

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

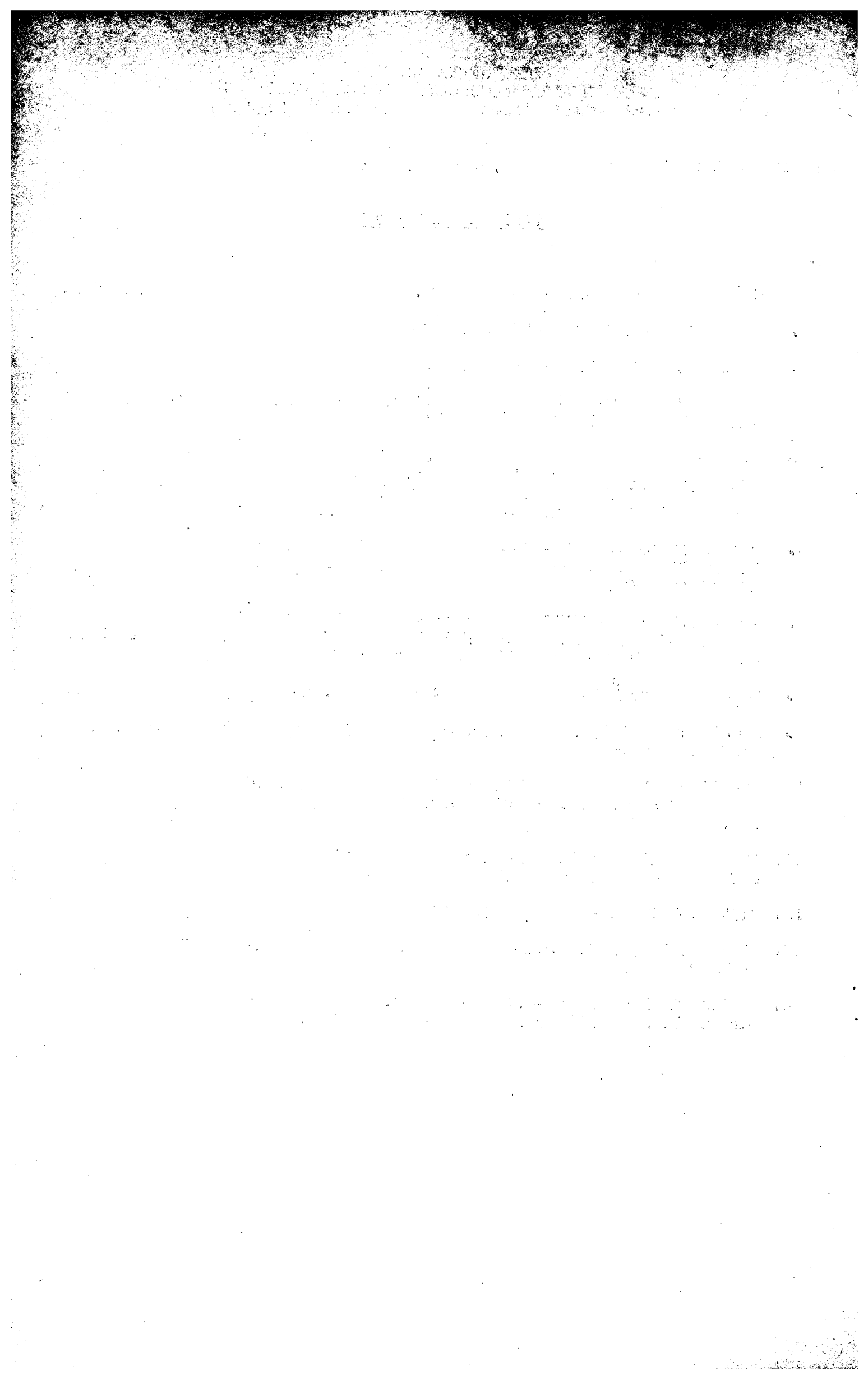
BULLETIN 821

November 18, 1948

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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060-Broad Street Newark 2, N. J.

November 18, 1948

BULLETIN 821

1. APPELLATE DECISIONS - LAVICOLI v. CAMDEN - ORDER OF DISCONTINUANCE

ANGELINA LAVICOLI,)
Appellant,)
-vs-)
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF CAMDEN,)
Respondent.)

ON APPEAL
ORDER OF DISCONTINUANCE

Gene R. Mariano, Esq., Attorney for Appellant.
John J. Crean, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's denial of appellant's application to transfer to her the plenary retail consumption license of Battista DiMarco for premises 519 South Fifth Street, Camden, for the 1945-46 licensing year.

Hearing was held in abeyance to await a determination in the courts of the appellant's right to possession of the premises. This issue was decided adversely to the appellant in the Court of Chancery, and was recently affirmed on appeal to the Court of Errors and Appeals, sub nom. Lavicoli v. DiMarco, 142 N. J. Eq. 699.

The parties hereto have now stipulated that the appeal may be discontinued. No reason appearing to the contrary,

It is, on this 29th day of October, 1948,

ORDERED that the within appeal be and the same is hereby discontinued.

ERWIN B. HOCK
Commissioner.

November 3, 1948

ACTIVITY REPORT FOR OCTOBER 1948

2.

ARRESTS:		
Total number of persons arrested - - - - -		17
Licensees and employees - - - - - 3	Bootleggers - - - - - 14	
SEIZURES:		
Motor vehicles - cars - - - - -		1
- trucks - - - - -		2
Mash - gallons - - - - -		100.00
Disfilled alcoholic beverages - gallons - - - - -		15.12
Wine - gallons - - - - -		556.87
Brewed malt alcoholic beverages - gallons - - - - -		133.74
RETAIL LICENSEES:		
Premises inspected - - - - -		664
Premises where alcoholic beverages were gauged - - - - -		1,020
Bottles gauged - - - - -		16,650
Premises where violations were found - - - - -		19
Violations found - - - - -		21
Type of violations found:		
Unqualified employees - - - - - 8	Gambling devices - - - - - 1	
Other mercantile business - - - - - 6	Improper beer taps - - - - - 1	
Disposal permit - - - - - 2	Reg.#38 sign not posted - - - - - 1	
Prohibited signs - - - - - 1	Other violations - - - - - 1	
STATE LICENSEES:		
Premises inspected - - - - -		26
License applications investigated - - - - -		14
COMPLAINTS:		
Complaints assigned for investigation - - - - -		350
Investigations completed - - - - -		382
Investigations pending - - - - -		129
LABORATORY:		
Analyses made - - - - -		136
"Shake-up" gases (alcohol, water and artificial color) - bottles - - - - -		5
Liquor found to be not genuine as labeled - bottles - - - - -		15
IDENTIFICATION BUREAU:		
Criminal fingerprint identifications made - - - - -		11
Persons fingerprinted for non-criminal purposes - - - - -		235
Identification contacts made with other enforcement agencies - - - - -		140
Motor vehicle identifications via N. J. State Police Teletype - - - - -		11
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities - - - - -		13
Violations involved:		
Sale during prohibited hours - - - - - 8	Permitting bookmaking on premises - 1	
Sale to minors - - - - - 3	Permitting hostesses on premises - 1	
Cases instituted at Department - - - - -		25*
Violations involved:		
Fraud and front - - - - - 8	Conducting business as a nuisance 1	
Sale on credit to retailer in default - 3	Hindering investigation - - - - - 1	
Sale under Fair Trade price - - - - - 3	Permitting bookmaking in premises 1	
Sale during prohibited hours - - - - - 3	Permitting pin ball machines on premises - 1	
Possessing illicit liquor - - - - - 2	Mislabeling beer taps - - - - - 1	
Sale to minors - - - - - 2	Failure to afford view into premises during prohibited hours - 1	
Failure to report retailer in default - 1		
Purchase from improper source - - - - - 1		
Permitting immoral activity on premises 1		
*1 includes cancellation proceedings for lack of requisite possession of club quarters		
Cases brought by municipalities on own initiative and reported to Department - - - - -		5
Violations involved:		
Permitting brawls on premises - - - - - 2	Permitting solicitation for immoral activity - - - - - 1	
Sale to intoxicated persons - - - - - 1	Conducting business as a nuisance 1	
Permitting persons of ill repute on premises - - - - - 1	Sale to minors - - - - - 1	
Permitting hostesses on premises - - - - - 1	Permitting females to tend bar - - 1	
HEARINGS HELD AT DEPARTMENT:		
Total number of hearings held - - - - -		44
Appeals - - - - - 5	Seizures - - - - - 2	
Disciplinary proceedings - - - - - 32	Application for license - - - - - 1	
Eligibility - - - - - 4		
PERMITS ISSUED:		
Total number of permits issued - - - - -		1,562
Employment - - - - - 149	Social affairs - - - - - 458	
Solicitors - - - - - 176	Special wine - - - - - 493	
Disposal of alcoholic beverages - - - - - 102	Miscellaneous - - - - - 184	

Erwin B. Hock
Commissioner

3. APPELLATE DECISIONS - CONKLIN v. BRIDGEWATER TOWNSHIP.

KENNETH CONKLIN, trading as)
 TRAIL'S END LODGE,)
)
 Appellant,)
)
 -vs-)
)
 TOWNSHIP COMMITTEE OF THE)
 TOWNSHIP OF BRIDGEWATER,)
)
 Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

 George W. Allgair, Esq., Attorney for Appellant.
 Ronald A. Gulick, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's refusal to renew appellant's plenary retail consumption license for the current licensing year for premises located on Trail's End Lane, Bridgewater Township.

During the last licensing year, expiring June 30, 1948, the appellant had been found guilty of possessing contraceptives on his licensed premises, as a result of which respondent revoked his license. Upon appeal, the conviction was sustained but, because of the circumstances surrounding the violation, the penalty was modified to a twenty-day suspension. See Bulletin 809, Item 7.

No proofs were presented in this case and it was agreed between the respective parties that the determination of this appeal should rest upon the record of the prior appeal case.

The situation herein presented is similar to that which confronted former Commissioner Driscoll in Zicherman v. Newark, Bulletin 647, Item 5. In that case the Commissioner had previously reduced a revocation to a suspension and, after a subsequent refusal to renew, made the following observations when sustaining such refusal on appeal:

"There is a clear difference between the issues raised in disciplinary proceedings and those that may be raised on an application to renew a license. Those who charge (in disciplinary proceedings) must support their charges with competent proof. The burden, in the first instance, is upon the person or authority pressing the charges. A person applying for the renewal of a privilege should be prepared to demonstrate that he is worthy of the privilege. The burden of going forward is upon the applicant for a renewal of a license.

"It is now well established in New Jersey that 'no one has a right to demand a license. A license is a special privilege granted to the few, denied to the many.' Paul v. Gloucester, 50 N.J.L. 585; Meehan v. Jersey City, 70 N.J.L. 382; Bumball v. Burnett, 115 N.J.L. 254.

"Nor is the appellant entitled to renewal of her license as a matter of right. Malone v. Bordentown, Bulletin 129, Item 8. Whether a renewal should be granted or not is, like the original issuance of a license, to be determined in the light of the best interest of the public at large.

"In stressing the paramount public interest that must be considered on an application to renew, I have not lost sight of the fact that the licensee is entitled to fair play. A license once given should not be arbitrarily or unreasonably withheld. If the scales are balanced in favor of public welfare, the reasons therefor should be clear and convincing. In renewal cases, private justice is weighed as against the public interest of the community.' Lavelle v. Way, Bulletin 140, Item 1.

"I have, however, consistently held that improper conduct under a previous license should be seriously considered by an issuing authority before reaching a decision on an application to renew. In a goodly number of cases it has been held that improper conduct under a prior license warrants the denial of a renewal. Schelf v. Weehawken, Bulletin 138, Item 10; Kaplan v. Newark, Bulletin 269, Item 6; Lipman v. Newark, Bulletin 356, Item 6. The misconduct of the appellant during the previous license year is not to be denied. Zicherman v. Newark, supra."

This case, in Bulletin 647, Item 5, was affirmed on appeal to the former Supreme Court, 133 N.J.L. 586; wherein the opinion stated:

"Prosecutor argues further that there was both a suspension and a revocation of the license, a double penalty and as the statute R. S. 33:1-31 authorized a suspension or revocation such action was invalid. There was no revocation, the license was suspended and then not renewed for the next licensing period, an entirely different situation."

An application of the indicated principles to the facts of the instant case leaves me no alternative other than to affirm respondent's action since I am unable to find, as I must to warrant a reversal, that such action constituted an abuse of the discretion lodged in the respondent to determine, in the first instance, the appellant's worthiness of a renewal license.

Accordingly, it is, on this 3rd day of November, 1948,

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

ERWIN B. HOCK
Commissioner.

4. RETAIL CONSUMPTION LICENSEES - TAVERNS - HEREIN OF LIMITS ON ADVERTISING PRICE OR SIZE OF DRINKS.

November 4, 1948.

Dear Sir:

You hold a plenary retail consumption license for your premises at the above address.

Our attention has been called to your newspaper advertisement in the _____ of October 29th. It bears the caption "Lowest Priced Drinks in City" and it advertises "All Popular Brands Whiskey 25¢ up" and also "Leading Brands Scotch Whiskies 40¢."

This is an undesirable type of advertising which, in the long run, can only do harm to the industry as well as to the public. For the past several years the Department has consistently discouraged tavernkeepers from making any reference to price or size of drinks in their newspaper advertisements or in any advertisement other than on the inside of their licensed premises not visible from the exterior. We have done this because, when tavernkeepers engage in such type of advertising, then eventually each competitor will seek to outdo the other by having more and more sensational advertising of cheap or large drinks, with the result that strong adverse public reaction will inevitably set in.

Thus far tavernkeepers have, in general, been cooperating wholeheartedly with the Department by refraining from any reference to price or size of drinks of alcoholic beverages in any advertisement except on the inside of their licensed premises not visible from the exterior.

May I have, by return mail, your written pledge that you will similarly cooperate in this regard and that you will, accordingly, refrain hereafter from referring to price or size of drinks of alcoholic beverages in the newspapers or elsewhere except on the inside of your licensed premises not visible from the exterior?

Very truly yours,
ERWIN B. HOCK
Commissioner.

5. DISQUALIFICATION - CRIMES OF KEEPING DISORDERLY HOUSE (PROSTITUTION) AND OF ATTEMPTED RAPE INVOLVE MORAL TURPITUDE - LACK OF REQUISITE EVIDENCE TO SHOW LAW-ABIDING CONDUCT FOR FIVE YEARS LAST PAST - PETITION TO LIFT DENIED.

In the Matter of an Application)
to Remove Disqualification)
because of a Conviction,)
Pursuant to R. S. 33:1-31.2.)
Case No. 685.)
-----)

CONCLUSIONS

BY THE COMMISSIONER:

In March 1928 petitioner was convicted of keeping a disorderly house (prostitution), was sentenced to one year in State Prison, and released in January 1929. In March 1931 petitioner was convicted of "attempted rape". Sentenced to one year in State Prison, he was released in March 1932. Both these convictions are obviously convictions of crimes involving moral turpitude. Re Case No. 527, Bulletin 719, Item 9; Re Case No. 420, Bulletin 667, Item 8.

Petitioner appears to have had no further trouble with the criminal laws. He did, however, live out of the state during most of the years 1944 and 1945, and is unable to produce positive testimony as to his conduct during that time -- a period within the five-year period provided by statute, R. S. 33:1-31.2.

Under the circumstances, I am unable to find that petitioner has lived a law-abiding life during the immediate last past five years.

The petition will be dismissed.

Dated: November 5, 1948.

ERWIN B. HOCK
Commissioner.

6. APPELLATE DECISIONS - GRANT LUNCH CORPORATION AND SEVENTY MARKET CORPORATION v. NEWARK AND THE STALL, INC. - ORDER OF DISCONTINUANCE.

No. 1967

GRANT LUNCH CORPORATION and SEVENTY MARKET CORPORATION,)

Appellants,)

-vs-)

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, and THE STALL, INC.,)

Respondents.)

No. 1980

GRANT LUNCH CORPORATION and SEVENTY MARKET CORPORATION,)

Appellants,)

-vs-)

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, and THE STALL, INC.,)

Respondents.)

ON APPEAL

ORDER OF DISCONTINUANCE

No. 2018

GRANT LUNCH CORPORATION and SEVENTY MARKET CORPORATION,)

Appellants,)

-vs-)

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, and THE STALL, INC.,)

Respondents.)

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

Harold Simandl, Esq., Attorney for Respondent, The Stall, Inc.

Thomas L. Parsonnet, Esq., by George B. Astley, Esq., Attorney for Respondent Municipal Board of Alcoholic Beverage Control of the City of Newark.

BY THE COMMISSIONER:

In the above entitled cases, the appeals are from the transfer of the plenary retail consumption license held by The Stall, Inc. from 326-328 Plane Street to 64-66 Market Street, and the subsequent renewal thereof.

It appearing that counsel for the parties in each of said appeals have agreed to a discontinuance thereto and have filed a stipulation consenting thereto, and no cause appearing to the contrary,

It is, on this 5th day of November, 1948,

ORDERED that the above appeals be and the same are hereby discontinued.

ERWIN B. HOCK
Commissioner.

7. DISCIPLINARY PROCEEDINGS - CLUB LICENSE - FAILURE TO REVEAL CRIMINAL RECORD OF OFFICER - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - CANCELLATION PROCEEDINGS DISMISSED.

In the Matter of Disciplinary Proceedings against)

PRIDE OF ELIZ. LODGE OF ELKS #1117)
I. B. P. O. E. of W.)
221 Jefferson Ave.)
Elizabeth 4, N. J.,)

CONCLUSIONS AND ORDER

Holder of Club License CB-14, issued) by the Municipal Board of Alcoholic Beverage Control of the City of) Elizabeth.)

-----)
J. Leroy Jordan, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that, in its license application for the current licensing year, it falsely denied that its Exalted Ruler had been convicted of crime, in violation of R. S. 33:1-25.

The officer in question had been convicted of unlawful transportation of liquor in March 1929, and also of the crime of desecrating the flag in November 1946. He was sentenced to pay a fine of \$100.00 on the Prohibition violation and, on the other, to a jail term of ten days. Immediately after the charges herein were preferred, the officer submitted his resignation from office, which resignation was accepted by the lodge, and a new Exalter Ruler was elected.

The defendant's previous record includes a suspension imposed by the local issuing authority in June 1948 for sales to non-members. Under all the circumstances, I shall suspend the license for a period of fifteen days, less five days for the plea, leaving a net suspension of ten days. Cf. Re Elia, Bulletin 780, Item 6.

In view of the foregoing disposition, the cancellation charge alleging the improvident issuance of the license because of the aforesaid convictions is dismissed. Re Tumulty, Bulletin 558, Item 2.

Accordingly, it is, on this 8th day of November, 1948,

ORDERED that Club License CB-14, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Pride of Eliz. Lodge of Elks #1117, I.B.P.O.E. of W., for premises 221 Jefferson Avenue, Elizabeth, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. November 15, 1948, and terminating at 2:00 a.m. November 25, 1948.

ERWIN B. HOCK
Commissioner.

8. APPELLATE DECISIONS - BISCAMP AND HESS v. TEANECK.

HARRY J. BISCAMP and FRED W. HESS, JR.,)

Appellants,)

-vs-

TOWNSHIP COUNCIL OF THE TOWNSHIP OF TEANECK,)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

John J. Deeney, Esq., Attorney for Appellants.
Donald M. Waesche, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of the respondent, on June 22, 1948, in denying an application to transfer appellants' plenary retail consumption license for the 1947-48 fiscal year from proposed premises at 801 Cedar Lane to proposed premises at 251 Fort Lee Road, Teaneck. At the same meeting respondent denied an application by appellants for a renewal of said license at 251 Fort Lee Road for the present fiscal year.

It appears from the minutes of the meeting of June 22, 1948 that the Mayor and members of the Township Council discussed these applications and reached the conclusion that Fort Lee Road is too narrow a street to have a licensed premises located thereon, and that the site of the proposed licensed premises is located too close to a public park.

The testimony given at the hearing discloses that the neighborhood wherein the site of the proposed license is located is substantially residential. The street, according to the testimony of Paul A. Bolker, Township Manager, is a main highway approximately 30 feet in width from curb to curb. The public park mentioned by the respondent as a reason for denying the application for the license is located on Fort Lee Road, about 206 feet from the proposed licensed premises. The vicinity, as shown in the photographs exhibited in the instant case, confirms the fact that although not closely developed, it is generally residential in character. It presents the not unfamiliar picture of a residential area traversed by a well-travelled road that contains scattered dwellings.

A 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 85, Item 5; VanSchoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; Semento v. West Milford, Bulletin 255, Item 2; Masarik et al. v. Milltown, Bulletin 283, Item 10.

On the other hand, where it appears that the refusal of a transfer was arbitrary or 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.

The question whether a particular location is suitable for a licensed premises is a matter confided to the sound discretion of the issuing authority; the members thereof know the place and the people. Their opinion is worthy of great weight. The burden of showing that the issuing authority abused its discretion rests with appellants. Segal et al. v. Clifton et al., Bulletin 732, Item 5.

The State Commissioner's function on appeals of this type, however, 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 view on the subject. Ashton v. Hopewell et al., Bulletin 782, Item 11.

After consideration of all the evidence in the instant case, I cannot say that the action of the members of respondent issuing authority in denying the application for transfer and renewal of the license was so arbitrary and unreasonable as to constitute an abuse of discretion warranting a reversal of its action.

The action of respondent in denying the applications for transfer and renewal is hereby affirmed.

Accordingly, it is, on this 8th day of November, 1948,

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

ERWIN B. HOCK
Commissioner.

9. APPELLATE DECISIONS - MALINCONICA v. MATAWAN TOWNSHIP - ORDER OF DISCONTINUANCE.

FLORENCE MALINCONICA, trading as)
FLO'S BAR & GRILL,)

Appellant,)

-vs-

ON APPEAL
ORDER

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF MATAWAN,)

Respondent.)

Heuser & Heuser, Esqs., by Ralph S. Heuser, Esq., Attorneys for Appellant.

Ezra W. Karkus, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial by the respondent of an application to transfer the license held by appellant from its present location to other premises.

At the hearing herein, Ralph S. Heuser, Esq., attorney for appellant, after presenting his case, moved that the appellant be permitted to withdraw her appeal. Ezra W. Karkus, Esq., attorney for respondent Township Committee of the Township of Matawan consenting thereto, and no causes appearing to the contrary,

It is, on this 5th day of November, 1948,

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

ERWIN B. HOCK
Commissioner.

10. APPELLATE DECISIONS - EAST ORANGE RETAIL PACKAGE STORES ASSOCIATION ET ALS. v. EAST ORANGE AND SUBURBAN COCKTAIL LOUNGE, INC.

EAST ORANGE RETAIL PACKAGE STORES)
ASSOCIATION; ACKER, MERRALL &)
CONDIT CO.; L. W. JOHNSON; GOLD)
ROSE WINES AND LIQUORS INC., and)
ESSEX COUNTY RETAIL LIQUOR STORES)
ASSOCIATION,)

Appellants,)

-vs-)

ON APPEAL
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
EAST ORANGE, and SUBURBAN COCKTAIL)
LOUNGE, INC.,)

Respondents.)

Samuel Poleshuck, Esq. and Peter A. Williams, Esq., Attorneys for
Appellants.

Walter C. Ellis, Esq., by Donald Karrakis, Esq., Attorney for
Respondent Municipal Board.

William J. Egan, Esq. and Robert L. Hood, Esq., Attorneys for
Respondent Suburban Cocktail Lounge, Inc.

BY THE COMMISSIONER:

This is an appeal from the action of respondent Municipal Board whereby, on May 28, 1948, it removed special conditions concerning structural arrangement of premises, previously imposed by the Board upon a license held by respondent Suburban Cocktail Lounge, Inc., and also from the action of respondent Municipal Board on June 29, 1948 whereby it granted an unconditional renewal for the present fiscal year of the license held by respondent Suburban Cocktail Lounge, Inc.

The conditions in question are set forth in Suburban Cocktail Lounge, Inc. v. East Orange, Bulletin 790, Item 5, wherein the action of respondent Municipal Board, in imposing said conditions on the license issued for the 1947-48 fiscal year, was affirmed. It will be unnecessary to repeat herein the events which occurred prior to the imposition of the condition because it is admitted that these facts are fully set forth in the previous appeal cited herein.

Appellants contend that the action of the Board on May 28, 1948 and June 29, 1948 was contrary to law in that the Board permitted the establishment of a new outlet, contrary to the provisions of Ch. 98 of the Laws of 1948. This point is without merit. The license was already in existence and no question of establishing a new outlet is involved. P.L. 1948 was approved and effective on May 28, 1948, and the respondent corporation's current license was a renewal carrying the broad package privileges provided in that law.

Appellants also contend that the action of respondent Municipal Board constituted an abuse of discretion because the conditions existing in and about the licensed premises had not changed so as to justify modification of the prior ruling of the Board. Admittedly the conditions have not changed. However, the testimony of George F. Mack, Secretary of the Municipal Board, indicates that, shortly after

my decision was rendered in the previous appeal case, he had a conversation with Mr. Hazen, who was then a member of the Board, as a result of which both apparently agreed that an undue hardship had been imposed upon respondent Suburban Cocktail Lounge, Inc. by the imposition of the condition in question. This conclusion seems to have been reached because a Mr. Nolan, who, with Mr. Hazen and Mr. Sharp (now deceased), composed the Board when the structural changes were originally made, said that at that time the president of the licensee corporation was assured by the Board that no condition would be imposed. Mr. Hazen agreed that Mr. Nolan was probably correct. Mr. Mack testified that he and Mr. Hazen voted to remove the condition because of the statement made by Mr. Nolan. Mr. Olsen who, on May 28, 1948, was the third member of the Board, testified that he was not a member when the condition was imposed and that he voted to remove the condition because he was satisfied from all the circumstances that an injustice had been done to the licensee. The evidence does not show that any member of the Board was improperly motivated. The imposition of the condition was a matter resting in the discretion of the Board, and the removal of the condition is also a matter which rested in the discretion of the Board.

After reviewing all the evidence I conclude that the appellants have not shown that the members of respondent Municipal Board acted in an illegal manner or abused their discretion in removing the condition.

Appellants also contend that they were not given an opportunity to be heard on May 28th but, in any event, the evidence shows that they were afforded full opportunity to be heard on June 29th when the license was renewed without condition. They have also been given an opportunity to be heard at the hearing herein. Under the circumstances it would seem to be an idle gesture to remand the matter to respondent Municipal Board instead of deciding the appeal upon the merits in this proceeding.

Lastly, appellants contend that removal of the restriction is not in the public interest. That was also a question to be decided in the discretion of the Municipal Board and I find no abuse of discretion in their decision that, under all the circumstances, the conditions be removed. I shall affirm the action of respondent Board.

Accordingly, it is, on this 8th day of November, 1948,

ORDERED that the action of respondent Municipal Board on May 28, 1948, whereby the condition was removed, and the action of respondent Municipal Board on June 29, 1948, whereby the license was renewed without condition, be and the same are hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

11. AUTOMATIC SUSPENSION - TWO LICENSES HELD BY SINGLE LICENSEE -
HEREIN OF PRINCIPLES APPLICABLE THERETO.

In the Matter of a Petition of)
HENRY A. DELANO)
to lift the automatic suspension)
of Plenary Retail Consumption)
License C-5 for premises 5 North)
Black Horse Pike, and Plenary)
Retail Distribution License D-2)
for premises 15 North Black Horse)
Pike, both located in the Borough)
of Bellmawr, and both issued by)
the Borough Council of the)
Borough of Bellmawr.)

ON PETITION
CONCLUSIONS AND ORDER

John R. DiMona, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

This matter comes before me on the petition of Henry A. Delano, holder of Plenary Retail Consumption License C-5 for premises 5 North Black Horse Pike, and Plenary Retail Distribution License D-2 for premises 15 North Black Horse Pike, both located in the Borough of Bellmawr, to lift the automatic suspension of said licenses resulting from the conviction of Henry A. Delano for the crime of sales of alcoholic beverages to minors in the Camden County Criminal Court on November 1, 1948. See R. S. 33:1-31.1.

From a certified copy of the criminal proceedings annexed to the petition, it appears that the licensee was found guilty of selling alcoholic beverages to three minors, two of whom were 17, and the other 18, years of age, at his tavern on December 5, 1947. A second count in the indictment upon which he was tried, alleging sales to the same minors at the tavern on December 31, 1947, was dismissed on a finding of "Not Guilty". No indictment was found against the licensee for sales to one of said minors allegedly occurring at the "package" store on December 31, 1947.

Disciplinary proceedings were instituted by the Borough Council of Bellmawr against the licensee on charges alleging the sales as aforesaid at both the tavern and "package" store. These proceedings were dismissed by the Borough Council and it appears that the dismissal was partly motivated by reason of testimony presented to it to the effect that "the father of one of the minors had attempted to extort money from the licensee without success".

The cited statute (R. S. 33:1-31.1) provides that "any license held at the time of said conviction pursuant to this chapter by the person convicted....shall suspend automatically....for the balance of the term of the license unless the commissioner, in his discretion and for good cause shown, shall otherwise order".

With respect to the distribution license, it is apparent that, in fairness, the lack of either a civil or criminal conviction of any charge relating to those premises should result in a favorable exercise of my discretion and an immediate lifting of the automatic suspension of that license, since there is no warrant in the record for a finding that the licensee is no longer worthy of exercising the privileges of any liquor license.

The situation with respect to the consumption license, however, poses different considerations. The criminal conviction resulted from a violation of the terms of that very license. In evaluating whether the licensee shall be additionally punished (he received a suspended

sentence in the criminal proceedings), I must necessarily take into account the fact that the licensee has been found guilty of selling alcoholic beverages to minors by a court of competent jurisdiction, despite the dismissal of the disciplinary charge by the local governing body whose determination, upon this application, is not binding but merely advisory. See petition of Morris, Bulletin 98, Item 10.

While a greater penalty would normally be warranted for the committed violation if the determination were to be made in direct disciplinary proceedings, I feel that, in the exercise of the discretion lodged in me by the statute, upon a careful consideration of all of the particular circumstances relating to this application, that the consumption license should remain suspended for a period of ten days. Since this license was not picked up until the morning of November 4, 1948, it follows that it is to continue to remain under suspension until 3:00 a.m. November 14, 1948.

Accordingly, it is, on this 8th day of November, 1948,

ORDERED that the automatic suspension of Plenary Retail Distribution License D-2 issued to Henry A. Delano, t/a Bellmawr Liquor Store, for premises 15 North Black Horse Pike, Bellmawr, by the Borough Council of the Borough of Bellmawr, is hereby lifted, effective immediately; and it is further

ORDERED that the automatic suspension of Plenary Retail Consumption License C-5 issued to Henry A. Delano, t/a Henney's Cafe, for premises 5 North Black Horse Pike, Bellmawr, by the Borough Council of the Borough of Bellmawr, shall continue and remain in full force and effect until 3:00 a.m. November 14, 1948.

ERWIN B. HOCK
Commissioner.

12. STATE LICENSES - NEW APPLICATIONS FILED.

James Vetri
260 - 39th St.
Brooklyn, N. Y.

Application for Transportation License filed November 10, 1948.

Herbert L. Konrad
T/a Laurel Beverage Supply
N/E Cor. White Horse Pike & Suburban Ave.
Stratford, N. J.

Application filed November 16, 1948 for transfer of State Beverage Distributor's License SBD-108 from Elizabeth R. Drechsler, t/a Laurel Beverage Supply.

ERWIN B. HOCK
Commissioner.

13. REFERENDUM (R. S. 33:1-45) - EFFECT OF A MAJORITY OF "NO" VOTES - CLUB LICENSES.

November 18, 1948.

Harold J. Landshof, Borough Clerk
Rutherford, New Jersey.

Dear Mr. Landshof:

I have before me your registered letter of November 3rd, reading:

"In accordance with the provisions of R.S. 33:1-45, I hereby certify that at the General Election held yesterday, the action taken by the legal voters of the Borough of Rutherford on the Public Question provided by this section of the statutes produced the following result:

'Yes' - 1,454
'No' - 5,742"

The question set forth in R. S. 33:1-45 is: "Shall the retail sale of all kinds of alcoholic beverages, for consumption on the licensed premises by the glass or other open receptacle...be permitted in this municipality?"

Paragraph 3 of R. S. 33:1-45 reads:

"If a majority of the legal voters voting upon the question shall vote 'No', then the clerk of the governing board or body of such municipality shall forthwith in writing notify the commissioner and municipal board, if any, having authority to issue such licenses, of the action taken by the legal voters of the municipality, and after thirty days have elapsed after the date of such vote, the retail sale of all kinds of alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle (such retail sale being sometimes hereinafter called 'prohibited sale'), shall be unlawful in such municipality and constitute a violation of this chapter, and it shall forthwith upon such vote be unlawful for the other issuing authority of such municipality having authority to issue licenses to issue any license in respect to such municipality which shall permit such prohibited sale and all licenses theretofore issued in respect to such municipality which shall have licensed such prohibited sale shall, to the extent that they permitted such prohibited sale, become void and inoperative thirty days after the date of such vote." (Underscoring added.)

Pursuant to the provisions of the statutory section and the negative vote thereunder at the referendum, it will be unlawful for the Mayor and Council to issue any license which shall permit the retail sale of alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle; and, from and after midnight of Wednesday, December 1, 1948, the three club licenses now outstanding in the Borough shall be completely void and inoperative. (See the enclosed copies of Re Rutherford, Bulletin 63, Item 1, and Re Merchantville, Bulletin 58, Item 3.)

A copy of this letter is today being forwarded by registered mail to each of the three club licensees in the Borough: Rutherford Lodge BPOE #547, 48 Ames Avenue; Rutherford Post #109, American Legion, 424 Carmita Avenue; and Reynolds-Everett-Schneider Post #227, Veterans of Foreign Wars, 16 Union Avenue.

Kindly bring this letter to the prompt attention of the Mayor and Council.

Very truly yours,
ERWIN B. HOCK
Commissioner.

14. APPELLATE DECISIONS - ROSENZWEIG v. PATERSON - ORDER OF DISCONTINUANCE AND REIMPOSITION OF PENALTY.

HERMAN ROSENZWEIG,

Appellant,

-vs-

BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF PATERSON,

Respondent.

ON APPEAL
O R D E R

Peter Cohn, Esq., Attorney for Appellant.
George Surosky, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from a thirty-day suspension imposed by the respondent against Plenary Retail Consumption License C-103 held by the appellant for premises 212 River Street, Paterson, New Jersey, after the appellant was found guilty of charges alleging sales of alcoholic beverages to a minor.

The parties have stipulated that the appeal may be discontinued and that the thirty-day suspension should be reimposed by the State Commissioner. Since no reason appears to the contrary,

It is, on this 15th day of November, 1948,

ORDERED that the within appeal be and the same is hereby discontinued; and it is further

ORDERED that Plenary Retail Consumption License C-103, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Herman Rosenzweig, 212 River Street, Paterson, be and the same is hereby suspended for a period of thirty (30) days, commencing at 7:00 a.m. November 16, 1948, and terminating at 7:00 a.m. December 16, 1948.

E. J. Heck
Commissioner.