

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

Director

October 15, 1970

BULLETIN 1936

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - HUDSON-BERGEN PACKAGE STORES ASS'N.
ET AL. v. LODI, DI MARIA, VISENTINI ET AL.
2. APPELLATE DECISIONS - HUDSON-BERGEN PACKAGE STORES ASSN.
ET AL. v. LODI and SOUTH MAIN BAR, INCORPORATED.
3. APPELLATE DECISIONS - HELMS ET AL. v. NEWARK and AVON
DELICATESSEN & LIQUOR INC.
4. DISCIPLINARY PROCEEDINGS (Atlantic City) - CRIMINALLY
DISQUALIFIED EMPLOYEE - LICENSE SUSPENDED FOR 20 DAYS.
5. ELIGIBILITY PROCEEDING - CONVICTION FOR CARRYING CONCEALED
WEAPON - UNDER FACTS OF CASE HELD NOT TO INVOLVE MORAL
TURPITUDE.
6. DISCIPLINARY PROCEEDINGS (Buena Vista Township) - SALE
IN VIOLATION OF HOURS ORDINANCE - SALE TO INTOXICATED
PERSONS - FOUL LANGUAGE - PRIOR DISSIMILAR RECORD -
LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS - ORDER AMENDING COMMENCEMENT
DATE OF SENTENCE.
8. DISCIPLINARY PROCEEDINGS (Hamilton Township - Atlantic
County) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE
SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
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1. APPELLATE DECISIONS - HUDSON-BERGEN PACKAGE STORES ASS'N.
ET AL. v. LODI, DI MARIA, VISENTINI ET AL.

Hudson-Bergen Package Stores
Association, et al.,

Appellants,

v.

Mayor and Council of the Borough
of Lodi, and Peter B. Di Maria,
Michael Visentini and John
Visentini,

Respondents.

ON APPEAL

CONCLUSIONS
AND ORDER

-----)
Samuel J. Davidson, Esq., Attorney for Appellants
Carbonetti & Di Maria, Esq., by John M. Di Maria, Esq.
Attorneys for Respondent Borough
Peter B. Di Maria, Respondent, Pro se

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Mayor and Council of the Borough of Lodi (hereinafter Council) whereby it granted the application of Peter B. Di Maria, Mildred Visentini and John Visentini for a person-to-person and place-to-place transfer of a plenary retail distribution license from D. & S. Liquors of Lodi, Inc., for premises 479-1/2-481 Passaic Avenue, to said respondents Peter B. Di Maria, Michael Visentini and John Visentini, located at 113-119 South Main Street.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. This was supplemented by the transcript of the hearing below which is found in the file of case No. 3465, Hudson-Bergen Package Stores Association, et al, v. Lodi, et al.

The application for transfer, the consent and the proof of publication (all in due form) were received in evidence. Ordinance No. 925, governing transfer of liquor licenses was also received in evidence. It was agreed that the distance between the two premises involved was approximately seventeen hundred feet and that the situs to which the license is sought to be transferred is not within five hundred feet of any other licensed premises.

The premises to which the transfer is sought, that is, 113-119 South Main Street, is now occupied by South Main Bar, Incorporated, the holder of a plenary retail consumption license for those premises. The Council granted the application of South Main Bar to transfer its said license to 72 Main Street. One of the appellants herein (Hudson-Bergen Package Stores Association) has appealed the granting of the transfer of that license by the Council to this Division and the adjudication of that appeal is made the subject of a separate Hearer's report (Hudson-Bergen Package Stores Assn. et al., v. Mayor and Council of the Borough of Lodi and South Main Bar, Incorporated, Case No. 3465).

Appellant contends that the instant transfer is violative of Ordinance No. 925 in that the ordinance does not provide for a person-to-person transfer of a plenary retail distribution license; and further, that the ordinance does not provide for a transfer of license in excess of seven hundred and fifty feet. Appellant also argued that there was no public need or necessity for the transfer.

It is my view that appellant's interpretation of the ordinance is erroneous.

My interpretation of the ordinance is that no place-to-place and/or person-to-person transfer of a license in excess of seven hundred and fifty feet is prohibited unless the contemplated transfer is to premises within five hundred feet of an existing plenary retail consumption license or a plenary retail distribution license.

Further, a place to place transfer may be made by a licensee to any other premises within seven hundred and fifty feet of his original premises notwithstanding the fact that the license so transferred is within five hundred feet of an existing license. Therefore, I find that the proposed transfer is not violative of the ordinance quoted.

The burden of establishing that the action of a local issuing authority was erroneous and should be reversed rests with the objectors. Rule 6 of State Regulation No. 15.

The decision as to whether or not a license should be transferred to a particular locality rests within the sound discretion of the municipal issuing authority in the first instance. Hudson-Bergen County Retail Liquor Stores Assn. v. North Bergen et als., Bulletin 997, Item 2. Each municipal issuing authority has wide discretion in the transfer of a liquor license, subject to review by the Director in the event of any abuse thereof. Passarella v. Atlantic City, 1 N.J. Super 313 (App. Div. 1949). However, action based upon such discretion will not be disturbed in the absence of a clear abuse. Blanck v. Magnolia, 38 N.J. 484 (1962). As Justice Jacobs pointed out in Fanwood v. Rocco, 33 N. J. 404, 414 (1960):

"Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for...license or transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him...Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable."

And further, in evaluating the action of the Council herein, it might be well to state the view expressed in Ward v. Scott, 16 N.J. 16 (1954), wherein the Supreme Court, dealing with an appeal from a zoning ordinance, set forth the following general principle (at p. 23):

"Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for variance. And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' *Graham v. United States*, 231 U. S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

In conclusion it may be stated that in matters involving transfer of liquor licenses, the responsibility of the municipal issuing authority is "high", its discretion "wide", and its guide the "public interest." *Lubliner v. Paterson*, 33 N. J. 428, 446 (1960). As indicated hereinabove, the Director is governed by the principle that where reasonable men, acting reasonably, may have arrived at a determination in the issuance or transfer of a license, such determination should be sustained by the Director unless he finds that it was clearly against the logic and effect of the presented facts. *Hudson-Bergen County Retail Liquor Stores Assn. v. Hoboken*, 135 N. J.L. 502 (1947); cf. *Fanwood v. Rocco*, 59 N.J. Super. 306 (App. Div. 1960).

The Council has, in my opinion, understood its full responsibility and has acted circumspectly and with a reasonable exercise of its discretion in granting the transfer. I do not find the objections of sufficient merit, and thus conclude that appellants have failed to sustain the burden of establishing that the action of the Council was arbitrary, capricious, unreasonable or an abuse of its discretion. Rule 6 of State Regulation No. 15.

For the reasons aforesaid, it is recommended that an order be entered affirming the action of the Council and dismissing the appeal.

Conclusions and Order

No exceptions were taken to the Hearer's report pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 11th day of August, 1970,

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

RICHARD C. McDONOUGH
DIRECTOR

2. APPELLATE DECISIONS - HUDSON-BERGEN PACKAGE STORES ASSN.
ET AL. v. LODI and SOUTH MAIN BAR, INCORPORATED.

Hudson-Bergen Package Stores)	
Assn. et al.,)	
)	
Appellants,)	ON APPEAL
)	
v.)	CONCLUSIONS
)	AND ORDER
Mayor and Council of the Borough)	
of Lodi and South Main Bar,)	
Incorporated,)	
)	
Respondents.)	
-----)		
Samuel J. Davidson, Esq., Attorney for Appellants		
Carbonetti & Di Maria, Esqs., by John M. Di Maria, Esq.,		
Attorneys for Respondent Borough		
South Main Bar, Incorporated, Respondent, Pro se		

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Mayor and Council of the Borough of Lodi (hereinafter Council) whereby it granted the application of the respondent, South Main Bar, Incorporated, for place to place transfer of its plenary retail consumption license C-24 for the year 1969-70, from premises 113-119 South Main Street to 72 South Main Street, Lodi.

This appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. The transcript of the Council hearing was received in evidence.

The facts essential to the adjudication of this matter are not in dispute.

It was conceded at this hearing and the hearing below that the premises to which the transfer is sought is being operated as a motor vehicle and gasoline service station, and that the corporate licensee does not intend to use the premises for either the sale or storage of alcoholic beverages, nor does it intend to convert the premises to such usage. The answer to question 7(a) in the application filed with the respondent Borough (A-1 in evidence) states "No beverages will be stored, served or sold from the premises."

It appears that the licensee will attempt to find a place to relocate the license and that the new location was merely a mailing address and "stand-by" location until another location was obtained in order to operate its liquor business.

The resolution approving the transfer which states that "Transfer granted with condition of time limit till renewal date of July 1, 1970" was received in evidence A-6.

It was further admitted that the distance between 113-119 South Main Street and 72 South Main Street was eight hundred and fifty feet and that new address is in excess of five hundred feet from any other licensee.

Appellants argued mainly that the application was defective in that no plans or specifications were filed pursuant to the rules; that since licensee had no intention to use its license at the new location, the transfer was not made in good faith; that the transfer violated Ordinance No. 925, regulating the transfer of licenses (A-3 in evidence) in that the new location was in excess of seven hundred and fifty feet from its former location.

It is my view that Ordinance No. 925 does not prohibit a transfer of a license to a point in excess of seven hundred and fifty feet from its present location, provided that the transfer is to a point not within five hundred feet of an existing liquor license. Thus, the contemplated transfer is not violative of said ordinance.

In further considering the merits of the Council's action, I note that the law entrusts the local board with a discretion as to the transfer of liquor licenses. Passarella v. Board of Commissioners, 1 N. J. Super. 313, 319 (App. Div. 1949); Biscamp v. Twp. Council of the Twp. of Teaneck, 5 N. J. Super. 172, 174 (App. Div. 1949). And the State Division on an appeal in such a matter, N.J.S.A. 33:1-26, 33:1-38, will interfere in the exercise of the board's discretion only where there is an abuse of its discretion, Hudson-Bergen, etc. Assn. v. Hoboken, 135 N.J.L. 502, 511 (E. & A. 1947), Passarella v. Board of Commissioners, 1 N. J. Super. 313, supra, that is, because of a manifest mistake, Smith v. Smith, 17 N. J. Super. 128 (App. Div. 1951), clearly unreasonable action, or some more untoward impropriety. Such is the scope of review before the Division in such a matter, notwithstanding that testimony is taken de novo. Cino v. Driscoll, 130 N.J.L. 535 (Sup. Ct. 1943).

After carefully considering the entire record herein I do not perceive the Council's action to be unreasonable.

Apparently the Council was of the same mind as the court in Lakewood v. Brandt, 38 N. J. Super. 462 (App. Div. 1955) wherein the court said at p. 466:

"An owner of a license or privilege acquires through his investment therein, an interest which is entitled to some measure of protection in connection with a transfer."

Therefore, after considering all of the evidence herein, including the transcripts of the testimony, the exhibits and the summation of counsel, I conclude that the appellant has failed to sustain the burden of establishing that the action of the Council was unreasonable or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15. Hence, I recommend that an order be entered affirming the action of the Council and dismissing the appeal. However, I further recommend that the transfer of the subject license or any renewal thereof should contain a condition that the license will not be issued until licensee complies with all regulations concerning the suitability of the proposed premises for the operation of a plenary retail consumption license; and, it is further recommended that the Council allow the respondent South Main Bar, Incorporated, a reasonable period of time to locate and have its said license transferred to other suitable premises in conformance with the alcoholic beverage laws and the rules and regulations pertaining thereto. Cf. Hudson-Bergen Package Stores Association v. Lyndhurst, Bulletin 1914, Item 2; Rallo's Bar, Inc. v. West Orange, Bulletin 1914, Item 1.

Conclusions and Order

No exceptions were taken to the Hearer's report pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record, including the transcript of testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 11th day of August, 1970

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

RICHARD C. McDONOUGH
DIRECTOR

3. APPELLATE DECISIONS - HELMS ET AL. v. NEWARK and AVON
DELICATESSEN & LIQUOR INC.

MILDRED HELMS and CLINTON HILL)
AREA REHABILITATION COMMITTEE)
(an unincorporated association),)

Appellants,)

v.)

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
NEWARK, and AVON DELICATESSEN &)
LIQUOR INC.,)

Respondents.

ON APPEAL
CONCLUSIONS
AND ORDER

Michael C. Parks, Esq., Attorney for Appellants
Anthony J. Iuliani, Esq., by Ronald Owens, Esq., Attorney for
Municipal Board
Percy H. Penn, Esq., and William Osterweil, Esq., of Counsel
Attorney for Respondent, Avon

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Board which unanimously granted the application of the respondent Avon Delicatessen and Liquor, Inc. (Avon), for place-to-place transfer of its plenary retail distribution license from premises 189 Avon Avenue and 556 Bergen Street to 565 Bergen Street, Newark. The two locations are diagonally across the street and within two hundred feet of each other.

The appellants allege in their petition of appeal that the action of the Board was erroneous for the following stated reason:

"The locale to which the transfer was granted already has two nearby license establishments and the area is not in need of an additional one; furthermore,

the area into which the license was transferred is designated as a renewal and rehabilitation area pursuant to the Federal Housing Act and plans promulgated pursuant thereto and the addition of respondent's premises contravenes the purpose, scope, goals, and orderly development of the plan in the area."

Respondent Board denied that its action was erroneous and additionally Avon asserted as a separate defense:

"The respondent is forced to move from its old location, to wit: 189 Avon Ave., Newark and 556 Bergen Street, Newark, to 565 Bergen Street, which is practically across the street, because of the fact of the recent riots having completely demolished the old location and, as a matter of fact, the property is now owned by the Housing Authority of the City of Newark."

The transcript of the hearing below was submitted in evidence by respondents and additional testimony was adduced at the hearing herein in accordance with Rule 8 of State Regulation No. 15.

A reading of the transcript of the hearing held before the Board reveals that approximately eighteen persons who reside in the area affected signed a petition in opposition to the grant of the transfer.

In opposition to the transfer, Mildred Helms, who resides at 583 Bergen Street, testified that she is a member of the Clinton Hill Area Rehabilitation Committee (an unincorporated association known as "CHARC") whose membership is confined to persons residing in or organizations based in the fourteen block area designated as an urban renewal project. No. 565 Bergen Street, the location to which the transfer was approved, is situated at the extreme northeast section of the area (see map marked in evidence A-1). By resolution dated March 6, 1963, the City of Newark recognized CHARC as the official citizens participation group in the project. The resolution further provided that the Redevelopment Agency and the Housing Authority of the City of Newark shall retain and work with CHARC as such official body.

As a group, CHARC opposed the transfer of the subject license and made known its recommendation to the Housing Authority.

There is a tavern located two blocks to the south at the corner of Clinton Avenue and Bergen Street which appears to be approximately twelve hundred feet distant from the site of the proposed transfer. There is a package liquor store located at the corner of Madison Avenue and Bergen Street, one block to the south of the site of the proposed transfer and approximately six hundred feet therefrom. There is a tavern located on the southeast corner of Bergen Street and Avon Avenue, almost opposite the proposed location but not within the fourteen block renewal area. Also there are other liquor outlets in the area. However, they appear to be more than one thousand feet removed from the proposed location.

Samuel Weissman testified that he, a daughter and another individual are the sole persons having any interest in the respondent corporate license. The license had been located at its present location for twenty-five years; several years ago

it was also engaged in selling delicatessen goods. The proposed location is owned by his family and is presently occupied by a tenant under a lease who operates a grocery and delicatessen business therein.

The present location has been inoperative since May 1969, it having been destroyed by rioting. The proposed location had been purchased for the purpose of eventually locating therein.

It was established at the hearing before the Board that the building was acquired by the Housing Authority.

Walter T. Schmidt, Director of Urban Renewal for the local Housing Authority, testified that the Clinton Hill area is basically a rehabilitation project to improve the neighborhood and existing premises where the buildings are below set standards. In some instances the Authority would acquire the buildings for the purpose of residential rebuilding. CHARC has participated in the planning on the basis of review and approval.

The witness asserted that "The Authority does not attempt to put taverns out of business, necessarily, or any other business out. Where we have been able to maintain businesses, we have done so." He had no knowledge of whether or not outlets for the sale of liquor have been opened since the CHARC area was established.

This Hearer denied appellants' proffer in evidence of alleged building violations and a zoning map of the area in question holding that, that is a matter to be decided in another forum. Cf. Lubliner v. Paterson, 33 N.J. 428 (1960).

In adjudicating this matter, preliminarily, I observe that the burden of establishing that the action of the Board in granting the transfer was erroneous and should be reversed rests with appellant. Rule 6 of State Regulation No. 15. It has been consistently ruled that no one has a right to the issuance or transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946); Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949). The decision as to whether or not a license will be transferred to a particular locality rests in the first instance within the sound discretion of the local issuing authority. Hudson-Bergen County Retail Liquor Dealers Assn. v. North Bergen et al., Bulletin 997, Item 2. Where there is an honest difference of opinion in the exercise of discretion for or against the transfer of a liquor license, the action of the issuing authority in approving the transfer should not be disturbed. Paul v. Brass Rail Liquors, Inc., 31 N.J. Super. 211 (App. Div. 1954). A local issuing authority has been held to possess wide discretion in the transfer of a liquor license subject, of course, to review by this Division in the event of any abuse thereof. Passarella v. Atlantic City et als., 1 N.J. Super. 313. In Fanwood v. Rocco, 33 N.J. 404 (1960), Justice Jacobs stated:

"Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for...license or the transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. The Director conducts a de novo hearing of the appeal and makes the necessary

factual and legal determinations on the record before him....Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable."

See also Essex County Retail Liquor Stores Assn. v. Newark, et al., 77 N.J. Super. 70 (1962).

The Director's function on appeals of this kind is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Larion, Inc. v. Atlantic City, Bulletin 1306, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1. In other words, the action of the municipal issuing authority may not be reversed by the Director unless he finds the "act of the board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502. Cf. Fanwood v. Rocco, supra.

In Fanwood, the case of Ward v. Scott, 16 N.J. 16 (1954) was cited, wherein the Supreme Court dealt with an appeal from a zoning ordinance and set forth the following general principle:

"Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for variance. And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

Additionally, I am mindful that the court in Lakewood v. Brandt, 38 N.J. 462 (App.Div. 1955) stated:

"An owner of a license or privilege acquires through his investment therein, an interest which is entitled to some measure of protection in connection with a transfer."

It is uncontroverted that the premises for which this license was issued had been destroyed by rioting and that the licensee would suffer in the event that appellant's application for transfer were to be denied. This might well be characterized as a hardship case. Moreover, the distance between the present premises is less than two hundred feet and the proposed premises is not near a church or school. Inasmuch as the premises (present and proposed) are in the same vicinity, it is apparent that the transfer of the license would not result in the existence of any additional license or increase in the number of present licenses in the general area. Tagliaferro v. Newark, Bulletin 1710, Item 1; Jesswell, Inc. v. Newark, Bulletin 1847, Item 5. The factual situation in the matter sub judice is substantially the same as that in Club Warren, Inc. v. Newark, Bulletin 1585, Item 4.

I have considered the fact that objections were voiced against the grant of the transfer at the hearings held herein and that a petition in opposition thereto was filed with the Board. It is understandable that the residents of an area may voice their concern for its welfare. However, if the premises are conducted in a respectable and law-abiding manner (and it must be assumed that such will be the case), inhabitants of the area have nothing to fear. If, however, the licensed premises are operated in violation of the Alcoholic Beverage Law, the licensee will subject his license to suspension or revocation. Tagliaferro v. Newark, supra; Jesswell v. Newark, supra.

After reviewing the testimony and the exhibits, I find that the Board's action was neither arbitrary, unreasonable nor did it constitute an abuse of discretion. I conclude that appellants have failed to sustain the burden of proof necessary to establish that the action of the Board was erroneous. Rule 6 of State Regulation No. 15. Hence, it is recommended that an order be entered affirming the Board's action and dismissing the appeal.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record, including the transcript of testimony, the exhibits and the Hearer's report, I concur in the findings of the Hearer and adopt his recommendations.

Accordingly, it is, on this 20th day of August 1970,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

RICHARD C. McDONOUGH
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - CRIMINALLY DISQUALIFIED EMPLOYEE -
 LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary)
 Proceedings against)

2705 Pacific Corporation)

t/a Haunted House)

2705 Pacific Avenue)

Atlantic City, N. J.)

CONCLUSIONS
 and
 ORDER

Holder of Plenary Retail Consumption)
 License C-136, issued by the Board)
 of Commissioners of the City of)
 Atlantic City.)

 Edwin H. Helfant, Esq., Attorney for Licensee.
 Walter H. Cleaver, Esq., appearing for the Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee entered a technical plea of not guilty to the
 following charge:

"On October 11, 1968 and May 25, 1969 and
 on divers days between those dates, you
 employed and had connected with you in a
 business capacity, Allison T. Williams,
 a person who had been convicted on or
 about February 24, 1967 of a crime in-
 volving moral turpitude, viz., burglary
 (fourth degree) in the Superior Court of
 the State of Delaware (New Castle County);
 such employment by you being in violation
 of Rule 1 of State Regulation No. 13."

By letter dated May 11, 1970 the licensee advised this
 Division that, in entering this technical plea of not guilty,
 it did not intend to offer any testimony or any other evidence,
 thus waiving hearing on the facts, with the final determination
 of the case being left to the Director on the reports of inves-
 tigation. However, a Hearer's report was not waived.

The file of this Division, which includes reports of
 investigation and other documents, establishes that on October
 11, 1968 and May 25, 1969, and on divers days between those
 dates, the licensee employed and had connected with it, in a
 business capacity, Allison T. Williams, a person who had been
 convicted on or about February 24, 1967 of a crime involving
 moral turpitude. He was, on that date, convicted of burglary
 (fourth degree) in the Superior Court of the State of Delaware
 (New Castle County).

On the dates charged herein, ABC investigators observed
 Williams performing regular services as manager and host in the
 licensed premises. Williams admitted to the ABC agents that he
 was also employed by the licensee as a maintenance man, re-
 pairing and maintaining equipment in the said premises. Such
 employment is in violation of Rule 1 of State Regulation No. 13.

It is, accordingly, recommended that an order be entered adjudging licensee guilty of the said charge.

In mitigation of the penalty to be imposed herein, the attorney for the licensee sets forth, in letters to this Division dated March 25, 1970 and May 11, 1970, that a complete change of stockholders in the corporate licensee took place on August 21, 1969, and that the notice of this charge was received by the corporate licensee on December 5, 1969. Thus, he contends that the corporate licensee, as presently constituted, should not be penalized for the alleged violation occurring between October 11, 1968 and May 25, 1969.

It should be pointed out, however, that the corporation, as an entity, is responsible in disciplinary proceedings for its violations, regardless of the corporate structure and irrespective of the fact that there was a change of stockholders between the date of the alleged violation and the preferment of the said charge.

It is not present Division policy to take a prior record of suspension into account in assessing a penalty for a violation by a corporate licensee where there has been an intervening change of stockholders, complete and bona fide in all respects, and where there is no continuing interests, directly or indirectly, by any of the former stockholders. However, the instant situation does not come within that framework.

The licensee has no prior adjudicated record. It is, further, recommended that the license be suspended on the said charge for twenty days. Re Lu-Anne, Inc., Bulletin 1526, Item 15.

Conclusions and Order

Pursuant to Rule 6 of State Regulation No. 16, written exceptions to the Hearer's report were filed with me by the attorney for the licensee.

The principal contention of the attorney for the licensee is that "the penalty sought to be imposed of twenty days suspension is penalizing a licensee who had no knowledge of the pending violation, had no part in its alleged wrong doing and is about to suffer for the alleged acts of its predecessor."

As the Hearer pointed out, it has been long-established Division policy that a corporation as an entity is responsible in disciplinary proceedings for its violations regardless of the corporate structure and irrespective of the fact that there was a change of stockholders between the date of the alleged violation and the preferment of the said charge. This policy is based upon practical and realistic considerations in consonance with the statutory imperative of stringent alcoholic beverage control. R.S. 33:1-73.

Having carefully considered the record herein, including the memoranda of counsel for the licensee submitted in summation, the Hearer's report and the written exceptions with supportive argument, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 29th day of July 1970,

ORDERED that Plenary Retail Consumption License C-154 (for 1970-71 licensing period), issued by the Board of Commissioners of the City of Atlantic City to 2705 Pacific Corp., t/a The Haunted House, for premises 2705 Pacific Avenue, be and the same is hereby suspended for twenty (20) days, commencing at 7:00 a.m. Wednesday, August 5, 1970 and terminating at 7:00 a.m. Tuesday, August 25, 1970.

RICHARD C. McDONOUGH
DIRECTOR

5. ELIGIBILITY PROCEEDING - CONVICTION FOR CARRYING CONCEALED WEAPON - UNDER FACTS OF CASE HELD NOT TO INVOLVE MORAL TURPITUDE.

Re: Eligibility No. 787

Applicant seeks determination as to whether or not he is disqualified from being associated with the alcoholic beverage industry in this State by reason of his conviction of crime. A person convicted of crime involving moral turpitude is so disqualified. R.S. 33:1-25, 26.

Applicant's criminal record discloses that on April 21, 1969 following a plea of guilty in the Bergen County Court to a charge of carrying a concealed weapon, a misdemeanor, he was sentenced to two to three years in States Prison, sentence suspended, three years probation and fined \$1,000.

The crime of carrying a concealed weapon may or may not involve the element of moral turpitude. Re: cf Case No. 1698, Bulletin 1474, Item 4. When the crime stands alone unattended by other crimes or intention to commit other crimes it does not ordinarily involve moral turpitude Re: Case No. 614, Bulletin 870, Item 2.

At the hearing held herein, applicant (36 years old) testified that when he lived in North Carolina, he worked for a concessionaire at a County fair, and after work he had to take money home. He obtained a permit to carry a gun in order to protect himself. When he moved to New Jersey, he took the gun with him and never had any use for it. He is married and has six children; his wife is an alcoholic and has deserted him and the children many times.

His criminal record is clear with the exception of this crime both as a juvenile and an adult. He is the chief steward of Englewood Field Club and has worked there for fifteen years.

A witness produced on his behalf, an attorney of New York testified that he is a member of the Board of Governors of Englewood Field Club; that the applicant is chief steward of the club, is a loyal conscientious, hard working employee, and has a good reputation.

Report received from the County probation office essentially corroborates the testimony of the applicant and states that he is performing his role as a household head and trusted employee in admirable manner.

Based on the aforesaid report and sworn testimony of the applicant and witness, it is my opinion that the crime of which applicant was convicted on April 21, 1969 does not involve aggravating circumstances or the commission or intent to commit other crimes in connection with the unlawful possession of a firearm. This crime therefore under the facts and circumstances herein does not involve the element of moral turpitude. Hence, it is recommended the applicant be advised that in the opinion of the Director he is not disqualified by virtue of said conviction from being associated with the alcoholic beverage industry in this State.

Harry D. Gross

Approved:

RICHARD C. McDONOUGH
DIRECTOR

Dated: September 1, 1970

6. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF HOURS ORDINANCE - SALE TO INTOXICATED PERSONS - FOUL LANGUAGE - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

EDITH Q. FEENEY, INDIVIDUAL,
ESTATE OF GEORGE B. FEENEY
t/a Oak Grove Inn
6th Rd. & 10th Street
Buena Vista Township
PO Newtonville, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-12 (for 1969-70 and 1970-71 license periods), issued by the Township Committee of the Township of Buena Vista.

Licensee, Pro se
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads guilty to charges alleging that on April 4, 1970, on her licensed premises, she (1) sold alcoholic beverages after 3 a.m. during hours prohibited by local ordinance, (2) sold drinks of alcoholic beverages to persons actually or apparently intoxicated in violation of Rule 1 of State Regulation No. 20, and (3) permitted foul, filthy and obscene language (by patrons) in violation of Rule 5 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for ten days effective January 13, 1969, for possessing alcoholic beverages in bottles not truly labeled. Re Feeney, Bulletin 1839, Item 8.

The license will be suspended on the first charge for fifteen days (Re Schoell's Tavern, Inc., Bulletin 1893, Item 2), on the second charge for twenty days (Re Augie's Tavern, Inc., Bulletin 1889, Item 4), and on the third charge for ten days (Re Castaways Inc., Bulletin 1675, Item 4), to which will be added five days by reason of suspension of license for

dissimilar violation occurring within the past five years (Re Castaways Inc., supra), or a total of fifty days, with remission of five days for the plea entered, leaving a net suspension of forty-five days.

Accordingly, it is, on this 13th day of August 1970,

ORDERED that Plenary Retail Consumption License C-12, issued by the Township Committee of the Township of Buena Vista to Edith Q. Feeney, Individual, Estate of George B. Feeney, t/a Oak Grove Inn, for premises 6th Rd. & 10th Street, Buena Vista Township, be and the same is hereby suspended for forty-five (45) days, commencing at 3 a.m. Monday, August 30, 1970, and terminating at 3 a.m. Thursday, October 15, 1970.

RICHARD C. McDONOUGH
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - ORDER AMENDING COMMENCEMENT DATE OF SENTENCE.

In the Matter of Disciplinary)
Proceedings against)

BRIGHTON MEMORIAL VFW POST 2140)
255 Willow Avenue)
Long Branch, N. J.)

AMENDED
ORDER

Holder of Club License CB-7, issued)
by the City Council of the City of)
Long Branch.)

Licensee, by Theodore Bartel, Judge Advocate and Past Commander.
Walter H. Cleaver, Esq., Appearing for the Division.

BY THE DIRECTOR:

An order was entered herein on July 20, 1970 suspending the subject license for thirty days commencing 3 a.m. August 4, 1970, after finding licensee guilty of the charges contained therein.

It appears from information received from the issuing authority that this license was not renewed until August 25, 1970; thus the suspension previously imposed was ineffective.

Accordingly, it is, on this 31st day of August 1970,

ORDERED that the order dated July 20, 1970 is hereby amended to read as follows:

ORDERED that Club License CB-7 (as renewed for 1970-71 licensing period), issued by the City Council of the City of Long Branch to Brighton Memorial VFW Post 2140, for premises 255 Willow Avenue, Long Branch, be and the same is hereby suspended for thirty (30) days, commencing at 3 a.m. Tuesday, September 8, 1970, and terminating at 3 a.m. Thursday, October 8, 1970.

RICHARD C. McDONOUGH
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

MICHAEL BATTAGLIA
A/K/A BATTLES
201 W. Main Street
Hamilton Township (Atlantic Co.)
PO Mays Landing, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-10, issued by the Township
Committee of the Township of Hamilton.

Feinberg & Ginsburg, Esqs., by Edward I. Feinberg, Esq., Attorneys
for Licensee
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

Absent prior record, the license will be suspended
for ten days, with remission of five days for the plea entered,
leaving a net suspension of five days. Re Charcoal Hearth, Inc.,
Bulletin 1908, Item 9.

Accordingly, it is, on this 4th day of September
1970,

ORDERED that Plenary Retail Consumption License C-10,
issued by the Township Committee of the Township of Hamilton to
Michael Battaglia, A/K/A Battles, for premises 201 W. Main Street,
Hamilton Township (Atlantic County), be and the same is hereby
suspended for five (5) days, commencing at 4 a.m. Monday, September
21, 1970, and terminating at 4 a.m. Saturday, September 26, 1970.



Richard C. McDonough
Director