

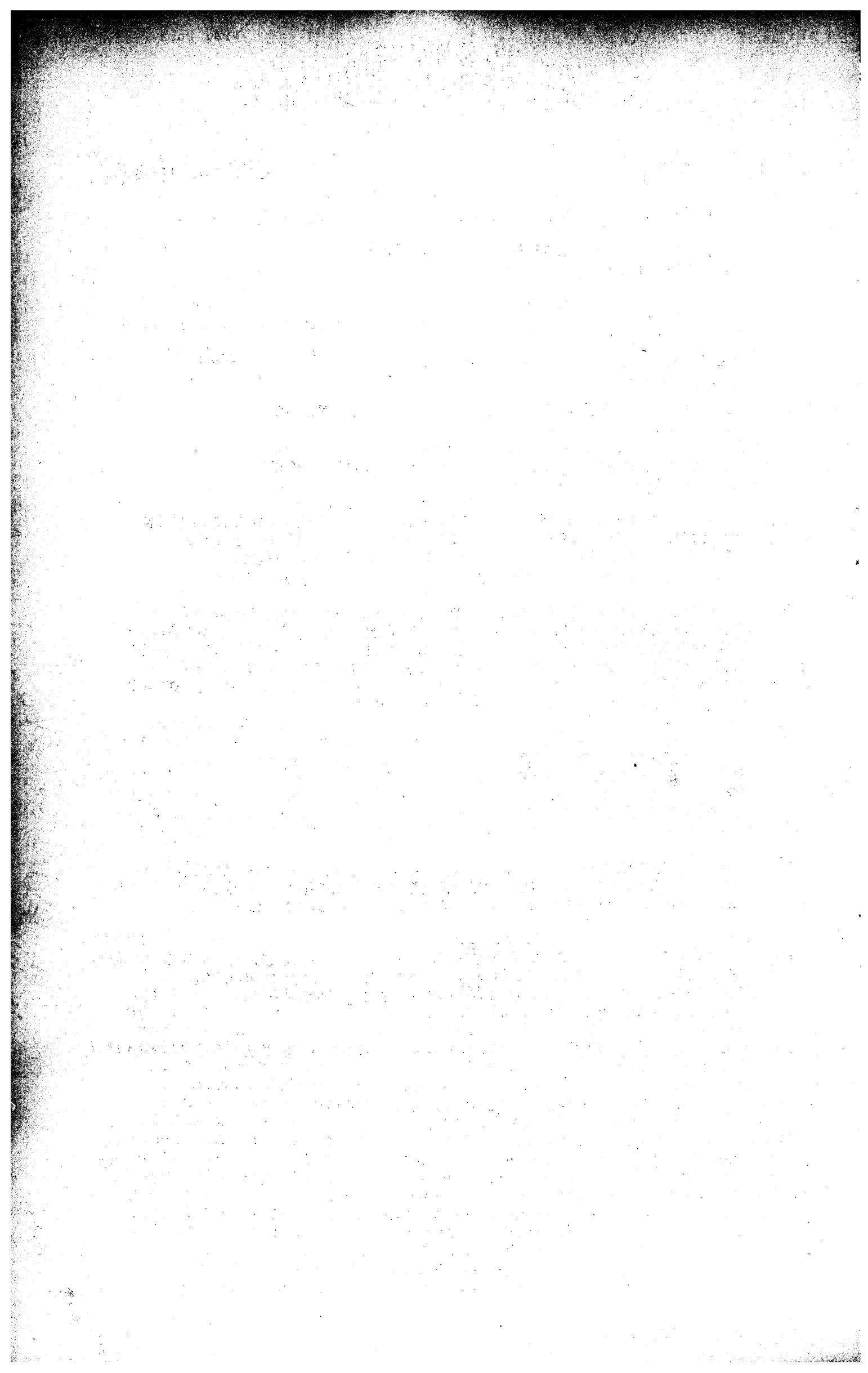
BULLETIN 1217

APRIL 9, 1958.

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

BULLETIN 1217

APRIL 9, 1958.

1. APPELLATE DECISIONS - KANE AND KEIL v. UNION BEACH.

FRANK J. KANE, KATHERINE  
KANE & HERMAN KEIL,

Appellants,

-vs-

BOROUGH COUNCIL OF THE BOROUGH  
OF UNION BEACH,

Respondent.

ON APPEAL.  
CONCLUSIONS AND ORDER

-----)  
James F. McGovern, Jr., Esq., Attorney for Appellants.  
Joseph F. Mattice, Esq., Attorney for Respondent.  
Karkus, Kantor & Burns, Esqs., by Ezra W. Karkus, Esq.,  
Attorneys for Objectors.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on September 19, 1957 it denied appellants' application for transfer of Plenary Retail Consumption License C-9 from premises located at 7-11 Union Avenue to the northeast corner of State Highway #36 and Paterson Avenue, Union Beach.

"In their petition of appeal, appellants allege, in effect, that the refusal to grant the transfer was an abuse of discretion.

"Respondent in its answer alleges that it denied the application for transfer because of protests by approximately 64 residents of the area where appellants sought to transfer the license.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15.

"It appears from maps of Union Beach introduced in evidence that there are fourteen licensed premises located on three main business arteries forming what resembles an irregular triangle having its apex at the northern boundary and its base along the southern boundary of the Borough. On the west side of the triangle there are five licensed premises and on the east side which comprises part of Front Street and all of Union Avenue there are two licensed premises on Front Street and seven licensed premises on Union Avenue. Appellants' licensed premises are located on Union Avenue which terminates at State Highway #36 and are approximately 2100 feet north therefrom. The premises to which the license is sought to be transferred are approximately the same distance east of Union Avenue on the northerly side of said highway. There are no licensed premises along the southern boundary of the Borough excepting premises on the corner of Union Avenue and said highway. It further appears that on the southerly side of said highway in Raritan Township there are two licensed premises, one approximately 500 feet to the west, the other 1600 feet to the east of the proposed site.

"The record herein discloses that at the hearing before respondent on September 12, 1957, written objections to the transfer in the form of petitions alleging that public convenience and necessity do not require the transfer and containing the signatures of 64 residents were lodged with the Board; that an attorney representing the objectors urged that the transfer be denied on the ground that there was no public need or convenience to be served by the transfer; that three objectors addressed the Borough Council, one urging that the adequacy of parking facilities at the proposed location should be considered, the second questioning the zoning ordinance, and the third questioning the adequacy of drainage at the proposed site. The meeting was adjourned to September 19, 1957 at which time it appears that the Mayor directed the clerk to read letters received from the Police Department, Board of Health and Building Inspector. The contents of those letters are herein below set forth:

September 14, 1957

TO : THE BOROUGH CLERK

SUBJECT: INSPECTION OF TAVERN SITE AND RECORD OF APPLICANTS.

1. Per your request, an inspection was made on property situated between the westerly side of Wesley Ave. extending in a Westerly direction to the Easterly side of Patterson Ave., bordering on the Northerly side of Route #36 and thence extending in a Northerly direction for a distance of approximately 125 feet at the farthest point.
2. Under the present conditions of the property available for the parking of vehicles, approximately twenty passenger type vehicles could be parked.
3. In the event that all available land would be filled and graded, approximately three hundred passenger type vehicles could be parked.
4. Further inspection as to the suitability of the premises for a Tavern site found no apparent anticipation of a traffic problem concerning the entrance and exodus of vehicles and no apparent anticipation of any extraordinary Police problem in general.
5. Police Records disclose no derogatory information concerning the applicants who are present holders of a license in excess of ten years.

Respectfully,  
s/ Walter A. Hutton  
WALTER A. HUTTON  
Captain of Police'

'Honorable Mayor and  
Members of the Borough Council  
Union Beach, N. J.

Re: Crystal Bar License Transfer

Gentlemen:

I have made an inspection of the premises at the northeast corner of Highway 36 and Patterson Avenue in the

Harris Gardens section of the Borough, proposed location of tavern premises in connection with the above transfer.

I find that the building now existing on the premises is suitable for operation as a tavern premises provided toilet facilities are installed as planned, and recommend inspection of completed toilet facilities prior to delivery of license.

The plot being approximately 110 x 150 feet will provide better drainage than the present tavern location.

Yours truly,  
s/ Orin Gunsauls  
Orin Gunsauls  
Sec'y Board of Health'

'Mayor and Council  
Borough of Union Beach  
Union Beach, N. J.

Dear Mayor and Members of the Council:

At the request of the Borough Clerk I have inspected the building at the n/e corner of Highway 36 and Patterson Avenue proposed location of Frank Kane, Crystal Bar tavern premises.

The building is soundly constructed of cinder block with frame front and concrete floors and is suitable for operation as a tavern premises, without structural change.

I have recommended that the doors on the building be arranged so that they will open outwardly, and have been assured that this will be done.

Very truly yours,  
s/ Howard C. Smith  
BUILDING INSPECTOR.'

"Five members of respondent Council and the Mayor were present at the adjourned meeting but one member asked to be excused and left the room before a vote was taken upon a resolution to grant appellants' application. One of the Councilmen who remained stated that he 'felt obliged to vote in the negative in view of the petitions filed by persons objecting to the transfer.' On roll call appellants' application was denied by a vote of three to one. Thereafter it appears a 'Petition of Protest' containing the signatures and addresses of 398 residents of the community requesting respondent to reconsider its decision and grant the transfer was submitted to the Borough Council and rejected by it.

"At the hearing herein, appellants produced as their witnesses the Captain of Police, the Borough Clerk, the Mayor and appellant Frank J. Kane. No witnesses were called to testify on behalf of respondent. Five objectors appeared at the hearing but only one was called upon to testify.

"Reviewing the testimony of the aforesaid witnesses, it appears that the population of the Borough has doubled during the past three years; that building construction has

been away from the center of the Borough and towards the highway; that Union Avenue, on which seven licensed premises are presently located, is 28 feet wide from curb to curb and about one-half mile in length; that an ordinance was adopted limiting parking to one side of Union Avenue because of the heavy traffic thereon; that there is no congested traffic on State Highway 36 and that running east on the north side of Highway 36 from Union Avenue to the boundary line which section is zoned for business, there are a restaurant, hardware store, lumber yard, undeveloped lots with billboards thereon advertising them to be business property, an iron works, an empty store, a bicycle repair shop, a cinder block manufacturing plant, the proposed premises, a lake, a gas station and a tile manufacturing plant. The objectors reside on various streets in a residential development known as Harris Gardens which is located in the rear of the premises to which the transfer is sought.

"It has repeatedly been held that the transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. On the other hand, where it appears that the denial was arbitrary or unreasonable, the action will be reversed. Spezzi v. Sayreville, Bulletin 1152, Item 4, and cases cited therein.

"At the outset it may be well to point out that respondent was justified in rejecting appellants' 'Petition of Protest' since it had no jurisdiction to reconsider its action which is essentially judicial in nature. Lantz v. Hightstown, 46 N.J.L. 102; White v. Atlantic City et al., 62 N.J.L. 644; Vanaman v. Adams, 74 N.J.L. 125; Gulnac v. Board of Chosen Freeholders, 74 N.J.L. 543 (E & A 1906); Plager v. Atlantic City, Bulletin 80, Item 11. On the other hand while it was within the province of respondent to determine the weight to be given to the petitions filed by the objectors (Looloian v. Greenwich et al., Bulletin 504, Item 6), there are other factors which should have been considered, e.g., that the premises to which the license is sought to be transferred are located in a 99% business area; that, in the Borough, there is but one plenary retail consumption license in that section which is located approximately 2100 feet from the proposed premises; that the objectors reside on side residential streets; that parking facilities at the proposed site are sufficient to accommodate the parking of cars off the highway; and that authorized representatives reported favorably respecting the proposed premises and the character of appellants.

"Under the circumstances, I conclude that the action of respondent in denying appellants' application for transfer of their license was unreasonable and I recommend that said action be reversed. Cf. DeLotto et al. v. West Paterson, Bulletin 1172, Item 1, and cases therein cited."

No exceptions to the Hearer's Report were filed by respondent within the time limited by Rule 14 of State Regulation No. 15, i.e., January 10, 1958. However, on February 5, 1958 a lengthy letter disapproving the report was submitted by an objector who had testified at the hearing on appeal in opposition to the granting of the transfer.

Having carefully considered the evidence adduced at the hearing herein, the Hearer's Report and the objector's comments with respect thereto, I concur in the Hearer's findings and conclusions and I adopt his recommendation.

Accordingly, it is, on this 27th day of February, 1958,

ORDERED that the action of respondent be and the same is hereby reversed and respondent is hereby directed to transfer the license in accordance with the application filed by appellants.

WILLIAM HOWE DAVIS  
Director.

2. APPELLATE DECISIONS - HARLYN, INC. v. NEWARK.

HARLYN, INC., t/a HARLYN )  
CLUB, )

Appellant, )

-vs- )

ON APPEAL  
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY )  
OF NEWARK, )

Respondent. )  
-----

Henry H. Rubenson, Esq., Attorney for Appellant.  
Vincent P. Torppey, Esq., by James E. Abrams, 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 on November 19, 1957, it suspended appellant's license for a period of twenty-five (25) days, effective December 2, 1957 after finding it guilty on a charge alleging that it sold, served and delivered alcoholic beverages to a 16-year-old minor and permitted the consumption of such beverages by said minor in and upon its licensed premises, in violation of Rule 1 of State Regulation No. 20. Appellant's premises are located at 421 High Street, Newark.

"Upon the filing of the appeal, an order was entered on December 2, 1957 staying the aforesaid suspension until entry of a further order herein. R. S. 33:1-31.

"At the hearing herein, the parties hereto submitted the case upon the transcript of the proceedings before respondent Board, pursuant to Rule 8 of State Regulation No. 15.

"Appellant, in its petition of appeal alleges, in substance, that respondent's action was erroneous in that (1) it was against the weight of the evidence and (2) the penalty imposed was excessive.

"Respondent, in its answer, denies appellant's allegations and contends that the ground upon which its decision was based was the factual testimony before it.

"The evidence before respondent Board clearly establishes that on April 3, 1957 and divers days prior thereto, Richard ---, age 16, consumed bottled beer which was served to him in and upon appellant's licensed premises by its bartender who made no inquiry as to Richard's age.

"Appellant's defense to the charge is that Richard appeared to Lewis Levine, its bartender, to be over 21 years of age. In support of its contention, appellant produced as its witnesses, Lewis Levine and a local police officer. Levine testified that commencing on February 6, 1957 and on other occasions up to and including April 3, 1957, he served bottled beer to Richard without making any inquiry as to his age because he believed, from his general appearance, that he was over 21 years old.

"The police officer testified, in substance, that on the night of April 3, 1957, he had cause to arrest Richard who told him he was 25 years of age; that relying on Richard's representation and appearance, he conducted him in a patrol wagon to a police station where Richard was interviewed by the desk lieutenant and was placed in a cell, and that some four or five hours later, when headquarters detectives learned from Richard his true age, he was then treated as a juvenile.

"It is argued that while the arrest and detention of Richard was in violation of police regulations respecting juveniles, the procedure adopted by the police shows that they were 'taken in' as was Levine, by Richard's appearance, and consequently they treated him as an adult. Although the arresting officer testified that Richard appeared to him to be 22 years of age, it is more likely that he considered him an adult as distinguished from a juvenile. The police regulations were not introduced in evidence. However, it may be judicially noticed that the section of the 'juvenile and domestic relations court law' pertaining to the arrest and detention of juveniles, classifies an adult as a person 18 years of age or over. N.J.S.A. 2A:4-33. While the police might not have considered Richard to be a juvenile, it is unreasonable to believe that they assumed that he was 21 years of age or over. In any event, Richard was a minor and defendant's agent did not obtain from him a written representation that he was twenty-one years of age or over. Hence, defendant has not established a valid defense under the provisions of R. S. 33:1-77.

"As to the excessive penalty. It has long been established that the question of quantum of penalty to be imposed rests within the discretion of the local issuing authority and will not be disturbed on appeal unless it is clearly excessive and manifestly unreasonable. Bryla v. Newark, Bulletin 1136, Item 2. I find that appellant has not sustained the burden of proof in establishing that respondent's action in finding appellant guilty of the charge preferred against it was erroneous. I find further that the suspension of appellant's license for a period of twenty-five days for sale of alcoholic beverages to a 16-year-old minor was neither excessive nor unreasonable, and I conclude that respondent's determination is, in all respects, supported by the facts. I recommend, therefore, that an order be entered affirming respondent's action and reimposing the suspension."

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

Having carefully considered the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 3rd day of March, 1958,

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

ORDERED that the twenty-five days' suspension imposed by respondent which was stayed during the pendency of these proceedings be and the same is hereby reimposed and reinstated to commence at 2:00 a.m. March 10, 1958, and terminate at 2:00 a.m. April 4, 1958.

WILLIAM HOWE DAVIS  
Director.

3. APPELLATE DECISIONS - TOMPETRINI v. HAWTHORNE.

FRANK TOMPETRINI and SILVIO )  
TOMPETRINI, t/a GOFFLE BROOK )  
INN, )  
Appellants, )  
-vs- )  
BOARD OF COMMISSIONERS OF THE )  
BOROUGH OF HAWTHORNE, )  
Respondent. )

ON APPEAL  
CONCLUSIONS AND ORDER

-----  
Peter Cammelleri, Esq., Attorney for Appellants.  
Francis Caminetti, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from respondent's denial of an application to transfer appellants' plenary retail consumption license from 142 Goffle Road to 1048-1058 Goffle Road, Borough of Hawthorne.

"The resolution denying the application recites that '\*\*\* in view of the circumstances and taking into consideration the petitions heretofore filed for and against the said transfer of such license which disclosed that a larger number of the signers residing in the immediate area of the proposed new location were against the granting of such transfer, the application \*\*\* is hereby denied.'

"In a prior appeal between the same parties involving the denial of appellants' application for a similar transfer of their 1956-57 license it was indicated that respondent's determination could not be sustained solely upon the basis of the petitions favoring or opposing the transfer. Because the licensing period had expired when the case was decided on September 25, 1957, the prior appeal was dismissed without prejudice to the right of appellants to file an application for transfer of their renewed license. Tompetrini v. Hawthorne, Bulletin 1193, Item 3. Thereafter respondent renewed appellants' license for 142 Goffle Road, but denied appellants' application considered herein by the aforesaid resolution, dated November 18, 1957.

"It further appears that respondent scheduled a public hearing upon the application considered herein, and that no

objectors appeared at said hearing which was duly held on November 6, 1957.

"At the hearing held herein it was stipulated that the testimony given at the prior hearing would be considered as an exhibit in this case. Therefrom it appears that the premises known as 1048-1058 Goffle Road are located in a mixed industrial and residential area. Business predominates and there are few homes. The land which is owned by appellants was then partly in a business zone and partly in a residential zone, but it has been represented that this residential zone has recently been changed to light industrial. Appellants have filed plans and specifications for the building they intend to erect and, at the time of the hearing herein, the building was then in the process of being erected. Appellants intend to conduct a restaurant at the premises. There is only one other license in that section of the Borough and it has been issued for premises four hundred feet away on the opposite side of the road.

"Under all the circumstances of this case, no valid reason appears for the denial of appellants' application. It is recommended, therefore, that an order be entered herein reversing respondent's action and directing respondent to grant the transfer subject to the special condition that the transfer shall not be endorsed on the face of the license certificate until the building is completed in accordance with the plans and specifications filed with the application. Meister v. Passaic, Bulletin 1030, Item 1."

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

Having carefully considered the facts and circumstances appearing herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 4th day of March, 1958,

ORDERED that the action of the respondent Board of Commissioners of the Borough of Hawthorne be and the same is hereby reversed and said respondent Board is directed to grant the transfer of the license subject to the special condition that the transfer thereof shall not be endorsed on the face of the license certificate until the building is completed in accordance with the plans and specifications filed with the application.

WILLIAM HOWE DAVIS  
Director.

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against VERONICA SADA t/a TONY'S TAVERN 218 - 12th Avenue Paterson, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-109, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

Veronica Sada, Defendant-licensee, Pro se. David S. Piltzer, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to a charge alleging that on Saturday, November 9, 1957, at about 10:55 p.m., she sold a pint bottle of Fleischmann's Preferred Whiskey, in its original container, for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

The file herein discloses that an ABC agent entered defendant's licensed premises at about 10:15 p.m. on the above date. Frank Cleaver was tending bar. At about 10:50 p.m., such agent, from his position at the bar, observed the bartender take a pint bottle of Fleischmann's Whiskey from the back bar, hand the bottle to a patron who paid for the whiskey, placed the bottle in his overcoat pocket and left the premises. Thereupon the agent asked the bartender for a pint of Fleischmann's Whiskey "to go". The bartender accepted payment for the whiskey from the agent, obtained a pint bottle of such whiskey from the back bar and handed it to the agent. The agent then left the tavern. He was joined by another agent who had been stationed outside. The two agents immediately entered the tavern and identified themselves to Cleaver, who verbally admitted the sale of the whiskey to the agent as above described.

Defendant has a prior record. Effective May 7, 1956, her license was suspended for ten days by the Director for a similar "hours" violation. Re Sada, Bulletin 1112, Item 12. The minimum penalty of fifteen days for the violation as charged will be doubled because of the similar violation which occurred within a five-year period. I shall suspend defendant's license for thirty days. Re Pickwick Products, Inc., Bulletin 1196, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 24th day of February, 1958,

ORDERED that Plenary Retail Consumption License C-109, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Veronica Sada, t/a Tony's Tavern, for premises 218 - 12th Avenue, Paterson, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. March 3, 1958, and terminating at 3:00 a.m. March 28, 1958.

WILLIAM HOWE DAVIS Director.

5. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION - FRONT FOR NON-CITIZEN - EMPLOYMENT PERMIT SUSPENDED FOR BALANCE OF TERM - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO APPLY FOR ORDER LIFTING SUSPENSION AFTER THE EXPIRATION OF 30 DAYS IF ILLEGAL SITUATION CORRECTED.

In the Matter of Disciplinary Proceedings against )

JANETTE KINNEY )  
t/a JANNETTE'S TAVERN )  
Main Street )  
Frelinghuysen Township )  
PO Johnsonburg, N. J., )

Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Frelinghuysen, )

CONCLUSIONS AND ORDER

and )

LAWRENCE KOOGER )  
Main Street )  
Frelinghuysen Township )  
PO Johnsonburg, N. J., )

Holder of Employment Permit No. 4120, issued by the Director of the Division of Alcoholic Beverage Control. )  
-----)

Robert W. Wolfe, Esq., Attorney for Defendant-licensee and Defendant-permittee.

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

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The defendant-licensee pleaded not guilty to charges alleging that (1) she falsely denied in her license application upon which she obtained her current plenary retail consumption license, that anyone else other than herself was interested in the license and the business conducted thereunder whereas Lawrence Kooger had such an interest in that he was co-owner with her of the licensed business, in violation of R. S. 33:1-25; and that (2) since March 2, 1955 she permitted Lawrence Kooger to exercise, contrary to R. S. 33:1-26, the rights and privileges of her successive license in violation of R. S. 33:1-52.

"The defendant-permittee pleaded not guilty to charges alleging that (1) he falsely denied in his application for non-citizenship employment permit that he had an interest in and was co-owner with Janette Kinney of the plenary retail consumption licensed business at Main Street, Frelinghuysen Township, in violation of R. S. 33:1-25 and (2) that from March 2, 1955 until the present time he exercised the rights and privileges of the license held by Janette Kinney in violation of R. S. 33:1-26.

"It appears from the evidence presented herein that Lawrence Kooger, the defendant-permittee, is a native of Holland. He has never been naturalized and, therefore, is not qualified to hold a liquor license. R. S. 33:1-25. Treaties between the

United States and foreign countries take priority over state law and, hence, nationals of countries having reciprocal trade treaties with the United States are not subject to the above prohibition as set forth in R. S. 33:1-25. Re Londa, Bulletin 693, Item 8. However, no such treaty with Holland presently exists. Furthermore, it appears that the money supplied for the purchase of the licensed premises and the licensed business was money inherited by Lawrence Kooger; that the building in which the licensed business is located is in the name of Lawrence Kooger and Janette Kinney as joint tenants but the liquor license is in the sole name of Janette Kinney. The bills rendered for various utility services, merchandise and other items were in the name of Lawrence Kooger.

"During the investigation both Janette Kinney as defendant-licensee and Lawrence Kooger as defendant-permittee gave written statements which were signed and sworn to wherein it was disclosed that each had an equal undivided one-half interest in the licensed business and that the license was obtained in the name of Janette Kinney because Lawrence Kooger as an alien was ineligible to hold a liquor license in his name in this state. However, at the hearing in this matter, Lawrence Kooger testified that for services rendered to himself and his children he made a gift of the licensed business to Janette Kinney and was merely employed by her on a salary basis in the operation of the business. Janette Kinney made a similar statement as to her ownership of the business and status of Lawrence Kooger in connection therewith.

"After careful consideration of the evidence herein I am satisfied that the license was originally taken and renewed in the name of Janette Kinney for the purpose of circumventing the law and that she was acting as a 'front' for Lawrence Kooger who is disqualified to hold a license in this state because of his being a Holland national.

"I recommend that defendant-licensee and also defendant-permittee be found guilty of the respective charges preferred herein. I further recommend that the license of defendant-licensee be suspended for the balance of its term with leave given to apply for a lifting of said suspension upon correction of the unlawful situation, provided that the suspension shall not be lifted until the expiration of sixty (60) days from the effective date thereof. Re The Panda, Bulletin 774, Item 1. Furthermore, I recommend that the non-citizen employment permit issued to the defendant-permittee be cancelled."

Written exceptions to the Hearer's Report, pursuant to Rule 6 of State Regulation No. 16, together with written argument thereon, were filed with me by the attorney for the defendant-licensee and defendant-permittee.

I have carefully examined the evidence adduced herein and the Hearer's Report submitted in the matter. I have also examined the exceptions taken by the attorney for the defendants and the written argument advanced in connection therewith. I find the defendant-licensee and the defendant-permittee guilty of the respective charges preferred herein. However, because of mitigating circumstances appearing in the matter, I shall modify the respective penalties recommended by the Hearer. I am satisfied that because of the close relationship of the parties to these proceedings, and the complete cooperation given by them during the investigation that the penalty recommended by the Hearer should be reduced. I shall, therefore, suspend the defendant-licensee's license and the defendant-permittee's



come to my attention that subsequent to charges being preferred against the defendant-licensee and the defendant-permittee and since the hearing in the matter, a reciprocal trade treaty has been negotiated between the United States and The Netherlands, also called Holland. Therefore, the defendant-permittee, a national of The Netherlands, is no longer disqualified from being associated with the alcoholic beverage industry in this State merely because of his lack of United States citizenship.

Under the circumstances, in order to correct the existing illegal condition, the defendant-permittee may, if he so desires, apply to the local issuing authority for a person-to-person transfer (pursuant to R. S. 33:1-26 and State Regulation No.6) of the license which is presently issued to Janette Kinney to himself individually or to a partnership of himself and Janette Kinney. Of course, any such application must be made to the issuing authority and may be granted or denied in the exercise of its sound discretion. The penalties heretofore imposed against the defendant-licensee and the defendant-permittee will not be disturbed.

Accordingly, it is, on this 26th day of February, 1958,

ORDERED that the penalties heretofore imposed in my orders dated February 19, 1958 shall remain in effect as provided therein.

WILLIAM HOWE DAVIS  
Director.

7. DISQUALIFICATION - CONVICTION OF LARCENY - CONVICTION OF ARSON - RECENT CONVICTION OF PETTY LARCENY - FALSE TESTIMONY AT HEARING - APPLICATION TO LIFT DENIED.

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

CONCLUSIONS  
AND ORDER

Case No. 1395  
-----)

BY THE DIRECTOR:

Applicant's criminal record discloses that on June 11, 1915, after pleading guilty to a charge of larceny (apparently reduced from a charge of breaking and entering) he was sentenced in a police court to serve six months in a county jail. On February 26, 1952 he pleaded non vult to an indictment charging him with the crime of arson and on March 14, 1952 was sentenced in a county court to serve from one to five years in New Jersey State Prison from which he was paroled on December 22, 1952. On May 19, 1957 he was charged with petty larceny and was sentenced to serve fifteen days in a county jail. The crime of arson, per se, involves moral turpitude, cf. Case No. 370, Bulletin 644, Item 3, and the applicant is thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R. S. 33:1-25, 26. At a previous hearing held on January 19, 1949, applicant's conviction in 1915 was held to involve moral turpitude. Under the circumstances it is unnecessary to determine whether his last conviction in 1957 involves moral turpitude.

At the hearing held herein applicant (64 years of age) testified that for the past five years he has been living in the same area where he presently resides; that for the past ten years he has been separated from his wife; that for a period of two years (1915-1917) he served in the armed forces of the United States, from which he has been honorably discharged; that for the past five years he was employed as a counter man in a luncheonette; that in 1950 he operated a store and because business was poor, he set fire to the same for which he was convicted of arson in 1952 aforesaid; that he had not been convicted of any crime since his parole from State Prison on December 22, 1952; that his aforesaid testimony that he was employed as a counter man for five years last past was untrue; that he was actually employed as a braze furnacer from 1953 to May 1957 when he was discharged because of the theft of some silver from his employer; that this theft led to his conviction of petty larceny (May 19, 1957); that he did not reveal his true employment because he wanted to conceal his last conviction in 1957; that he had arranged to have his character witnesses testify falsely that he was employed as a counter man for the past five years; that he is ill and is asking for the removal of his disqualification to accept a job as bartender for six months to enable him to qualify for social security payments.

The records of this Division disclose that the applicant held a plenary retail consumption license from 1934 to 1947 during which period his license was suspended on four different occasions, the last of which was for sixty days; that in his applications for said license he denied he was ever convicted of any crime, whereas his criminal record disclosed that he had been convicted of larceny; that in 1949 applicant's application to remove his disqualification for said crime was denied by the then Commissioner. Cf. Case No. 733, Bulletin 842, Item 1.

In view of the applicant's past record, his deliberate false statements under oath; his scheme for his character witnesses to give false testimony and his conviction in 1957 of petty larceny (a misdemeanor), I am satisfied that the applicant has not been law-abiding for more than five years last past and that his association with the alcoholic beverage industry would be contrary to the public interest.

Application is denied.

Accordingly, it is, on this 20th day of February, 1958,

ORDERED that the application be denied, without leave to reapply in the future.

WILLIAM HOWE DAVIS  
Director.

8. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

JOHN TROSKY )  
 t/a JOHN TROSKY TAVERN )  
 57 Vroom Street )  
 Jersey City 6, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-427, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )

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 John Trosky, Defendant-licensee, Pro se.  
 David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to a charge alleging that he sold alcoholic beverages in original containers for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

The file discloses that on Friday, December 6, 1957, at about 11:15 p.m., an ABC agent who was then in defendant's licensed premises purchased from defendant six cans of beer "to go." After the purchase the agent left the premises with the cans but returned immediately with another ABC agent who had remained outside and both agents identified themselves to defendant who verbally admitted the sale.

Defendant has a prior record. Effective October 12, 1952, the local issuing authority suspended his license for five days for selling alcoholic beverages before the opening hour. The minimum suspension for a violation similar to the violation herein is fifteen days (Re Marech's Tavern, Bulletin 1205, Item 4). In view of the substantially similar violation which occurred more than five years ago, but less than ten years ago, I shall suspend defendant's license in this case for twenty days (Re Gorcica, Bulletin 1189, Item 9). Five days will be remitted for the plea herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 19th day of February, 1958,

ORDERED that Plenary Retail Consumption License C-427, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to John Trosky, t/a John Trosky Tavern, for premises 57 Vroom Street, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. March 3, 1958, and terminating at 2:00 a.m. March 18, 1958.

WILLIAM HOWE DAVIS  
 Director.

## 9. RETAIL CONSUMPTION LICENSEES - EGG NOG - EASTER DISPENSATION.

April 3, 1958.

## TO ALL RETAIL CONSUMPTION LICENSEES:

Traditionally, every year during the Easter season, consumption licensees have been permitted to pre-mix and to serve such pre-mixed egg nog for on-premises consumption during a limited period of time.

I am glad to note that no abuse has developed from the exercise of this privilege.

The same privilege will therefore be granted this year beginning Thursday, April 3, 1958, and ending Monday, April 7, 1958, at midnight, on the understanding, of course, that the privilege will be used with reason and moderation.

WILLIAM HOWE DAVIS  
Director.

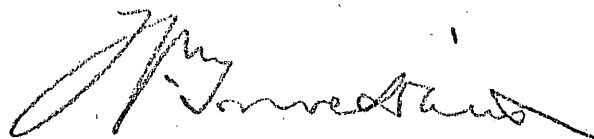
## 10. STATE LICENSES - NEW APPLICATIONS FILED.

Hans Bischoff  
t/a Beer Import Company  
2536 Springfield Avenue  
Union, N. J.

Application filed April 8, 1958 for Limited Wholesale License.

Landis Beverage Co.  
South Delsea Drive & Garrison Road  
Vineland, N. J.

Application filed April 8, 1958 for additional warehouse on State Beverage Distributor's License SED-30 at 131 W. Walnut Avenue (rear), North Wildwood, N. J.



William Howe Davis  
Director.