Deputy Director Saum

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

January 12, 1967.

BULLETIN 1710

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1. APPELLATE DECISIONS - TAGLIAFERRO v. NEWARK and B. T. McGRATH, INC.

Andrea Tagliaferro and Argentine Tagliaferro, et als.,	)	
Appellants,	)	On Appeal
v.	)	CONCLUSIONS and ORDER
Municipal Board of Alcoholic Beverage Control of the City of Newark, and B. T. McGrath, Inc.,	)	
Respondents.	)	

Grosso, Beck & Mangino, Esqs., by Vincent M. Mangino, Esq., Attorneys for Appellants
Norman N. Schiff, Esq., by Anthony J. Iuliani, Esq., Attorney for Respondent Municipal Board of Alcoholic Beverage Control of the City of Newark
Thomas E. Durkin, Jr., Esq., Attorney for Respondent B. T. McGrath, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal challenges the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) whereby on June 1, 1966, by a vote of two-to-one, it granted the application of B. T. McGrath, Inc. (hereinafter McGrath) for place-to-place transfer of its plenary retail consumption license from premises 51-53 Eleventh Avenue to 68 Eleventh Avenue, Newark (a distance of approximately one hundred sixty-eight feet).

After a lengthy hearing before the Board, at which numerous objectors were given full opportunity to be heard, the Board in granting said application set forth its statement of reasons in accordance with Rule 10 of State Regulation No. 6 which, because of its completeness, is herewith restated in full.

"This matter was presented for place to place transfer of liquor license #C-54, from 51-53 Eleventh Avenue to 68 Eleventh Avenue.

"At the hearing approximately 55 objectors appeared. Some of the objectors offered testimony. Mr. Anthony Vitale, president of B. T. McGrath, Inc., offered testimony that the present licensed premises has been purchased by the Housing Authority and that said application is being presented because of the Urban Renewal Program, namely, the Fairmount Project. The applicant further testified that this transfer is not voluntary. In fact, he is better financially to remain at his present location rather than to move. The main contentions of the objectors, as a whole, may be summarized as follows:

"That the proposed transfer would present more of an exposure to the citizens of the immediate area to the so-called evils associated with a tavern business.

"That the new premises would attract patrons, some of whom feared, might not be desirable.

"That the traffic condition at the new location would present problems to the people within the neighborhood.

"That there is a school, namely, the South 8th Street School, within the area, although not within 200 feet of the new licensed premises, and therefore children would have to pass the new proposed premises.

"That there is a 'bus stop located at the corner of the new building.

"And that in general that this would provide more traffic problems to the immediate neighborhood.

"There were no objections as to the character and reputation of the applicants personally as to their conduct of business at the present licensed premises.

"It may be noted that among the objectors was Frank Addonizio, the Councilman of the West Ward, wherein this transfer is to take place.

"The legislature has entrusted to the Board of Alcoholic Beverage Control the right and charged it with the duty to issue licenses and place to place transfers thereof. This was so held in Fanwood versus Rocco and Division of Alcoholic Beverage Control: 59 New Jersey Super, 306321.

"It may be also noted that general objections to the transfer of a liquor license where a business establishment is not prohibited is fixed by the residents of the immediate area, and is in themselves sufficient reason for denying the present application.

"This Board may grant or deny a transfer. However, if it denies a transfer upon unreasonable grounds, then such denial may be considered arbitrary, capricious and unreasonable, and therefore such denial would not be sustained by a higher authority.

"The apprehension expressed by the various objectors that the proposed licensed premises would create an atmosphere objectionable to young people is readily understandable. However, if the licensed premises is conducted in a law abiding manner (and it must be assumed that such will be the case), the objectors have nothing to fear. If perchance the licensed premises are operated in violation of the alcoholic beverage laws, or the municipal ordinances pertaining thereof, the applicant will subject its license to suspension or revocation.

"In so far as the traffic condition is concerned, it is doubtful whether such contentions by the objectors are reasonably grounded. The application for the transfer herein is comparable to and governed by Bivona versus Hock et al, 5 New Jersey Super. 118. In that case the application was made to transfer a liquor license to a building across the street from their existing license. Many objectors appeared, among whom were clergymen, and offered objections similar to the objections herein. In the Bivona case, the transfer of said license was eventually upheld by the Appellate Division of the Superior Court of this State.

"In addition to what has been stated, it may also be noted that the area wherein the new premises are to be located would not aggravate to any appreciable degree the existing concentration of the licenses in the area.

"For the reasons as expressed above, this Board, in it sound discretion grants the said transfer."

Appellants' petition of appeal alleges that the action of Respondent Board in approving the place-to-place transfer of the license in question was erroneous for the following reasons: (1) the proposed area is adequately serviced by other taverns and

package goods stores, (2) the proposed location is too close to a school, (3) its action was "arbitrary, capricious and unreasonable" and "an abuse of its discretion."

Respondent Board in its answer states that its decision was "based upon the factual testimony before the Board from which it, in its sound discretion, concluded that the transfer should be granted." Substantially the same reasons were set forth in the separate answer filed by McGrath.

The transcript of the proceedings before the Board was submitted on this appeal pursuant to Rule 8 of State Regulation No. 15, and was supplemented by additional testimony on behalf of the appellants and McGrath.

An examination of the transcript of the hearing before the Board, together with the testimony elicited at this *de novo* hearing, reflects the following: This is a hardship case. McGrath has operated a tavern at these premises in a building which it owned since April 16, 1949. There have never been any charges made against it, either before the Board or to local police authorities, and no objections were made by anyone during this period of time to its annual renewal applications for the said license.

As part of the urban renewal program the Newark Housing Authority undertook the Fairmount Project and required McGrath to sell its building to the said Authority and vacate the premises, as hereinabove detailed in the statement of reasons by the Board. McGrath obtained the proposed new premises which are located on the same street approximately one hundred sixty-eight feet distant from McGrath's former premises.

Frank Addonizio, a councilman representing the residents of the section of the City in which these premises are located, acted as primary spokesman for the objectors to this application. He stated that the transfer was to a residential section and that it has "caused a tremendous upheaval in the area to the extent where the white people now want to move out, and since the white people have more access to property, the negroes will be left, and this will downgrade their property." He felt that during the past five years McGrath has catered to a lower class of people and that the tavern has been conducted in a disorderly manner. "We have had many incidents that occurred outside of his tavern. We have heard of immoral acts that took place outside of the tavern. And we have heard of knifings that took place outside of the tavern. I say 'outside of the tavern' because there is a question whether or not it started inside his tavern."

This witness also asserted that there was a lack of parking facilities; that, although it is more than two hundred feet from the nearest school, nevertheless hundreds of children will be passing the premises. Finally, he expressed regret that the premises had to be displaced because of the urban renewal project but he felt that the transfer should be to another part of the City.

On cross examination he admitted that Vitale (president of McGrath) was an honest businessman and a "respectable owner of a tavern." He also admitted that neither he nor anyone else ever made any objection prior to this application to the conduct of the tavern or to the renewal of the existing license.

Elnora Gathright testified that she is opposed to the transfer because she objected to the noise that emanated from this tavern and, since she now lives only two doors away from

the proposed new location, she is fearful that the tavern will be conducted in an objectionable manner. Most of her testimony concerned itself with the operation at the new location which, of course, was irrelevant to the issue facing the Board in its consideration of the said application.

William C. Jefferies, representing Shiloh Baptist Church, objected to the transfer because he could never get any parking space in front of his garage due to the usurping of the same by patrons of this tavern. He also objected to loud noises emanating from these premises.

Emery Pearce, another neighbor, objected to "congregating of people on the outside of the tavern, their abusive language that they were using around the tavern." He added that when he had a discussion about the conduct with Vitale, Vitale was "very cooperative" and that he "ran a reputable place." Further, he felt that this tavern should be transferred to a business area rather than to the same street which is in a residential area.

Hattie Davis objected to the fact that the tavern attracts an undesirable element; that there are "empty wine bottles all along the street and sidewalk and in the alleys and backyards."

On cross examination she admitted that the problems that she complained about stemmed from taverns in general and the type of people that they attract. "This tavern was there when we moved in, that is true, but it is the change of clientele that they have brought in."

Andrea Tagliaferro, one of the appellants, is the operator of a bakery shop located next door to the premises to which this license was transferred. He complained that many school children patronize his establishment and therefore he considered the existence of a tavern next door would be undesirable. He also objected to loitering of patrons outside the new premises, and felt that a traffic hazard had been created.

In rebuttal, Anthony Vitale, president of McGrath, maintained that he conducted his business lawfully and in an orderly manner, and insisted that some of the blame for the conduct attributed to his premises should be properly placed upon other taverns in the neighborhood. He said he had run a strictly clean establishment and had done everything in his power to operate his premises properly and respectably. He specifically denied the responsibility for empty bottles, saying that he does not serve wine or package goods.

The principal objections voiced by appellants' witnesses appear to be directed against the character of operation by McGrath. They cited instances of loitering, loud noises, drunks and other conditions which they are fearful will continue at the new premises. It is readily understandable that such concern may exist. However, if the premises are conducted in a law-abiding manner (and it must be assumed that such will be the case), children and other persons who have occasion to pass this establishment have nothing to fear. If the operation is conducted in an improper manner so as to cause annoyance or otherwise, in violation of the Alcoholic Beverage Law, the licensee will subject its license to either suspension or revocation. However, it should be pointed out that, in the many years this licensee has operated its premises, not a single complaint was made to the local authorities nor was any objection ever made in prior years when its applications for renewal were considered by the Board.

Councilman Addonizio admitted that Vitale (the principal officer and stockholder of this corporate licensee) is a decent, respectable and reputable operator. It is also significant to add in this respect that Addonizio averred that he would have no objection to the operation of the licensed premises by McGrath in any other section of the City. He also voiced the feeling that there are too many taverns now in the City of Newark, and he would be in favor of eliminating as many licenses as possible.

As the Board pointed out in its statement of reasons, this is clearly a hardship situation and McGrath was compelled to move through no fault of his own. The City of Newark has heretofore recognized hardship situations and has approved transfers of licenses in those cases. Cf. Club Warren Inc. v. Newark, Bulletin 1585, Item 4. In Helms v. Newark and Cardinal Wines and Liquors, Inc., Bulletin 1398, Item 3, the Board, acting within the proper use of its discretionary authority, approved a transfer to another section of the City notwithstanding substantial objections made thereto. In the instant matter the new premises are located within two hundred feet of the old premises. Cf. Henderson v. Teaneck and Stanley's Inc., Bulletin 1588, Item 1.

It should be also emphasized that the proposed new premises are more than two hundred feet from the nearest school and there has been no objection to this transfer on the part of the Board of Education or any school authorities. Another objection has been raised to the effect that the area is already sufficiently serviced by other taverns and package good stores. The number of licensed premises to be permitted in a particular area has been held to be a matter confided to the sound discretion of the local issuing authority. Di Gioacchino v. Atlantic City, Bulletin 1030, Item 3. It is also apparent that the Board took into consideration the good character of the applicant, its unblemished record as a licensee, and the hardship circumstances. Cf. Watson and Hardeman v. Camden and Valentine, Bulletin 1010, Item 1. It also clearly accepted the thesis that an owner of a license or privilege acquires through its investment therein an interest which is entitled to some measure of protection in connection with a transfer. R.S. 33:1-26. Tp. Committee of Lakewood v. Brandt, 38 N.J. Super. 462.

The licensee's former premises are a short distance away from the proposed premises and thus there will be no increase in the number of liquor licenses in the area. Cf. L. Kubisky, Inc. v. Paterson, Bulletin 1662, Item 2; Bomwell v. Newark, Bulletin 1639, Item 1, affirmed id.nom. (App. Div. 1966), not officially reported, recorded in Bulletin 1667, Item 1. No proof was presented that the licensed premises at the proposed site would adversely affect property values.

In cases such as that now under consideration, the Director's function is to determine whether reasonable cause exists for the issuing authority's opinion and, if so, to affirm its action. Helms v. Newark and Cardinal Wines and Liquors, Inc., supra: Krogh's Restaurant, Inc. v. Sparta and Sparta Associates, Inc., Bulletin 1258, Item 1. The action of the municipal issuing authority will not be reversed by the Director unless there was evidence that "the act of the board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Association et al. v. Hoboken et al., 135 N.J.L. 503, at p. 511.

Accordingly I conclude that the appellants have failed to sustain the burden of showing that the action of the Board was arbitrary, unreasonable or an abuse of its discretion. Rule 6 of State Regulation No. 15. It is therefore recommended that

an order be entered affirming the action of respondent Board 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 herein, including the trascript of the testimony, the exhibits, the argument of counsel in summation, and the Hearer's report, I concur in findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 31st day of October, 1966,

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 that the appeal be and the same is hereby dismissed.

JOSEPH P. LORDI
DIRECTOR

2. APPELLATE DECISIONS - SEPAUL LIQUORS, INC. v. LINDEN.

Sepaul Liquors, Inc.,)	
Appellant,)	On Appeal
v.)	CONCLUSIONS AND ORDER
Municipal Board of Alcoholic Beverage Control of the City of Linden,)	
Respondent.)	

Mark L. Stanton, Esq., Attorney for Appellant.
Jerome Krueger, Esq., by Richard W. Kochanski, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent whereby on July 11, 1966, it unanimously denied appellant's application for renewal of its plenary retail consumption license for premises located at the intersection of U. S. Route #1 and Hamden Street, also known as 1218 West Edgar Road, Linden.

Appellant, in its petition of appeal, contends that respondent's action was erroneous because the licensed premises had been destroyed by fire and respondent abused its discretion "in failing to allow Appellant time within which to find suitable premises for the transfer of the license." Appellant seeks the renewal of its license, which said license is "not to be issued until the subject premises are rebuilt or suitable premises are found for the transfer of the said license, for the period expiring on June 30, 1967."

Respondent's answer sets forth (1) that the application for renewal of the license expiring June 30, 1966 was granted

upon the express condition "that the 1965-66 license shall not be issued unless and until the renovation and repair of the building shall have been duly completed and the premises put into condition deemed suitable by this Board for operation under the license", (2) that the said premises were sold on December 16, 1965 to General Motors Corporation, (3) that in its renewal application filed June 15, 1966, appellant stated that it was the owner of the said premises when, in fact, it was not, (4) that the application for renewal was incomplete, (5) that the premises were not put into operating condition and, therefore, "the application before the Board was not for renewal but for a new license", and (6) that there was no legal basis on which to issue said license.

The appeal was heard de novo, pursuant to Rule 6 of State Regulation No. 15, with full opportunity for all parties to present their testimony.

The sole and dispositive issue in this matter, from my evaluation of the record, is whether appellant has possession or the right to possession of the premises sought to be licensed. The undisputed facts reflected in the testimony are as follows: Appellant was the operator under a plenary retail consumption license of premises at 1218 West Edgar Road, which said premises were substantially destroyed by fire in March 1965. In June 1965, an application for renewal of the said license was granted on condition that the license certificate would not be issued until the premises were renovated and rebuilt and made suitable for the operation of business. The building was owned by Sepaul, Inc. (another corporation in which appellant had no proprietary interest) and appellant was the tenant under a lease. The said lease terminated upon the demolition of the said building in August 1965. In December 1965, the property was sold and conveyed by Sepaul, Inc. to General Motors Corporation by deed dated December 15, 1965, recorded December 16, 1965 in the office of the Register of Union County. The property is now being used by General Motors Corporation for its own purposes and is not available for the operation of a liquor licensed business.

On June 15, 1966, appellant filed an incomplete application and on June 24, 1966 refiled a complete application for renewal of its license for premises 1218 West Edgar Road, which is the same location at which it theretofore conducted its licensed business. Although appellant stated it was not the owner of the said premises, it described the premises as a bar, restaurant and bowling alley. In fact, such description was false because no building existed at that location at that time.

R.S. 33:1-12.13 authorizes the renewal of alcoholic beverage licenses provided that the renewed license "is of the same class and type as the expired or expiring license, covers the same licensed premises, is issued to the holder of the expired or expiring license and is issued pursuant to an application therefor which shall have been filed with the proper issuing authority prior to the commencement of the said new license term or not later than thirty days after the commencement thereof. Licenses issued otherwise than as above herein provided shall be deemed to be new licenses."

It is essential, in order for a valid renewal of an existing license to be granted, that the premises either be in existence or, if not in existence, that plans and specifications be filed with the application and, furthermore, that the applicant for said license have possession, a right to possession, or an interest in the premises sought to be licensed. Richwine v. Pennsauken, Bulletin 1045, Item 2, and cases cited therein.

Where it appears that the licensee had neither legal nor equitable interest in the premises, the license will be declared void. White Castle v. Clifton & Weiss, Bulletin 97, Item 13; Hirshorn, Trustee etc. v. Estell Manor, Bulletin 1326, Item 1.

It is apparent that appellant had no interest whatsoever in the premises sought to be licensed, or a right to possession therein. Therefore, respondent had no authority to grant its application for renewal. Richwine v. Pennsauken, supra.

It should be noted, although not entirely relevant to the issue, that respondent refused to renew the license because it determined that appellant had not acted in good faith in representing in its application that a building existed at the said address.

At the hearing of this appeal de novo, appellant introduced into evidence a lease executed on behalf of appellant with P & L Trucking Company, Inc. for other premises in the City of Linden. Appellant sought to have this Division direct respondent to approve a transfer of the 1965-66 license to the proposed new premises. However, since the appeal in this matter was filed on August 9, 1966, more than thirty days after the expiration of the license, and there was no valid license in existence, it follows that no transfer may be authorized, particularly in the absence of any application therefor and advertisement thereof in accordance with the Alcoholic Beverage Law and regulations.

In Madden & Goldstein, Bulletin 198, Item 1, it was said:

> "...a license may not be transferred where no application for transfer was ever approved by the issuing authority within the term of the license, and where the applicant failed to comply with the statutory requisites before the license sought to be transferred had expired." (Emphasis supplied)

It should be further added that an application for a new license could not be considered by respondent because, according to the testimony of Charles E. McCrann, Jr., chairman of the respondent Board, issuance of new licenses in Linden is barred by the state numerical limitation law. R.S. 33:1-12.14. Cf. Liptak v. Division of Alcoholic Beverage Control, 44 N.J.Super. 140.

After reviewing the evidence and the argument of counsel herein, I find that appellant has failed to sustain the burden of showing that the action of respondent was unreasonable or an abuse of its discretion. Rule 6 of State Regulation No. 15.

For the reason aforesaid, it is recommended that an order be entered affirming respondent'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 herein, 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 them as my conclusions herein.

Accordingly, it is, on this 1st day of November, 1966,

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

JOSEPH P. LORDI
DIRECTOR

3. MORAL TURPITUDE - CONVICTION OF WILLFUL FAILURE TO PAY FEDERAL OCCUPATIONAL (WAGERING) TAX AND WILLFUL FAILURE TO SUPPLY REGISTRATION INFORMATION HELD TO INVOLVE MORAL TURPITUDE.

Re: Eligibility No. 751

Applicant seeks an advisory opinion as to whether or not he is eligible to be associated with the alcoholic beverage industry in this State in view of a conviction of a crime.

Applicant's criminal record discloses that in March 1965 the United States Attorney for the District of New Jersey filed a criminal information in three counts against the applicant charging him with violations of the Internal Revenue Code of 1954. Count One charged that in August and September 1964 applicant was engaged in the business of receiving wagers for or on behalf of an unknown person who was engaged in the business of accepting wagers, and failed to pay the special occupational tax imposed by Section 4411 of the Code in violation of 26 U.S.C. 7262; Count Two charged that applicant did willfully fail to pay aforesaid tax in violation of Section 7203, U.S.C. Title 26, and Count Three charged applicant with a willful failure to supply the registration information specified in Section 4412 of the Code in violation of 26 U.S.C. 7203. On July 5, 1966, following his conviction on all three counts, applicant was fined $500 and placed on probation for five years (without supervision) on the second count, and received a suspended sentence on the third count. The sentence on Count One was molded with Count Two.

A report received by this Division from the United States Treasury Department discloses that during the month of August 1964 an Internal Revenue investigator placed twenty-three horse race bets with applicant at a licensed premises where he was employed as a bartender.

Applicant's probation officer advises, in part, that applicant claims, and no information was obtained to the contrary, that horse race bets were taken by applicant only as a personal favor to patrons and were placed by him by telephone with his own wagers.

At the hearing held herein, applicant (60 years old), except for his denial of accepting bets from patrons, verified aforesaid reports and further testified that for the past twenty-five to thirty years he has been betting on horse races; that for the past five years he had made such wagers by telephone with a person known to him only as "John" and that John would visit him the next morning to adjust their differences based on the outcome of his selections of the previous day.

With respect to his gambling activities with the investigator, applicant testified that his modus operandi was to accept the investigator's money in advance of transmitting his bets to John; that if he (investigator) were successful in his selections, he would pay him his winnings the following morning upon receipt

of the same from John and that he made three such payments to the investigator.

Applicant further testified that his gambling activities were limited to his own wagers, those he made for the investigator and some that he had made jointly with a neighbor on a few occasions; that the services which he performed for the investigator and his neighbor were made without pay and as an accommodation for them.

Applicant further testified that he is presently employed as a bartender in a licensed premises.

Conviction of the crimes of failure to pay the special occupational tax imposed by Section 4411 of the Internal Revenue Code of 1954 (27 U.S.C. 4411) and failure to supply the registration information specified in Section 4412 of the Code (26 U.S.C. 4412) may or may not involve the element of moral turpitude. Cf. Re Case No. 1737, Bulletin 1507, Item 4. Since Counts Two and Three in the instant case included the element of willfulness, it is my opinion that the aforesaid convictions (Counts Two and Three) involved the element of moral turpitude. Re Case No. 1737, supra. See Re Case No. 1711, Bulletin 1478, Item 5; Re Elig. No. 745, Bulletin 1645, Item 8.

Under the circumstances, I recommend that applicant be advised that (1) in the opinion of the Director, he has been convicted of crimes involving moral turpitude; (2) the Alcoholic Beverage Law of this State (R.S. 33:1-25) provides that no license of any class shall be issued to a person convicted of a crime involving moral turpitude, and (3) R.S. 33:1-26 and Rule 1 of State Regulation No. 13 provide that no licensee shall employ or have connected with him in any business capacity whatsoever a person so disqualified.

I. EDWARD AMADA,
ATTORNEY

Approved:

JOSEPH P. LORDI
DIRECTOR

Dated: October 31, 1966

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against

Blue Fountain, Inc.
413 Monroe Street
Passaic, New Jersey

Holder of Plenary Retail Consumption License C-58, issued by the Board of Commissioners of the City of Passaic and transferred during the pendency of these proceedings to

Phidoto Enterprises, Inc.
t/a Blue Fountain

for the same premises.

CONCLUSIONS AND ORDER

Harry Kampelman, Esq., by Richard E. Gruen, Esq., Attorney for Licensee.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee Blue Fountain, Inc. pleaded not guilty to the following charge:

"On April 15, 1966, you possessed, had custody of and allowed, permitted and suffered in and upon the licensed premises an alcoholic beverage in a bottle which bore a label which did not truly describe its contents, viz.,

One 4/5 pint bottle labeled 'Ambassador DeLuxe Blended Scotch Whisky, 86 Proof';

in violation of Rule 27 of State Regulation No. 20."

Two ABC agents participated in the investigation resulting in the preferment of the charge.

Agent C testified that, accompanied by Agent M, he visited the licensed premises on April 15, 1966 between 2:00 and 2:30 p.m. for the purpose of gauging alcoholic beverages in order to determine whether or not the labels on the bottles truly described the contents of the respective bottles. He described the premises as a "regular barroom, circular-type bar, with a center stand, liquor and wines displayed for services and stock." At that time there was a bartender on duty. Seated at the bar was Joseph Satkin (the president of the licensee corporation, Blue Fountain, Inc.).

After identifying themselves, the agents gauged the various bottles of alcoholic beverages. During the course of the investigation, the agent seized an opened 4/5 pint bottle labeled "Ambassador De Luxe Scotch Whisky, 86 Proof" in order to submit it for analysis. The bottle was "on the right side under the bar where there are stands and sort of sinks and whatever things they have there." A

sealed bottle of the same brand of whisky was seized for comparison. Preliminary gauging of the opened bottle by means of a hydrometer indicated the contents to "be very low in proof." When questioned as to tampering with the bottle, Satkin replied, "I don't know anything about it. I don't know what could have happened."

On cross examination the agent admitted that approximately eighty-nine bottles located on the center stand were tested. They appeared to be genuine. The seized opened bottle was not on the back bar. It was underneath the bar, on a shelf. There was a bottle of wine close to it. There were other bottles of the same brand of whisky on the opposite side. When seized, the bottle was approximately half filled.

Agent M testified in substantial corroboration of the testimony of Agent C.

John P. Brady (whose qualification as an expert in the field of chemical analysis of alcoholic beverages was stipulated) testified that he analyzed the contents of the seized opened bottle of scotch whisky; that the contents thereof were 71.4 proof instead of 86 proof (as indicated on the label) and that the contents of the bottle were below the listed standard and in his opinion were not genuine.

In defense of the charge, Joseph Satkin testified that both he and Agent M "couldn't believe the contents were so low." His bartenders the previous night were James Jones and Thomas Hill.

James Jones testified that he was tending bar on the night of April 14, 1966 into the early morning of April 15. He opened a previously unopened pint bottle of Ambassador DeLuxe Scotch Whisky in order to serve a patron. Having made the service, he turned around to place the bottle with the other stock. In so doing he and Thomas Hill (who was tending bar with Jones) bumped into each other, causing the bottle to slip from his hand into the sink containing water for washing glasses. He placed the bottle under the bar out of the way of the other stock, intending to report the incident to the officers of the licensee corporation. None of the officers came in before closing time. When he reported for work the next day at 6:00 p.m., Satkin called him into the office for an explanation as to what happened to the bottle.

On cross examination the witness stated that he had not replaced the top on the bottle when it fell into the sink. The bottle fell to the bottom of the sink which was full of water. He left no note or message explaining the occurrence, he had intended to call in. On the next day at "about 1, maybe 12:30, 1 o'clock", he spoke to the day bartender, Bernard Smith (Satkin was not in the licensed premises at the time) and, after he related the occurrence to him, Smith said that the ABC men were in the premises at that time. Thereafter Satkin got on the telephone and the witness advised Satkin of the occurrence.

Thomas Hill, who was tending bar with Jones on the evening of April 14 into the early morning hours of April 15, corroborated the previous witness' testimony as to the bottle of Scotch whisky accidentally falling into the water. Before he had occasion to notify Satkin of the occurrence, the ABC officers had taken the bottle.

On cross examination the witness stated that he did not leave a note as to the bottle falling into the sink. However, the bottle was placed in what they called a "garbage pile, dump pile."

Thomas Kelly, who was employed by the licensee as a special officer at the time of the occurrence in question, testified that he saw a bottle drop into the sink, which was recovered by the bartender. However, he could not identify the particular brand or the size bottle involved.

In rebuttal, Agent M testified that although he did not leave the premises until approximately 4:45 p.m., at no time did Satkin say that he received a telephone call from his bartenders advising him that a bottle of whisky had fallen into the sink.

The attorney for the licensee argued that although the contents of the bottle in question were admittedly not genuine, the licensee should not be found guilty, firstly, because that particular bottle was separated from the open stock on the back bar and was going to be discarded after it was shown to the owner and, secondly, because the president of the licensee corporation acted in good faith and had no knowledge that the contents of the bottle were not genuine.

As stated heretofore, licensee is charged with violating Rule 27 of State Regulation No. 20.

It is unchallenged that the bottle bore a label which did not truly describe the alcoholic beverage contained therein and we therefore focus our attention to the points raised by the argument of counsel.

The pertinent part of the rule in question reads as follows:

> "No retail licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage...in any keg, barrel, can, bottle, flask or similar container which...(b) bears a label which does not truly describe its contents..."

The phrasing of the vital part of the rule of present concern to us, which reads: "No retail licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage", is clear and unambiguous. More specifically, the words "in or upon the licensed premises" cannot be construed to imply a delimitation to a particular area in and upon the licensed premises but, on the other hand, connotes a coextensiveness with the entire area thereof. A contrary construction would not only be unwarranted in view of the plain language used but would also unjustifiably emasculate the beneficial and salutary purposes for which the rule was promulgated. See Re Farley & Danieli, Inc., Bulletin 1626, Item 1; Bulletin 1626, Item 2, wherein the licensee was found guilty of a similar charge. In the Farley case, the opened bottle of whiskey was found in the back room by the ABC agent and the licensee was found guilty of violating the aforesaid rule.

Finally, the fact that the officers of the licensee had no knowledge of the incident and may have acted in good faith presents no valid legal defense. It has been uniformly and repeatedly held that in disciplinary proceedings the licensee is fully accountable for all violations committed or permitted by his servants, agents or employees. Rule 33 of State Regulation No. 20. Cf. In re Schneider, 12 N.J.Super. 449 (App.Div. 1951).

A licensee cannot escape the consequences of the occurrence of an incident, such as hereinabove related, merely because he has no knowledge thereof. Scienter on the part of the employer is not a prerequiste to a finding of guilt where the employee participates in the misdeeds. Rule 33 of State Regulation No. 20.

Applying the firmly established principles to the instant proceeding, I am persuaded that the evidence is clear and convincing that the licensee is guilty of said charge and I therefore recommend that the licensee be found guilty of said charge.

Licensee has a previous record of suspension of license by the Director for a dissimilar violation for sixty days effective October 18, 1965. Re Blue Fountain, Inc., Bulletin 1647, Item 4.

It is therefore further recommended that the license be suspended for ten days (Re Root Beer and Checker Club, Bulletin 1688, Item 9), to which should be added five days for the record of suspension of license for dissimilar violation occurring within the past five years (Re Polish American Citizens' Club, Bulletin 1689, Item 7), making a total suspension of fifteen days.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

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

However, the attorney for the licensee Blue Fountain, Inc. advised by letter dated October 18, 1966 that Joseph Satkin, formerly the president and principal stockholder of Blue Fountain, Inc. and (since transfer of the license to Phidoto Enterprises, Inc.) now principal stockholder of Tooley's Bar, Inc., t/a Lounge 68, holder of plenary retail consumption license C-80 for premises 68 Myrtle Avenue, Passaic, has requested that the suspension be imposed against that license, apparently in the belief that the responsibility for the violation was his and its consequences should not be visited upon Phidoto Enterprises, Inc.

Since in practical effect Tooley's Bar, Inc. is the successor in interest of Blue Fountain, Inc., albeit not the transferee of its license, and since justice and equity would be done, and no reason to the contrary appearing, I shall grant the request.

Accordingly, it is, on this 27th day of October, 1966,

ORDERED that Plenary Retail Consumption License C-80, issued by the Board of Commissioners of the City of Passaic to Tooley's Bar, Inc., t/a Lounge 68, for premises 68 Myrtle Avenue, Passaic, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. Thursday, November 3, 1966, and terminating at 3:00 a.m. Friday, November 18, 1966.

JOSEPH P. LORDI
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Mary Fay
t/a Joe & Mary's Tavern
8101 Bergenline Avenue
North Bergen, New Jersey)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-25, issued by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen.)

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Licensee, Pro se.
Philip Margulies, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on October 7, 1966, she possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective July 8, 1962, for a sale in violation of State Regulation No. 38.

The prior record of suspension of license for dissimilar violation within the past five years considered, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Hotel Morton Company, Bulletin 1622, Item 6.

Accordingly, it is, on this 29th day of November, 1966,

ORDERED that Plenary Retail Consumption License C-25, issued by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen to Mary Fay, t/a Joe & Mary's Tavern, for premises 8101 Bergenline Avenue, North Bergen, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. Tuesday, December 6, 1966, and terminating at 3:00 a.m. Friday, December 16, 1966.

JOSEPH P. LORDI
DIRECTOR

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

In the Matter of Disciplinary Proceedings against Robert Daddario and John Toguville 24 - 69th Street Guttenberg, N. J., Holders of Plenary Retail Consumption License C-25, issued by the Mayor and Board of Council of the Town of Guttenberg.	CONCLUSIONS AND ORDER

Alexander A. Abramson, Esq., Attorney for Licensees
Michael J. Mehr, Esq., Appearing for Division of Alcoholic Beverage Control

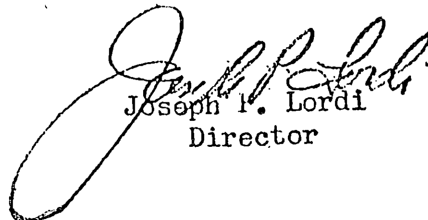
BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on August 23, 1966 they possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

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 Sohanchak, Bulletin 1697, Item 10.

Accordingly, it is, on this 21st day of November 1966,

ORDERED that Plenary Retail Consumption License C-25, issued by the Mayor and Board of Council of the Town of Guttenberg to Robert Daddario and John Toguville, for premises 24 - 69th Street, Guttenberg, be and the same is hereby suspended for five (5) days, commencing at 3 a.m. Monday, November 28, 1966, and terminating at 3 a.m. Saturday, December 3, 1966.



Joseph P. Lordi
Director

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