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

BULLETIN 1030 SEPTEMBER 7, 1954.

TABLE OF CONTENTS

ITEM

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

BULLETIN 1030 SEPTEMBER 7, 1954.

1. APPELLATE DECISIONS - MEISTER v. PASSAIC TOWNSHIP.

MRS. GRACE MEISTER, trading as IDLE HOUR, Appellant, -vs- TOWNSHIP COMMITTEE OF THE TOWNSHIP OF PASSAIC, Respondent.	)	ON APPEAL CONCLUSIONS AND ORDER

Sidney Simandl, Esq., Attorney for Appellant.
George B. Keeler, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The petition of appeal in the instant case constitutes in reality two appeals -- one from respondent's action in denying appellant's application for a place-to-place transfer of her 1953-54 plenary retail consumption license from premises located on the southeast corner of Passaic Valley Road (also known as Springfield Avenue) and Mountain Avenue to premises located on the south side of Passaic Valley Road (also known as Springfield Avenue) and from the failure of the respondent to act formally upon appellant's application for renewal of her 1954-55 license for premises on the south side of Passaic Valley Road (also known as Springfield Avenue). The failure of the respondent to act on appellant's renewal application will be considered for the purposes herein as a denial thereof.

In order to fully understand the matters now under consideration it will be necessary to give a brief history in chronological order of the proceedings prior to and including those which lead to the present appeal.

It appears from the undisputed evidence that the building wherein the licensed premises were located for many years past was destroyed by fire and that the owner thereof not only failed to repair the structure but indicated that he had no intention of permitting the appellant to reoccupy the premises. The appellant owned a parcel of land one hundred feet along Passaic Valley Road (also known as Springfield Avenue) which adjoins the property where the former premises were located. Appellant applied to the building inspector for permission to erect a building on part of her land to be used as the licensed premises. The building inspector refused to issue a permit for such purpose because of a possible violation of a zoning ordinance. The appellant thereafter made application to the local Board of Adjustment for the interpretation of the zoning law applicable to her particular property. At a meeting of the Board of Adjustment on March 25, 1954, the five members thereof by unanimous decision determined that forty-five feet of the appellant's land on the south side of Passaic Valley Road (also known as Springfield Avenue) next adjoining the property wherein her former premises were located was in a business zone and that a building proposed by appellant 22 feet by 36 feet might be erected thereon. Pursuant thereto a building permit issued and appellant began the erection of a building which was still in the course of construction at the date of the instant hearing.

On March 31, 1954, appellant filed an application with the respondent for the transfer of her license to the proposed premises. After a hearing thereon the respondent denied said transfer for the following reasons:

"1. The location of the building in a limited retail area is not adequate for use as a tavern.

"2. Part of the driveway which is to be used is in the residential zone.

"3. Seventy-five citizens are objecting to granting the transfer of license against eleven in favor of it.

"4. Objections of a technical nature. Plans and specifications have not been submitted to the Township Clerk which is required by statute.

"5. Part of a building in residential zone is to be for retail purposes."

On May 20, 1954, appellant filed another application for a similar place-to-place transfer as requested in her previous application. The respondent on its own motion denied said application for the same reasons as those given previously.

On May 29, 1954, appellant filed an application for renewal of her license for the 1954-55 licensing period for the proposed premises located on the south side of Passaic Valley Road (also known as Springfield Avenue). The respondent failed to act on said application, indicating "that a license cannot be renewed on a building that does not exist."

At the instant hearing Armando D. Rossi, Chairman of the respondent Township Committee, testified that the members of the respondent Committee voted to deny appellant's second application for a place-to-place transfer because "the location of the building is in the limited retail area and is not adequate for use as a tavern; part of the driveway which is to be used is in a residential zone; seventy-five citizens are objecting to the granting of the transfer of the license against eleven in favor of it."

In appeals of this nature the burden is on the appellant to establish that the action of the issuing authority was erroneous and should be reversed. Rule 6 of State Regulations No. 15.

The transfer of a liquor license to other persons or premises, or both, is not an inherent or automatic right. The issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on reasonable ground, it has been consistently ruled that such action will be affirmed. Fafalak v. Bayonne, Bulletin 95, Item 5; VanSchoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; Masarik v. Milltown, Bulletin 283, Item 10; Biscamp and Hess v. Teaneck, Bulletin 821, Item 8; Kemo v. Trenton, Bulletin 983, Item 2.

On the other hand, where it appears that refusal of a transfer is arbitrary and unreasonable, the action of respondent in refusing the transfer will be reversed. Shapley v. Delaware, Bulletin 294, Item 7; Maliken v. Neptune City, Bulletin 915, Item 2.

The situation which exists in the instant case is closely comparable to that in Leonia Liquors, Inc. v. Leonia, Bulletin 766, Item 1; Kupay v. Passaic, Bulletin 803, Item 9; Grower v. Hackensack, Bulletin 789, Item 1; Costa v. Verona, Bulletin 501, Item 2. In the latter case the then Commissioner stated:

"Thus, were appellant located in a different section of the municipality and seeking to transfer into the vicinity in question, or if, being within the area (as is the case), he were seeking to transfer to a site that would aggravate to any appreciable degree the existing concentration of licenses in that area, respondent would be justified in denying the transfer and, on appeal, I would sustain such denial. Neither of such situations, however, is present in this case. On the contrary, the facts herein indicate that the applicable ruling is that where no attack is made on the personal fitness of the applicant or the suitability of the premises, a refusal to transfer, whether from person to person or from place to place, cannot, in the absence of good independent cause, be sustained."

The appellant has conducted a licensed premises in the building previous to its destruction by fire for more than eleven years and there is no indication that the business was operated in an improper manner. The Chief of Police testified that "I can only state the fact that there was no police call to that tavern."

I have carefully examined the entire record herein, and find that respondent's reasons for refusing the transfer of appellant's license are insufficient warranting a denial thereof. Therefore, respondent's action denying appellant's application for transfer of her 1953-54 license to the proposed premises will be reversed. Respondent's inaction with respect to appellant's renewal application (such inaction being deemed, for the purposes herein, as a denial) will also be reversed.

It would be an empty gesture at this time to order the granting of appellant's application for transfer of her 1953-54 license. However, the pertinent order of reversal herein will give appellant the standing of a licensee as of June 30, 1954, and respondent shall grant appellant's renewal application as hereinafter set forth.

Accordingly, it is, on this 17th day of August, 1954,

ORDERED that the action of respondent denying the place-to-place transfer of appellant's 1953-54 license to the south side of Passaic Valley Road (also known as Springfield Avenue) be and the same is hereby reversed, and that appellant have the standing of a licensee for premises on the south side of Passaic Valley Road (also known as Springfield Avenue) as of June 30, 1954; and it is further

ORDERED that respondent's inaction upon appellant's renewal application (deemed a denial in these Conclusions) be and the same is hereby reversed; and that respondent grant such renewal application subject to the special condition that the license shall not be issued unless and until the proposed building on the south side of Passaic Valley Road (also known as Springfield Avenue) comply with the plans and specifications on file with the Township Clerk and comply with all other safety, health and sanitary regulations required by the Township.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - PISTILLI v. BERNARDSVILLE.

ALBERT PISTILLI and JOSEPHINE PISTILLI,
Appellants,
-vs-
COMMON COUNCIL OF THE BOROUGH OF BERNARDSVILLE,
Respondent.

ON APPEAL
CONCLUSIONS

Stern & Castellano, Esqs., by Harry R. Stern, Esq., and Aloysius J. Castellano, Esq., Attorneys for Appellants.
Arthur A. Palmer, Jr., Esq., Attorney for Respondent.
A. Vincent Gasparine, Esq., Attorney for Objectors.

BY THE DIRECTOR:

This is an appeal from respondent's action whereby it denied appellant's application for the transfer of License C-2 (for the year 1953-54) from Andrew J. DeFilippio to appellants and from premises 60 Bernards Avenue to premises 147-149 Morristown Road, Bernardsville.

Written objections to the transfer having been received, a public hearing was held by respondent on March 23, 1954. After said hearing, respondent by a three-to-two vote adopted a resolution denying the application for transfer. The reasons for denial, which are set forth in said resolution, may be summarized as follows:

(1) Objections in writing signed by 59 citizens of the Borough have been received;
(2) Police have been called to appellants' restaurant on at least two occasions because of disturbances among teen-aged customers;
(3) There have been gang disturbances at appellants' restaurant;
(4) No public need or demand for a liquor license at this location has been shown.

Respondent filed an answer herein and its attorney entered into a stipulation with attorneys for appellants consenting that certain documents, including the resolution referred to above, should be admitted in evidence, but presented no oral testimony at the hearing. Three objectors appeared and it was represented that they had signed the petition objecting to the transfer and had appeared at the hearing held by respondent.

From the evidence herein it appears that appellants have conducted an unlicensed restaurant at 147-149 Morristown Road since January 1951; that they have a dining room, approximately 20 feet by 35 feet, arranged to accommodate sixty patrons; that they have a kitchen and specialize in Italian food; that their premises are located in a business zone which extends for a distance of 3600 feet on both sides of Morristown Road; that the residence of the Modugno family (objectors) is on Morristown Road in the business district and about 100 feet from appellants' premises; that in the opposite direction there is a vacant lot and, beyond that, a bowling alley and other business properties.

As to ground (1): Aside from the members of the Modugno family, the nearest objector on Morristown Road resides 700 feet from appellants' premises. Nearly all other objectors reside on side-streets, which are residential in character. However, general objections to

the issuance of a license on a business thoroughfare filed by residents of side-streets which are residential are not in themselves a sufficient reason for denying a license. DeVito v. North Arlington, Bulletin 160, Item 1. The same rule applies to a transfer of a license. Brummer v. North Arlington, Bulletin 426, Item 11.

As to grounds (2) and (3): Josephine Pistilli admitted at the hearing that she had telephoned to Police Headquarters in November 1952 when a number of young people who visited the restaurant after a football game "kept singing" after she had told them to stop. It appears that the police officer who answered the call spoke to the youths and that it was "all quiet after that." She also testified that, after the Chief of Police had told her that he expected trouble between youths from Bernardsville and another municipality, she telephoned to Police Headquarters when a car containing youths parked on the adjoining property. There is no evidence that any brawl or act of violence or any disturbance other than that set forth above occurred in appellants' restaurant.

As to ground (4): The nearest licensed premises are located 3600 feet from appellants' premises. Appellants have had numerous requests for alcoholic beverages from patrons of their restaurant. A petition in favor of the transfer and containing more than 200 signatures recites, among other things, that the transfer of the license "will be of great convenience, not only to the patrons of the Pistilli Restaurant, but to the public in general."

As the Commissioner said in Leonia Liquors, Inc. v. Leonia, Bulletin 766, Item 1:

> "The transfer of a liquor license to other persons or premises, or both, is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. If denied on a reasonable ground, such action will be affirmed. Fafalak v. Bayonne, Bulletin 95, Item 5; VanSchoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; Masarik v. Milltown, Bulletin 283, Item 10.
>
> "On the other hand, where it appears that refusal of a transfer is arbitrary and unreasonable, the action of respondent in refusing the transfer will be reversed. Blumenthal v. Wall, Bulletin 169, Item 6; Conn v. Kearny, Bulletin 173, Item 1; Miller v. Paterson, Bulletin 219, Item 6; Rucereto v. Dumont, Bulletin 253, Item 6; Shapley v. Delaware, Bulletin 294, Item 7."

I do not agree with appellants' argument that the members of respondent Council "denied the application of appellants in such manner as to aid appellants to appeal." I believe that the members of respondent Council acted in good faith. However, upon the evidence presented I conclude that respondent's action was unreasonable and unwarranted and I have no alternative other than to reverse it. McCollum v. Egg Harbor, Bulletin 1026, Item 1.

The license sought to be transferred expired at midnight June 30, 1954. Andrew J. DeFilippio has obtained a renewal of his license for the present licensing year for premises 60 Bernards Avenue. Thus, the decision herein is merely advisory.

Although the action of respondent is reversed, nevertheless, since the license which is the subject of this appeal has expired, no order requiring respondent to transfer said license will be entered herein.

WILLIAM HOWE DAVIS
Director.

Dated: August 17, 1954.

3. APPELLATE DECISIONS - DiGIOACCHINO v. ATLANTIC CITY.

ROCCO Di GIOACCHINO,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDER
BOARD OF COMMISSIONERS OF THE CITY OF ATLANTIC CITY,)
Respondent.)

J. Bernard Rogovoy, Esq., Attorney for Appellant.
Murray Fredericks, Esq., by Chaim Sandler, Esq., Attorney for Respondent.
Benjamin A. Rimm, Esq., Attorney for Objectors.

BY THE DIRECTOR:

This is an appeal from respondent's action taken on April 15, 1954 whereby it denied appellant's application for a transfer of his Plenary Retail Consumption License C-240 (for the 1953-54 licensing year) from 1 South Maryland Avenue to 118-120 South Missouri Avenue, Atlantic City.

Appellant alleges that the action of respondent "is without legal foundation or other justifiable cause."

Respondent's resolution denying the application was adopted by unanimous vote and recites, among other things, the following:

> "the Board of Commissioners is of the further opinion that this particular area is amply serviced with liquor establishments in both the summer season and during the winter and the public benefit and welfare will not be served by adding an additional licensed premise in this particular area".

The evidence shows that appellant's present premises at 1 South Maryland Avenue are in a business area. The place to which he seeks to transfer his license is about two and a half miles from his present premises and is located in a roominghouse area on the block between Pacific Avenue and the Boardwalk. These premises (owned by appellant and known as 118-120 South Missouri Avenue) consist of a vacant lot and a house where he operates a restaurant and rents out rooms during the summer season. He testified that he intends to operate on a year-round basis if his license is transferred. Aside from appellant and members of his family, two witnesses testified at the hearing herein that there was need for a license at 118-120 South Missouri Avenue. Six objectors testified at the hearing herein that there was no need for an additional license at said premises.

The evidence further shows that a plenary retail consumption license has been previously issued to one Ferraro for premises almost directly across the street from appellant's proposed premises. The testimony of Inspector Murphy of the Atlantic City Liquor Bureau discloses that there are also three taverns on South Missouri Avenue between Atlantic and Pacific Avenues, and a total of nine taverns on South Missouri Avenue between the railroad station on Arctic Avenue and the Boardwalk.

The transfer of a liquor license is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. If denied on a reasonable ground, such action will be affirmed. Van Schoick v. Howell, Bulletin 120, Item 6. On the other hand, where it appears that refusal of a transfer is arbitrary and unreasonable, the action will be

reversed. Shapley v. Delaware, Bulletin 294, Item 7. The number of licensed premises to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. Longyear v. Jefferson, Bulletin 972, Item 4. After considering all the evidence herein, I conclude that appellant has not sustained the burden of proof in establishing that the action of respondent was erroneous. Rule 6 of State Regulations No. 15.

Accordingly, it is, on this 19th day of August, 1954,

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

WILLIAM HOWE DAVIS
Director.

4. APPELLATE DECISIONS --GREEN ACRES RESTAURANT & BAR, INC. v. LODI.

GREEN ACRES RESTAURANT & BAR, INC., trading as GREEN ACRES RESTAURANT & BAR, INC.,

Appellant,

-vs-

MAYOR AND COUNCIL OF THE BOROUGH OF LODI,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Albert S. Gross, Attorney for Appellant.
Alfred D. Schiaffo, Esq., by August A. Azzolino, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent on May 24, 1954, whereby it suspended appellant's plenary retail consumption license for thirty days, effective June 1, 1954, after finding appellant guilty, in disciplinary proceedings, of charges alleging that appellant's licensed premises were open and not closed, in violation of Section 2 of the local Alcoholic Beverage Ordinance, on six occasions from Saturday, February 13, 1954 to Saturday, February 20, 1954, inclusive.

Upon the filing of this appeal an order, dated June 4, 1954, was entered by me staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31.

The pertinent section of the ordinance provides, inter alia, that no licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage on the licensed premises on Saturday, between the hours of 5:00 a.m. and 6:00 a.m.; on Sundays, between 5:00 a.m. and noon and on weekdays between 4:00 a.m. and 6:00 a.m. The ordinance further provides as follows:

> "During the hours that sales are hereinabove prohibited, the entire licensed premises shall also be closed, but this closing of premises requirement shall not apply to hotels, to restaurants as defined in Revised Statutes 33:1-1t, to clubs licensed under Revised Statutes 33:1-12(5), or to other establishments where the principal business is other than the sale of alcoholic beverages."

Appellant contends that it "is the operator of a restaurant and the operation of said restaurant as distinguished from the sale of

alcoholic beverages constitutes no violation of said ordinance and the amendments and supplements thereof."

Appellant's contention is denied by respondent.

This appeal was heard de novo pursuant to Rule 6 of State Regulations No. 15.

At the hearing herein, the evidence disclosed that, at 5:34 a.m. on Saturday, February 13, 1954, three police officers entered appellant's licensed premises which were fully lighted. One of the officers testified that they found ninety-four patrons upon the premises, eighty-four at the bar and ten seated at tables. Three bartenders were behind the bar and one waitress was on the premises. The officers saw no food in evidence at that time. Appellant's President and manager was near the bar and, when the police officers told him that it was "after hours" and requested him to clear the premises of patrons, he became "defiant" and told the patrons to "leave the bar and sit at the tables until six o'clock when they could be served again."

It was stipulated that the testimony with respect to the remaining five occasions would be substantially the same, except that the number of patrons varied between twenty-four and ninety-four.

Appellant's President and manager described the licensed premises as a one-story building, approximately 75 x 100 feet, containing the following rooms (with approximate measurements): kitchen, 18 x 50 feet; pantry, 12 x 15 feet; check room, 15 x 15 feet; foyer, 16 x 17 feet; dining room, 35 x 70 or 75 feet; cocktail bar, 14 x 35 feet and barroom, 15 x 65 or 70 feet. He testified that the bar is 50 feet long on one side and 25 feet long on the other; that it seats forty-two patrons and that the dining room can accommodate 250 patrons "banquet style" or 180 patrons "ordinarily"; that there are 50 tables and 180 chairs. He also enumerated and described in detail the kitchen equipment and utensils. It is unnecessary to repeat the testimony here. Suffice it to say that, unquestionably, appellant's establishment is well equipped to prepare and serve food, including full course dinners. The only real question is whether or not appellant's premises constitute a "restaurant" as defined in R. S. 33:1-1(t) or other establishment "where the principal business is other than the sale of alcoholic beverages" as required by the ordinance. (There is no contention that it is a hotel or club.)

In this connection the only evidence before me is the testimony of appellant's President and manager, admittedly from recollection and unsupported by any other proof. In fact, he admitted that he had not produced the books and records of the corporation at any hearing on this matter, although available. His testimony, at times somewhat conflicting and self-contradictory, was to the effect that, recently, profits from food have increased 5 or 6 per cent. and now exceed the profits from the sale of alcoholic beverages; that the gross business is usually 58 to 62 per cent. from food with the balance from the sale of alcoholic beverages. While he testified with respect to figures on food for various months, including the month of February 1954 when the alleged violations occurred, he was unable to give comparable figures on alcoholic beverages. On cross-examination, he admitted that he itemized only food and explained, "I work in the kitchen, I cook, I cut it, I serve it. Liquor I don't keep too much in mind...." He further testified that his dinners are usually served from 4:00 p.m. to midnight but that most of the food is served a la carte after midnight, and that, after "curfew," the bartenders become waiters. He also testified that appellant conducts a restaurant and that the bar business is "secondary."

On appeal, the burden of establishing that the action of respondent is erroneous and should be reversed rests upon appellant. Rule 6 of State Regulations No. 15. In matters of this nature the question of whether or not a particular establishment constitutes a "restaurant" is to be determined, in the first instance, by the local issuing authority. Re Muller, Bulletin 674, Item 9.

Regulations permitting restaurants, clubs and hotels to remain open when other licensed premises must be closed have long been upheld as reasonable because those establishments render a "service" as distinguished from selling a commodity and this distinction presupposes that those establishments remain open for purposes other than the sale or service of alcoholic beverages. Peck v. West Orange, Bulletin 171, Item 10.

While, obviously, appellant's establishment must be viewed as a place where meals may be procured by members of the public and thus is a "restaurant" in the commonly accepted sense of the word, that is not enough in this case. Under the provisions of the local ordinance, hereinabove set forth, it must qualify as a "restaurant" as defined in R. S. 33:1-1(t) or as an establishment where the "principal business is other than the sale of alcoholic beverages." R. S. 33:1-1(t) defines "Restaurant" as "An establishment regularly and principally used for the purpose of providing meals to the public, having an adequate kitchen and dining room equipped for the preparing, cooking and serving of foods for its customers and in which no other business, except such as is incidental to such establishment, is conducted." (Underscoring added.)

A careful study of the evidence, and especially that dealing with the size and capacity of the barroom and cocktail lounge, the number of bartenders, and the admitted volume of business in alcoholic beverages, precludes any possible finding that appellant's alcoholic beverage business was "incidental" to its "providing meals to the public." It is possible, even probable, that, during certain hours (principally during the evening hours), the sale of alcoholic beverages may be incidental to the service of food. Thereafter, however, and particularly after midnight and until the 4:00 a.m. or 5:00 a.m. "curfew," it is clear that the principal business carried on at appellant's establishment is the on-premises drinking business and that the service of food is incidental. That this was so on the occasions set forth in the charges is manifest from the number of people at the bar after "curfew," the absence of food, and appellant's President's invitation to the patrons to move from the bar to tables until the six o'clock "opening" hour when they could be served again. Obviously their primary purpose in being there was to drink, not to eat.

The principles here involved were carefully considered and discussed in Asbury Park Licensed Beverage Association v. Asbury Park, Bulletin 628, Item 3, where the then Commissioner said:

> "The intent of the legislature, as evidenced by its definition of the word 'restaurant' is apparent. The definition may not be stretched to cover a nocturnal tavern merely because during the day and early evening meals are served to patrons. It is not sufficient that the service of meals should be the principal business part of the time. It is the overall picture that counts. The presence of the public bar raises a strong presumption that the respondent's liquor business is something more than incidental to the providing of meals."

See also Asbury Park Licensed Beverage Association v. Asbury Park, Bulletin 644, Item 9; and Padalino v. Clifton, Bulletin 977, Item 1.

See Clark Thread Co. v. Kearny Township, 55 N.J.L. 50, 54 (Sup. Ct. 1892); N. J. State Board of Optometrists v. S. S. Kresge Co., 113 N.J.L. 287 (Sup. Ct. 1934); modified in 115 N.J.L. 495 (E. & A. 1935). See also Asbury Park Licensed Beverage Association v. Asbury Park, supra; Jersey City Retail Liquor Dealers' Ass'n v. Jersey City, Bulletin 976, Item 4.

Under all of the facts and circumstances of this case I find that appellant has failed to sustain the burden of proving that respondent's action was erroneous and should be reversed.

The action of respondent will be affirmed, the present appeal will be dismissed and the thirty-day suspension originally imposed will be reinstated.

Accordingly, it is, on this 23rd day of August, 1954,

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

ORDERED that the thirty-day suspension by respondent of appellant's 1953-54 Plenary Retail Consumption License C-13 for premises 480 Main Street, Lodi, be and the same is hereby restored and reimposed against appellant's 1954-55 Plenary Retail Consumption License C-13 for the same premises, to commence at 4:00 a.m. August 30, 1954, and terminate at 4:00 a.m. September 29, 1954.

WILLIAM HOWE DAVIS
Director.

5. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL, ALCOHOL AND APPURTENANT EQUIPMENT ORDERED FORFEITED - VARIOUS ITEMS RETURNED TO INNOCENT OWNER - PADLOCKING WAIVED.

In the Matter of the Seizure on April 23, 1954, of a still, and a quantity of alcohol and other personal property, on the John Klecha farm, Plumbsock Road; Township of Wantage, County of Sussex and State of New Jersey.	Case No. 8592 ON HEARING CONCLUSIONS AND ORDER

Anthony A. Calandra, Esq., Attorney for John Klecha.
Harry Castelbaum, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 2, Revised Statutes of New Jersey, to determine whether a still, and a quantity of alcohol and other personal property, described in a schedule attached hereto, seized on April 23, 1954 on the John Klecha farm, located on Plumbsock Road, Wantage, New Jersey, constitute unlawful property and should be forfeited, and further to determine whether the premises should be padlocked.

A large still, not registered with the Director of the Division of Alcoholic Beverage Control as required by R. S. 33:2-1, and used for the manufacture of illicit alcohol, was seized by ABC agents in a barn on the above premises. 237 five-gallon cans of alcohol were also seized.

When the matter came on for hearing pursuant to R.S. 33:2-4, John Klecha appeared and sought return of a refrigerator unit, a

hot water tank, and a vacuum pump milking machine. He also sought to avoid padlocking of the premises. Forfeiture of the balance of the seized property was not opposed by any person.

An inspector of this Division testified that a Merchant and Evans refrigeration unit was seized in what he describes as a milk house, a wing of the barn. The unit was attached to a milk cooler, and evidenced no recent use. The inspector further stated that a John Wood water heater was part of the equipment of a lavatory, and furnished hot water for a shower in a room in the barn next to the milk house. A DeLaval pump, distinguished in some aspects from other water pumps seized, was found in the barn.

The illicit still, its equipment, all personal property seized therewith, and the alcohol, constitute unlawful property and are subject to forfeiture. The premises are also subject to padlocking. R. S. 33:2-2, R.S. 33:2-5.

I have the discretionary authority to return such property if I am satisfied that the claimant acted in good faith and unknowingly violated the law. R. S. 33:2-7.

John Klecha is 37 years of age, and resides on the farm with his wife and three minor children. His father purchased the farm in 1928, and Klecha has lived and worked there since boyhood. In 1947 John Klecha and his brother Joseph acquired the farm from their father. It was used as a dairy farm. They conducted the dairy farm until March, 1954. The dairy business becoming unprofitable, the brother sought employment elsewhere and decided to seek a tenant for the farm. They held a public auction of the livestock and farming equipment in March, 1954. The farm is mortgaged for $11,000.00, placed thereon after a fire in 1952. Klecha is required to pay about $800.00 a year on the principal of the mortgage, in addition to interest at 4 1/2 or 5 per cent. The taxes on the farm amount to about $550.00 a year. The only expectation of income for the farm at present is the crop of hay under cultivation.

Klecha posted a sign that the farm was for rent, and verbally publicized such fact. A few days after the sale a stranger who said his name was Russo came to Klecha's home as a prospective tenant for the farm. He stated that he manufactured bleaching fluid, and that he was from Dover, N. J. After some negotiations, John Klecha agreed to rent the barn to this man, and Klecha signed a written lease which this man produced. This lease is dated March 20, 1954 and names Harvard Bleach Company as the tenant, at the monthly rent of $125.00. Klecha was to furnish electricity, water and sewage facilities.

Klecha testified that between March 20, 1954 and the date of the seizure, he did not observe any bootlegging activity on the place, partly because his wife was in a hospital on March 22nd, which he visited frequently, and his children were with his mother and friends.

A dairy farmer, who also sells farm machinery, and resides in Newton, N. J., testified that he has known John Klecha for about seven years, and that Klecha has the reputation in the community of being a law-abiding citizen, held in such regard that his neighbors contributed their labor when he rebuilt the barn in 1952 after it had been destroyed by fire.

According to the observation of an ABC agent, there was considerable distance between the barn and the farmhouse. Close to the barn there was some alcoholic odor. A water pipe led from this building to a nearby brook. Some rubber hose, used to carry away

spent mash, was visible. There were some pits used to hold spent mash about 500 yards from the barn. These were the visible physical aspects of the illicit still operation.

John Klecha does not appear to have any previous criminal record, nor any background indicating a tendency to violate any liquor laws. It is entirely possible that he was unaware of the significance of these items.

Klecha states that he has barely made a living these many years as a farmer, and finally gave up the dairy business; that he is now and has always been in meager financial condition; that the farmhouse is the family home, and if restrained from renting the barn or the balance of the farm, it will seriously jeopardize his ability to maintain payment of the taxes and mortgage payments on the farm. Klecha has some employment as a trucker and a carpenter, and the farm seems to be the only tangible asset he owns.

It appears likely that John Klecha grasped at what seemed to be a desirable tenant. Whether a person of wider experience would have made a more extensive inquiry into the background and business of the prospective tenant is beside the point. Klecha is not the first farmer who has been duped into renting to illicit still operators. His consequent arrest, and involvement in the seizure proceedings should serve as an object lesson for him to be more careful in the future.

I shall therefore waive padlocking of the premises. Cf. Supplemental Order Seizure Case 8374. I shall also return to John Klecha the three articles aforementioned, which apparently were left on the premises unsalvaged by Klecha.

Accordingly, it is DETERMINED and ORDERED that if on or before the 27th day of August, 1954, John Klecha pays the costs of the seizure and storage of the refrigeration unit, a hot water tank, and a vacuum pump milking machine, such equipment will be returned to him; and it is further

DETERMINED and ORDERED that the balance of the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:2-5, and that it be retained for the use of hospitals and state, county, and municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
Director.

Dated: August 17, 1954.

SCHEDULE "A"

237 - 5-gallon cans of alcohol
258 - empty 5-gallon cans
1 - copper dephlegmator
5 - 50 lb. bags of urea
8 - wooden vats with mash
1 - mixing vat
6 - sections of copper column
1 - cooling tank
6 - water pumps
1 - refrigeration unit
1 - oil burner
1 - copper cooker
11 - 100 lb. bags of sugar
1 - water boiler
1 - high pressure boiler
Miscellaneous personal property

6. DISCIPLINARY PROCEEDINGS - REVOCATION ORDER MODIFIED - LICENSE SUSPENDED FOR 240 DAYS.

In the Matter of Disciplinary Proceedings against

SEIDLER'S BEACH, INC.
T/a SEIDLER'S BEACH, INC.
Seidler's Beach
Madison Township
P.O. Cliffwood, N. J.,

Holder of Plenary Retail Consumption License C-1 for the 1952-53 and 1953-54 licensing years, issued by the Township Committee of the Township of Madison.

ON PETITION
O R D E R

Wise & Wise, Esqs., Attorneys for Petitioner Seidler's Beach, Inc.
Sidney K. Werbel, Esq., Attorney for Petitioner Lebar Co., Limited.

BY THE DIRECTOR:

On December 7, 1953, the then Director, Dominic A. Cavicchia, entered Conclusions and Order wherein he found defendant herein guilty of a charge that it allowed, permitted and suffered lewdness and immoral activities in and upon its licensed premises, viz., the renting of rooms for the purpose of illicit sexual intercourse and revoked the license which it then held, effective immediately. See Bulletin 995, Item 3.

The petition of Seidler's Beach, Inc. sets forth that, because of the revocation of the license, petitioner has suffered extreme hardship because it is committed under a five-year lease of the premises which are approximately 722 feet by 2,158 feet and which "are considered the largest beach facilities and night club along the Central Jersey Coast." The petition further sets forth that the main building, which included the hotel rooms, was completely destroyed by fire in May 1954 and that petitioner is in the process of rebuilding this main building but will not "erect any rooms or lodgings in the main building for the rental to patrons." The petition further recites that the violation was committed by a handyman and room-clerk and that previous penalties "in other violations of the nature charged against the licensee were 180 days' suspension."

The petition of Lebar Co., Limited, sets forth that it is the owner of the property which "can be used only for a beach and for recreational purposes" and that great economic hardship would result if the license were not restored.

Both petitions request that the order revoking the license be modified.

From a review of precedents established in the Division I find that the penalty imposed in similar cases consisted of a suspension for a period of 180 days when defendant had no prior record. It does appear that the license of defendant herein had been previously suspended for twenty-five days in February 1953 for permitting an indecent performance by two entertainers. While the prior record should be considered, I conclude that the penalty of revocation was too harsh and that a suspension for a period of 240 days would be sufficient under all the circumstances. Accordingly, I shall modify the penalty from a revocation to a suspension of the license for the balance of its term. Defendant herein has held no license since July 1, 1954, although I am advised by letter dated July 28, 1954, that "the local authorities have already accepted our application for renewal of the license pending, of course, and awaiting the decision

of the Bureau." Thus the application for renewal appears to have been filed within time (R. S. 33:1-96) and, if the license is hereafter renewed, defendant will have suffered an effective suspension of more than 240 days.

Accordingly, it is, on this 17th day of August, 1954,

ORDERED that the Order heretofore entered herein be and the same is hereby amended to read as follows:

"ORDERED that Plenary Retail Consumption License C-1, issued for the 1953-54 licensing year by the Township Committee of the Township of Madison to Seidler's Beach, Inc., t/a Seidler's Beach, Inc., for premises at Seidler's Beach, Madison Township, be and the same is hereby suspended for the balance of its term expiring at midnight June 30, 1954, effective immediately."

WILLIAM HOWE DAVIS
Director.

7. STATE STORES - HEREIN OF ALLAYING AN UNFOUNDED RUMOR.

TO NEW JERSEY NEWSPAPERS:

A story which appeared in a column in one of our major New Jersey newspapers over the weekend unfortunately implies that the State ABC Director has met or conferred with the Governor and others on the possibility of inaugurating state liquor stores in New Jersey.

That one has whiskers! It's an old canard or rumor that keeps cropping up with virtually every State ABC head. It has neither truth nor novelty, and I would normally see no point in wasting anyone's time in answering it. However, as State ABC Director, I cannot, in good conscience, overlook the possibility that it may be causing unwarranted confusion in the minds of the public and of the industry.

Hence, I herewith categorically state that there have been no such discussions or meetings whatsoever with anyone. Nor do I entertain any notion that we should modify our present liquor license system in New Jersey with a state liquor store set-up. Our liquor licensing system in New Jersey has worked effectively and in the public interest without need of injecting the state into the liquor business.

I hope that's plain enough talk, and that it concludes the current season on old ghosts and rumors.

WILLIAM HOWE DAVIS
Director.

Dated: August 17, 1954.

8. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL REGULATION — HOSTESS - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

LEE CLUB, A CORP.
T/a LEE CLUB
27 Church Street
Paterson, N. J.,

Holder of Plenary Retail Consumption License C-126, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

CONCLUSIONS AND ORDER

Joseph R. Brumale, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant has pleaded non vult to the following charges:

"1. On Sunday, July 25, 1954, between 3:00 A.M. and 3:42 A.M., you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages and allowed the consumption of alcoholic beverages on your licensed premises; in violation of Section II of an Ordinance adopted by the Board of Alcoholic Beverage Control for the City of Paterson on May 27, 1948, which prohibits any such activity between 3:00 A.M. and 1:00 P.M. on Sunday.

"2. On Sunday, July 25, 1954, between 1:30 A.M. and 3:42 A.M., you allowed, permitted and suffered females employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulations No. 20."

The file herein discloses that on Sunday, July 25, 1954, at about 1:30 a.m., ABC agents entered defendant's licensed premises. They observed two female entertainers employed therein who were drinking at the expense of various male patrons and who, at the agents' expense, were later served two rounds of Scotch whiskey by the bartender, Donato Andreano, Secy.-Treas. of the corporate licensee. At intervals between 3:00 and 3:35 a.m., the same morning, the agents and numerous patrons were served and consumed alcoholic beverages. At about 3:40 a.m. an agent inquired of the bartender as to the closing hour and he replied, "We should close at 3 o'clock, we'll soon close up now." The agents then identified themselves, requested the patrons to leave and seized evidential material.

Defendant has no previous adjudicated record. I shall suspend defendant's license for a period of fifteen days on charge (1), Re Paulsboro Sportsmen's Assn., Bulletin 1022, Item 8, and impose an additional suspension of twenty days on charge (2). Re Goldberg, Bulletin 962, Item 4. This makes a total suspension of thirty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Accordingly, it is, on this 16th day of August, 1954,

ORDERED that Plenary Retail Consumption License C-126, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Lee Club, A Corp., t/a Lee Club, for premises 27 Church Street, Paterson, be and the same is hereby suspended for a period of thirty (30) days, commencing at 3:00 a.m. August 23, 1954 and terminating at 3:00 a.m. September 22, 1954.

WILLIAM HOWE DAVIS
Director