenary Retail Distribution License D-5, issued by the Board of Commissioners of the City of Passaic to Louis Fishman, 110 Market Street, Passaic, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. October 6, 1952, and terminating at 9:00 a.m. October 11, 1952.

DOMINIC A. CAVICCHIA
Director.

10.

ACTIVITY REPORT FOR SEPTEMBER 1952

ARRESTS:			
Total number of persons arrested	-----		31
Licensees and employees	----- 8		
Bootleggers	----- 23		
SEIZURES:			
Motor vehicles - cars	-----		5
- trucks	-----		2
Still - over 50 gallons	-----		4
- 50 gallons or under	-----		8
Mash - gallons	-----		37,113.10
Distilled alcoholic beverages - gallons	-----		85.37
Wine - gallons	-----		21.50
Brewed malt alcoholic beverages - gallons	-----		3.38
RETAIL LICENSEES:			
Premises inspected	-----		753
Premises where alcoholic beverages were gauged	-----		783
Bottles gauged	-----		12,840
Premises where violations were found	-----		64
Violations found	-----		68
Type of violations found:			
Unqualified employees	----- 18	Prohibited signs	----- 1
Disposal permit necessary	----- 18	Other mercantile business	----- 1
Reg. #38 sign not posted	----- 2	Other violations	----- 28
STATE LICENSEES:			
Premises inspected	-----		16
License applications investigated	-----		13
COMPLAINTS:			
Complaints assigned for investigation	-----		437
Investigations completed	-----		405
Investigations pending	-----		163
LABORATORY:			
Analyses made	-----		120
Refills (from licensed premises) - bottles	-----		2
Bottles from unlicensed premises	-----		35
IDENTIFICATION BUREAU:			
Criminal fingerprint identifications made	-----		30
Persons fingerprinted for non-criminal purposes	-----		265
Identification contacts made with other enforcement agencies	-----		199
Motor vehicle identifications via N. J. State Police teletype	-----		10
DISCIPLINARY PROCEEDINGS:			
Cases transmitted to municipalities	-----		23
Violations involved:			
Sale to minors	----- 7	Permitting lottery activity (raffle)	----- 2
Sale during prohibited hours	----- 7	Sale to non-members by clubs	----- 1
Permitting females at bar (mun.reg.)	----- 6	Sale on credit by retail licensee (mun. reg.)	----- 1
Cases instituted at Division	-----		17*
Violations involved:			
Sale to minors	----- 5	Retailer soliciting house-to-house	----- 1
Sale during prohibited hours	----- 2	Permitting pin ball machines on prem.	----- 1
Sale below minimum resale price	----- 2	Permitting females at bar (mun. reg.)	----- 1
Permitting immoral activity on premises	----- 2	Conducting business as nuisance	----- 1
False statement in application	----- 2	Possessing illicit liquor	----- 1
Delivery without bona fide invoice	----- 1	Wholesaler accepting ordinary checks from retailers in default	----- 1
Delivery w/o transportation insignia	----- 1	Possessing contraceptives on prem.	----- 1
*Includes one cancellation proceeding for conduct of other mercantile business on consumption licensed premises			
Cases brought by municipalities on own initiative and reported to Division	-----		4
Violations involved:			
Sale to minors	----- 2		
Sale during prohibited hours	----- 2		
HEARINGS HELD AT DIVISION:			
Total number of hearings held	-----		34
Appeals	----- 3	Seizures	----- 3
Disciplinary proceedings	----- 17	Applications for license	----- 2
Eligibility	----- 9		
PERMITS ISSUED:			
Total number of permits issued	-----		965
Employment	----- 219	Social affairs	----- 373
Solicitors	----- 105	Special wine	----- 63
Disposal of alcoholic beverages	----- 62	Miscellaneous	----- 143

DOMINIC A. CAVICCHIA
Director.

Dated: October 1, 1952.

11. NUMBER OF MUNICIPAL LICENSEES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1952 TO SEPTEMBER 30, 1952 AS REPORTED TO THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19.

CLASSIFICATION OF LICENSES

County	Plenary Retail Consumption		Plenary Retail Distribution		Club	Limited Retail Distribution		Seasonal Retail Consumption		Number Surrendered Revoked Expired	Number Licenses in Effect	Total Fees Paid	
	No. Issued	Fees Paid	No. Issued	Fees Paid		No. Issued	Fees Paid	No. Issued	Fees Paid				
Atlantic	488	\$ 208,030.05	71	\$ 26,075.00	17	\$ 1,600.00					576	\$ 235,705.05	
Bergen	814	299,625.00	299	83,712.00	80	7,578.23	57	\$ 2,615.00	5	\$ 1,334.50	1255	394,864.73	
Burlington	186	72,525.00	31	8,550.00	36	5,150.00	1	25.00			254	86,250.00	
Camden	456	218,500.00	82	31,725.00	69	6,623.23			1	375.00	608	257,223.23	
Cape May	133	64,650.00	11	3,550.00	17	1,800.00					161	70,000.00	
Cumberland	81	34,450.00	13	3,600.00	30	4,060.00					124	42,110.00	
Essex	1374	763,366.52	349	205,190.00	101	13,944.79	32	1,600.00	1	750.00	1857	984,761.31	
Gloucester	107	33,600.00	13	2,750.00	15	1,442.05					135	37,792.05	
Hudson	1556	675,185.00	298	117,810.00	76	9,132.13	64	2,750.00			1994	804,877.13	
Hunterdon	79	25,250.00	7	2,162.50	6	700.00					92	28,112.50	
Mercer	425	257,550.00	51	20,850.00	53	7,448.35			1	107.50	530	285,955.85	
Middlesex	635	303,905.00	73	22,245.00	75	6,973.49	5	250.00			788	333,373.49	
Monmouth	549	277,445.00	116	39,525.00	32	3,840.55	11	460.00	28	11,665.03	736	332,935.58	
Morris	353	122,307.60	97	29,800.00	46	4,435.89	22	1,100.00	5	1,068.80	2	521	158,712.29
Ocean	180	99,792.03	46	19,065.00	17	1,786.93					243	120,643.96	
Passaic	877	357,049.31	167	51,370.00	36	4,380.00	11	525.00			1091	413,324.31	
Salem	50	19,000.00	7	1,300.00	15	1,300.00			1	262.50	73	21,862.50	
Somerset	185	76,068.99	38	10,345.00	22	2,400.00					245	88,813.99	
Sussex	170	45,155.00	19	3,555.00	9	535.00	1	50.00	1	225.00	200	49,520.00	
Union	546	296,100.00	144	59,500.00	68	7,600.00	34	1,650.00			792	364,850.00	
Warren	148	42,555.00	17	4,157.50	32	3,165.00			2	292.48	199	50,169.98	
TOTALS	9392	\$4,292,109.50	1949	\$746,747.00	852	95,895.64	238	\$11,025.00	45	\$16,080.81	2	12474	\$5,161,857.95

DOMINIC A. CAVICCHIA
Director.

Respectfully submitted, John H. Michelson, Deputy Director

October 1, 1952

12. DISQUALIFICATION - EFFECT OF FULL AND UNCONDITIONAL PARDON - NO ORDER TO LIFT STATUTORY DISQUALIFICATION REQUIRED.

In the Matter of an Application)
to Remove Disqualification)
because of a Conviction, Pursuant)
to R. S. 33:1-31.2.)

CONCLUSIONS

Case No. 998.
-----)

BY THE DIRECTOR:

On January 6, 1943, after petitioner had pleaded guilty in a Federal District Court to a charge of conspiring to violate the Internal Revenue Laws, he was sentenced to imprisonment for six months and to pay a fine of \$200.00. The prison sentence was suspended and he was placed on probation for a period of one year. On December 14, 1945, petitioner was convicted in a Federal court on a charge of concealing assets in bankruptcy and was sentenced to imprisonment for one year and a day and to pay a fine of \$500.00. This sentence was also suspended and he was placed on probation for a further period of one year. Both of the crimes of which petitioner was convicted involved moral turpitude.

Petitioner has recently sold a bakery which he had conducted for a period of about four years in a New Jersey municipality. Prior to his entry into the bakery business he had been engaged in the yeast business for a period of more than twenty years in another state. He has never been engaged in the alcoholic beverage business.

At the hearing three bakers, each of whom has known petitioner for more than fifteen years, testified that he has conducted himself in a law-abiding manner for more than five years last past.

On the record presented I conclude that petitioner has been law-abiding for more than five years last past, and that his connection with the alcoholic beverage industry will not be contrary to public interest. Hence I would enter an order herein removing his disqualification if such an order were necessary. However, it appears from the record that on April 4, 1952, petitioner obtained from the President of the United States a full and unconditional pardon which recited therein both of the convictions hereinabove set forth. Such a pardon wipes out the convictions and everything pertaining to them. Re _____, Bulletin 160, Item 8. Under the circumstances there is no need to enter an order herein. In any application for a license or permit hereafter made, petitioner may honestly declare that he has never been convicted of the crimes of which he has been pardoned.

DOMINIC A. CAVICCHIA
Director.

Dated: September 30, 1952.

13. MORAL TURPITUDE - CONVICTION OF PURELY MILITARY OFFENSE (AWOL) HELD NOT TO CONSTITUTE CONVICTION OF A CRIME - CONVICTION AS DISORDERLY PERSON HELD NOT TO CONSTITUTE CONVICTION OF CRIME - CONVICTION FOR COMMERCIALIZED GAMBLING HELD NOT TO CONSTITUTE CONVICTION OF CRIME INVOLVING MORAL TURPITUDE UNDER FACTS OF CASE.

October 1, 1952

Re: Case No. 633

Applicant seeks a determination as to whether or not he is ineligible for employment by the holder of a liquor license in New Jersey by reason of his conviction of crime.

In 1944, while in the Armed Forces of the United States, applicant was found guilty by court martial of being absent without leave (AWOL) and was sentenced to serve seven and one-half years in military prison. However, he was released after having served two years, returned to duty and was thereafter honorably discharged from the service. Conviction of the purely military offense (AWOL), which is not cognizable before our civil courts, can hardly be a conviction of "crime" within the meaning of the Alcoholic Beverage Law (R. S. 33:1-25, 26). Cf. Case No. 231, Bulletin 271, Item 10. That offense (AWOL) is far less serious than desertion and in my opinion does not involve moral turpitude. Furthermore, the military authorities apparently believed that applicant had paid his debt because he was released after serving part of his sentence in a military prison and later received an honorable discharge. Hence this case is distinguishable from Case No. 302, Bulletin 357, Item 10.

In August 1949, applicant was arrested in a "numbers" raid and was adjudged a disorderly person (illegal occupation) in a Municipal Court and was fined \$100.00. Conviction under the Disorderly Persons Law is not a conviction of "crime" within the meaning of R. S. 33:1-25, 26. Case No. 593, Bulletin 739, Item 14; Case No. 131, Bulletin 451, Item 7. No moral turpitude is involved in this conviction. Case No. 131, supra.

In January 1950, applicant pleaded non vult in a County Court to a charge alleging that he unlawfully and knowingly possessed "numbers" slips, as a result of which he was sentenced to a one-to-two year term in State Prison but the prison term was suspended and he paid a fine of \$500.00. Conviction for engaging in commercial gambling may or may not involve moral turpitude depending upon the facts. Case No. 629, Bulletin 918, Item 11; Case No. 630, Bulletin 916, Item 7; Case No. 315, Bulletin 396, Item 4. Where the person is only an employee, as distinguished from a "principal" or "lieutenant", it has been held that the crime does not involve moral turpitude. Case No. 526, Bulletin 604, Item 8; Case No. 315, supra. In the instant case the applicant testified that he was not the "principal" but was merely an employee working on a percentage basis. There being no evidence to the contrary, I am constrained to find that the crime of which he was convicted in 1950 did not involve moral turpitude.

Under all the circumstances herein, I must conclude that applicant is not disqualified, within the meaning of R.S. 33:1-25, 26, by reason of the convictions herein, from being employed by, or connected with the holder of, an alcoholic beverage license in this state.

Anthony Meyer, Jr.
Attorney.

APPROVED:
DOMINIC A. CAVICCHIA
Director.

14. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against MARION COHEN 100 Carroll Street Paterson 1, N. J., Holder of Plenary Retail Distribution License D-17, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

CONCLUSIONS AND ORDER

Marion Cohen, Defendant-licensee, Pro Se. David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that she sold a pint bottle of whiskey in its original container for consumption off the licensed premises, before 9:00 a.m., on Friday, August 22, 1952, in violation of State Regulations No. 38.

The file disclosed that, at approximately 8:00 a.m., on Friday, August 22, 1952, an ABC agent entered defendant's licensed premises where Jack Cohen, defendant's husband, was standing behind a counter. The agent ordered and defendant's husband sold and delivered to him a sealed pint bottle of Schenley Reserve whiskey which had been placed in a paper bag. The agent went outside where he was joined by another agent who had remained nearby. Both agents then entered the licensed premises where defendant's husband verbally admitted the violation but claimed that he thought it was 9:00 a.m.

Defendant has no prior adjudicated record. I shall impose the minimum suspension for violations of this type -- fifteen days. Re Della Rodolfa, Bulletin 916, Item 16. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 2nd day of October, 1952,

ORDERED that Plenary Retail Distribution License D-17, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Marion Cohen, 100 Carroll Street, Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 9:00 a.m. October 14, 1952, and terminating at 9:00 a.m. October 24, 1952.

DOMINIC A. CAVICCHIA Director.

15. STATE LICENSES - NEW APPLICATIONS FILED.

Marcus E. Van Blarcom and Aaron J. Van Blarcom
T/a Van's Delivery Service
689 Godwin Avenue
Wortendyke, N. J.

Application filed September 22, 1952 for Transportation License.

William H. Harris 3rd
T/a Salem Express
Salem-Woodstown Rd. at Fenwick Bridge
Mannington Township
P.O. Salem, N. J.

Application filed September 23, 1952 for Transportation License.

Langer Transport Corp.
Route 1, near Danforth Avenue
Jersey City, N. J.

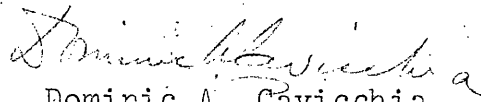
Application filed September 30, 1952 for Transportation License.

Garford Trucking Inc.
Highway S-28
East Brunswick, N. J.

Application filed October 6, 1952 for Additional Warehouse at
101 Hart Avenue, Trenton, N. J.

Carlo C. Gelardi, Inc.
16 Elm St. and Rear of 14 Elm Street
Somerville, N. J.

Application filed October 6, 1952 for Transfer of State Beverage
Distributor's License SBD-51 from Carlo C. Gelardi.


Dominic A. Cavicchia
Director.