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

BULLETIN 1578 August 31, 1964

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ITEM

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

BULLETIN 1578 August 31, 1964

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (ROOM RENTING) - LICENSE SUSPENDED FOR 180 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
Riverview Hotel, Inc. 134 River Street Hoboken, New Jersey	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-7, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken	)	

Thomas P. Calligy, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to the following charge:

> "On Sunday, May 17, 1964, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the making of arrangements for the renting of rooms, the offering to rent, and the renting of rooms, for the purpose of illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20."

Absent prior record, the license will be suspended for a period of one hundred eighty days (Re Edna W. Fuller Company, Bulletin 1545, Item 3), less a remission of five days for the plea entered, leaving a net suspension of one hundred seventy-five days.

Accordingly, it is, on this 20th day of July, 1964,

ORDERED that Plenary Retail Consumption License C-7, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Riverview Hotel, Inc. for premises 134 River Street, Hoboken, be and the same is hereby suspended for one hundred seventy-five (175) days, commencing at 2:00 a.m. Tuesday, July 28, 1964, and terminating at 2:00 a.m. Tuesday, January 19, 1965.

JOSEPH P. LORDI
DIRECTOR

2. APPELLATE DECISIONS - HARDY v. NEWARK

Eula Hardy, t/a Hardy's Rendevous, Appellant,	)	ON APPEAL
v.	)	CONCLUSIONS AND ORDER
Municipal Board of Alcoholic Beverage Control of the City of Newark, Respondent.	)	

Elias I. Cohen, Esq., Attorney for Appellant
Norman N. Schiff, Esq., by Paul E. Parker, 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 the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) wherein it suspended appellant's license for a period of twenty-five days (ten days on charge No. 1 and fifteen days on charge No. 2), effective March 30, 1964, after finding her guilty in disciplinary proceedings of two charges alleging (1) that on the evening of August 5 and early morning of August 6, 1963, she allowed, permitted and suffered the sale of alcoholic beverages to a minor and did sell, serve and deliver the same, in violation of Rule 1 of State Regulation No. 20, and (2) that she allowed, permitted and suffered her place to be conducted as a nuisance in that she allowed, permitted and suffered on her licensed premises lewdness and immoral activities and conducted her business in a manner offensive to common decency and public morals, in violation of Rule 5 of State Regulation No. 20.

Upon the filing of the appeal, an order dated March 23, 1964, was entered by the Director staying the effect of the respondent's order of suspension pending the determination of this appeal. R. S. 33:1-31.

Appellant in her petition of appeal alleges that the action of the respondent was erroneous and should be reversed for the following reasons:

1. The findings of the Board were not supported by the evidence and testimony;

2. There was an inadequate quantum of proof necessary for the finding of guilt;

3. The appellant was not permitted to introduce "vital testimony having a direct bearing on this matter;"

4. The action of the Board was "arbitrary, unreasonable and an abuse of discretion."

Respondent in its answer admitted the jurisdictional facts and denied the substantive allegations of the petition. It further alleged that the grounds upon which the decision was based were supported by the factual testimony before it "from which it, in its sound discretion, concluded that the penalty imposed substantiated such action."

The hearing on appeal was de novo pursuant to Rule 6 of State Regulation No. 15. The stenographic transcript of the hearing below was submitted in accordance with notice prescribed by Rule 8 of State Regulation No. 15, and was supplemented at this hearing by testimony of witnesses produced on behalf of the appellant.

The picture reflected from the testimony herein is as follows: Charles --- (a 20-year old minor) entered the appellant's tavern on the evening of August 5, 1963; seated himself at one of the tables located toward the rear of the premises and ordered a number of mixed drinks which were served to him by the bartender (later identified as Ernest English). The minor does not remember the exact number of drinks which he consumed, but before he left these premises at about 2 a.m. on August 6 he had ordered and consumed "over ten, it must be over ten, about." At no time was he questioned about his age nor was he required to produce any identification. The minor further testified that while he was on the premises a person (later identified as Orlando Johnson) approached him and got into a conversation with him. While they were both drinking, Johnson made an indecent sexual proposal to him. He doesn't recall specifically whether Johnson was introduced to him by anyone because "it is so long now." In any event, he left the tavern at 2 a.m. with Johnson and proceeded to a parking lot located about a half-block away from the tavern. When they got into the car Johnson told him "he didn't have any money and then he started to fight with me in the car there and I jumped out of the car, I had stopped it, and went to call a cop. He hit me and he wouldn't get out of my car." Shortly thereafter the police arrived and arrested both of them and charged them with assault and battery. They were thereafter arraigned and eventually both pleaded guilty to the said charge. On cross examination this witness reiterated that he was certain of the fact that he went into this bar and there was some question as to whether the table that he characterized as a "booth" was actually a booth or a table. He further insisted that, although he had been drinking a considerable amount of liquor that night, he does remember being in this particular tavern and leaving the said premises with Johnson. He added that the argument with Johnson solely concerned the question of the payment to him by Johnson for which Johnson was going to commit the perverted act.

At the hearing before me counsel represented that he was unable to subpoena this minor, and I continued the hearing to a later date in order to afford him additional opportunity to do so. Service on the minor was finally accomplished and he testified on this appeal de novo substantially to the same effect as he had testified to below. He once more reiterated that the licensed premises was the one which he had patronized; that he had consumed more than ten drinks, but that he was not fully intoxicated and knew what was going on.

Officer Michael Russinello testified that he was dispatched to the scene of the disturbance at the parking lot on Edison Place. When he arrived there he observed Johnson and this minor in a heated argument and the minor was bleeding from one of his ears. Johnson had a number of scratches on his face.

The minor told him that he had met Johnson at a neighborhood tavern; that Johnson had gotten into the minor's car; they argued and an altercation took place. They were both taken to police headquarters, and he observed that the minor was not drunk although he had been obviously drinking. His testimony was corroborated by Officer James Torre of the Newark Police Department.

Detective George Reilly, a Newark police officer, testified that he made an investigation of this matter and brought the minor to the neighborhood of these licensed premises. Charles --- pointed out Hardy's tavern as the one in which he had been drinking. They entered the tavern and he thereupon identified the bartender who he alleged had served him on the dates referred to herein. The bartender denied having seen him or having served him and, in fact, even denied having been working on the dates in question. However, he admitted that he was present at that time, was sitting at the bar with his girl friend, although not on duty.

The minor, recalled by his counsel at this juncture, identified several statements which he admitted having voluntarily executed, in one of which statements he specifically named these licensed premises. In the other he merely identified the premises as being located "On Mulberry St. and that St. that runs up there." The statement sets forth the further questions:

"Q Was the bar on the corner? A Yea, it's the only bar on the corner one block in from Market St. on the left.
Q From Market St. where is the bar? A From Market St. going to Broad St. you make a left turn and on the corner on the left side." (This is the specific location of appellant's premises.)

The minor again insisted that he had been in these licensed premises, identified the bartender who was present at this hearing, and corroborated the identifying details of his written statements.

Orlando Johnson testified on behalf of the Board, and was called by appellant's counsel at the de novo hearing. He gave the following story: He was standing on the corner of Mulberry Street and Edison Place when the minor approached him in his automobile. He thought he recognized him so he came over to the car and the minor asked, "Can I give you a lift" and I said "Yes." It was then suggested by Charles (the minor) that, if Johnson would give him $20, he would permit him to engage in a perverted sex act. This caused a violent argument to ensue and they started to fight. The police then arrived and arrested both of them. On cross examination he denied that he had met this minor in the tavern or had been drinking with him on the licensed premises. In fact, he stated he had not been in the tavern at all on that evening. An examination by the Board's chairman produced the remarkable testimony that, in order to stop the car, this witness reached over to the left side of the driver's seat and pulled the emergency brake after he was originally "propositioned." He admitted also that he had never seen this minor before this night and he insisted that the automobile was not in the parking lot but actually was stopped in the middle of the street.

Ernest English, testifying on behalf of the appellant

at the hearing below, stated that he entered the licensed premises at about 10:30 or 11 o'clock on August 5, although he was not on duty on that night. He does not remember seeing Orlando Johnson or the minor; states that this tavern does not sell 7-Up soda which the minor claims he ordered when ordering 7-7 mixed drinks. However, on cross examination it was established that they serve a drink similar to 7-Up which is bottled by another company. He also admitted that, when the minor confronted him in the presence of the police officers, he was immediately identified as the person who had allegedly served him on the dates in question. He was then asked by the chairman:

"The Chairman: You say you were asked 'Are you Ernie' and you didn't ask the detective 'What Ernie do you mean'?
The Witness: It made no difference. My name is Ernie.
The Chairman: You have two in there. How do you know that he was referring to you?
The Witness: He called 'Ernest.'
The Chairman: And still there were two Ernests there.
The Witness: Yes.
The Chairman: And you didn't ask him what Ernie you want:
The Witness: No."

Willie Hardy, called on behalf of the licensee, testified that he is the husband of the licensee and that he was actually present on the dates in question; that he did not see either the minor or Johnson in the premises. He was then asked the following questions on cross examination:

"Q You say that you didn't see them or they were not there?
A I didn't see them in the tavern.
Q Can you state positively that they were not there?
A Not positively. When the bar is busy you can't tell unless I knew them personally."

Eula Hardy (the licensee) testified that she was not present on that particular evening but insisted that Ernest Cunningham, and not Ernest English, was on duty on that evening, so far as she knows.

In evaluating the testimony and its legal impact, the following principles of law should be restated: We are dealing here with purely disciplinary measures and their alleged infractions; such measures are civil in nature and not criminal. In re Schneider, 12 Super. 449 (App. Div. 1951). Thus the proof must be supported by a fair preponderance of the credible evidence. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N. J. 373 (1956).

Testimony to be believed must not only come from the lips of credible witnesses but must be credible in itself. No testimony need be believed but, rather, the judge may always credit as much or as little as he finds reliable. 7 Wigmore Evidence, sec. 2100 (3rd ed. 1940); Greenleaf Evidence, sec. 201 (16th ed. 1899). Bearing particularly the latter principle in mind, I have considered the testimony relating to the first charge, namely, that the licensee sold and delivered alcoholic beverages to a minor or permitted and suffered the sale and service of the same to him. I am persuaded that the minor entered the licensed premises on the dates in question and was served by the licensee's bartenders.

While this Division has frequently discounted and, indeed, discarded the uncorroborated testimony of a minor in the consideration of the charge of service to minors, here under review, this has not been an unalterable position. Each case must be decided by its own peculiar facts and circumstances. I have been circumspect in my consideration of the uncorroborated testimony of the minor in this case, but feel that the circumstances herein are imperatively persuasive, that the presence of the minor in the licensed premises was as testified to by him.

It will be recalled that I was not satisfied with merely having the transcript of the hearing below, but afforded counsel for the appellant the opportunity to subpoena the minor at a continued hearing. At this hearing I observed the minor carefully and have examined his testimony under searching cross examination. His unequivocal identification of the licensed premises and of the bartender who served him; the consistencies of his statements with respect to that particular circumstance, both immediately upon his arrest, as well as in the hearings below and before me; and the fact that Willie Hardy (the manager of the licensed premises) did not deny that the minor was in the premises on the night in question lead me to conclude that he was there and was served intoxicating beverages. The appellant is thus clearly inculpated by the actions of her employees.

Under all of these circumstances I believe that there is the necessary quantum of proof, namely, by a fair preponderance of the believable evidence. I therefore recommend that the respondent's action as to Charge 1 be affirmed.

As to the second charge, which alleges that the licensee permitted her premises to be conducted as a nuisance in that she allowed, permitted and suffered on her licensed premises lewdness and immoral activities in violation of Rule 5 of State Regulation No. 20, I have found a complete absence of testimonial support for such charge. I have examined the testimony of Charles (the minor) and find a considerable conflict therein with respect to the incident upon which this charge is based. He testified that he entered the licensed premises with a male acquaintance who shortly thereafter left him. He was then approached by Johnson who "propositioned" him and he left the premises with Johnson. The fight between Johnson and this minor was precipitated by an argument in his automobile and not in the licensed premises. Johnson denies that he was in this tavern on the date in question and states that in fact he met Charles --- on the outside of the tavern. The other witnesses for the appellant have all denied seeing Johnson or the minor in the tavern. Charles --- was asked at the hearing before me, about his testimony in municipal court, the following questions:

"Q Do you recall when you stood up before the judge, the judge asked you what happened, and you said, 'I don't remember what happened'? ...A I don't remember exactly.

Q You told the judge you were pretty drunk, you didn't remember what happened...? A Yes."

Even assuming, arguendo, that Johnson approached the minor in the tavern, "propositioned" him, and they then left the tavern, there is not a scintilla of evidence to suggest that this took place within the hearing of or in the presence of the appellant, her agents, servants or employees. Nor is there any evidence to show or impute knowledge to the appellant.

As the court said in Re Silidker, Bulletin 405, Item 5:

> "Unless the offense (in this case the presence of prostitutes) can be tied in and brought home to the licensees by their knowledge or by acquiescence, which implies knowledge, I cannot, in fairness, hold them responsible. Such a thing might happen in the best regulated club . . ."

In Connor v. Fogg, 75 N.J.L. 245, Sup. Ct. 1907, the court, in considering the terms "allowed, permitted or suffered," stated:

> "To permit is defined as meaning to authorize or to give leave (McHenry v. Winston, 49 S.W. Rep. 4), but the term 'permit' has been often used synonymously with 'suffer', so that it may be said that one who suffers the doing of a thing which he might have prevented permits it." (Emphasis ours.)

While the licensee has the responsibility to exercise full control of the acts and conduct of patrons in his establishment, the circumstances in this case are insufficient to show that this situation was brought to his attention or that he might have become reasonably aware of its existence. Thus I conclude that the testimony herein is insufficient to sustain a finding of guilt. I therefore recommend that the action of the respondent be reversed on this charge, and that an order be entered affirming respondent's action as to the first charge and reversing respondent's action as to the second charge.

I further recommend that the penalty imposed (suspension of license for thirty days) be reduced to ten days, the penalty heretofore specifically imposed by the respondent Board on the first charge.

Conclusions and Order

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

After carefully considering the transcript, including the oral argument of counsel contained therein, 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 27th day of July, 1964,

ORDERED that the action of respondent finding appellant guilty of the first charge be and the same is hereby affirmed; and that its action in finding the appellant guilty of the second charge be and the same is hereby reversed; and it is further

ORDERED that Plenary Retail Consumption License C-628, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Eula Hardy, t/a Hardy's Rendevous, for premises 146 Mulberry Street, Newark, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, August 3, 1964, and terminating at 2:00 a.m. Thursday, August 13, 1964.

JOSEPH P. LORDI
DIRECTOR

3. APPELLATE DECISIONS - PICCIRILLO v. LYNDHURST.

Angelo A. Piccirillo, t/a Angelo's Appellant, v. Board of Commissioners of the Township of Lyndhurst, Respondent.	)	ON APPEAL CONCLUSIONS AND ORDER

Charles L. Bertini, Esq., Attorney for Appellant
James A. Breslin, Esq., Attorney for Respondent
Alfred A. Porro, Jr., Esq., Attorney for Objectors

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Appellant appeals from the action of the respondent whereby on December 16, 1963, by a three-to-two vote of its members, it denied an application for place-to-place transfer of appellant's Plenary Retail Consumption License C-4 from premises 614 Freeman Street to premises 263 Ridge Road, Lyndhurst.

Appellant, in his petition of appeal, complains that no reasons were given for the denial and alleges that respondent's action was erroneous in that "there is no basis for denying the application for transfer and said denial was illegal, discriminatory, unreasonable and arbitrary."

Respondent, in its answer, admits that no reasons were given, denies the other allegations of appellant's petition of appeal and, in justification of respondent's action, contends that proper discretion was exercised by respondent because the transfer would serve no public interest for the following reasons:

"(a) The proposed location of the tavern is less that 250 feet from the Lincoln Public School and on the same side of the Street;

"(b) There is presently another tavern directly opposite the proposed location, which tavern is called 'Lenny's Charcoal Grill;'

"(c) The proposed location for the tavern is located on the southwesterly corner of Freeman Street and Ridge Road. To permit a tavern to be operated at that location would create a traffic hazard and aggravate the present traffic situation, particularly arising out of the entrance of automobiles into Freeman Street from Ridge Road and the exit of automobiles on Freeman Street (a one-way street to the west);

"(d) The proposed location of the tavern is less than 200 feet from the crown of a hill in Ridge Road and the vision of motorists proceeding south on Ridge Road is obstructed until the motor vehicles reach the crown of the hill. (Ridge Road, also known as Route 17, is a state highway and heavily traveled by motor vehicles).

"(e) The proposed parking facilities of the licensee is not adequate to meet the requirements of the off-street parking ordinance of the municipality.

"(f) A large number of citizens and tax payers on Freeman Street, west of Ridge Road, object to the proposed location of the tavern."

At the outset, it may be stated that, in fairness to an applicant for transfer of a liquor license, the local issuing authority should express reasons for its action, but failure to do so does not render its action ineffective. Fanwood v. Rocco, et al, 33 N.J. 404.

It might be advisable to give a brief summary of what occurred previously when appellant filed a similar application to transfer his license to the proposed premises. The matter was heard by respondent on September 26, 1963, at which time the members thereof continued the matter to October 7, 1963. At the latter date, a resolution to grant the transfer requested by appellant was defeated by a vote of three to two. According to the minutes of the meeting and in response to Mayor Garde's announcement that he would entertain comments from his colleagues on the Board, Commissioner Curcio (who is also a member of the local Board of Education) stated that he voted for the adoption of the resolution upon the condition that there would be no exit from the parking lot on to Freeman Street and that flues or ducts would be installed on the building of a sufficient height so as to eliminate odors from the kitchen. Commissioner Russo stated that he voted against the adoption of the resolution because of insufficient off-street parking and the distance of the premises from the school. Mayor Garde said he was opposed because of insufficient parking facilities. Neither Commissioners Bogle nor Polito made any comments.

It appears from the record in the present appeal that appellant, in conjunction with his liquor license, has operated a restaurant at the Freeman Street address either individually or as a partner since July 7, 1952. Apparently, from appellant's testimony, his business has grown so that his kitchen facilities do not suffice for the preparation of food for his customers. Appellant made an application to the proper authorities for permission to enlarge the kitchen and such request was denied. Thereafter, suitable premises on the southwest corner of Ridge Road and Freeman Street became available. The proposed location is in a business area approximately 150 feet from appellant's present premises, which are in a residential neighborhood. It appears that the section of Freeman Street east of Ridge Road wherein appellant's premises are now situated, according to appellant's testimony, is a one-way street 24 feet in width running from east to west with the outlet on Ridge Road. A customer or patron desiring to reach appellant's present premises by automobile from Ridge Road would turn on Valleybrook Avenue, proceed east, turn left on Harrington Avenue, proceed to Freeman Street where he would again turn left to reach the premises. There are no off-street parking facilities at the present site.

Now considering the proposed location, the testimony discloses that on Ridge Road in the immediate area, the street is 56 feet in width and there are various stores and businesses on sides thereof. Immediately next to appellant's proposed premises is a garage and service station and then there are three stores

with apartments above them. Beyond and across Gutheil Place, there is the Lincoln School which, according to the undisputed testimony, is slightly less than 250 feet distant. Across Ridge Road at Freeman Street is a tavern, a bakery shop, a confectionery store; also on the southeast corner of Ridge Road and Freeman Street is a diner and continuing along Ridge Road are other mercantile establishments.

I shall discuss the reasons given by respondent for denying the transfer in the order set forth in respondent's answer. Although Lincoln School is not within the prohibited statutory distance of 200 feet from the entrance to the proposed premises (R.S. 33:1-76), the local issuing authority has discretion to grant or deny a transfer of a liquor license. However, the exercise of this discretion includes the power to determine the question of policy of whether or not any particular premises (although beyond the 200-foot distance) is too close to a school. A denial under these circumstances, in order to be meritorious, should be pursuant to a reasonable and bona fide municipal policy to that effect. Drozdowski v. Sayreville, Bulletin 746, Item 5; Geltzeiler v. Newark, Bulletin 1171, Item 1. There was no denial that there are other licensed premises located close to schools in the municipality, some of which are within 200 feet thereof. The attorney for respondent agreed that there is no municipal policy presently in being to prohibit transfers of liquor licenses in close proximity to schools.

The transfer of appellant's license from its present location on Freeman Street to the corner of Freeman Street and Ridge Road may be considered as in the same neighborhood and thus would not result in the existence of an additional license in the vicinity of the school. Notwithstanding that there is a tavern across from the proposed premises on Ridge Road, permitting appellant to transfer a license to the proposed location would not increase the number of liquor outlets in the same general area. See Abramson v. Lakewood, Bulletin 1516, Item 1, and cases cited therein.

Respondent contends that if a licensed premises is permitted at the proposed corner, it would be instrumental in creating a traffic hazard, particularly if a car turned into Freeman Street from Ridge Road. There was no testimony presented by a traffic consultant which might have substantiated this fact. It cannot be denied that any type of business establishment, especially a restaurant, in the proposed premises might increase automobile traffic whether or not operated in conjunction with a liquor license. The crown of the hill on Ridge Road less than 200 feet from the proposed premises is not conducive to safety of motorists driving in a southerly direction; but it is merely conjectural that patrons who may visit appellant's premises would be less careful than those presently using the highway. It is to be noted also that the speed on Ridge Road in the vicinity of Freeman Street is limited to 35 miles an hour.

At the initial denial of the transfer aforementioned, Commissioner Russo and Mayor Garde indicated that a reason for denying the transfer was that, in their opinions, there were insufficient off-street parking facilities. At the second hearing, appellant proposed a plan prepared by an architect disclosing parking space available at the rear of premises 263-265 Ridge Road to accommodate fifteen cars. Appellant asserts that he has complied with the provisions of the off-street parking ordinance applicable to restaurants. Respondent contends otherwise. Be that as it may, Judge Gaulkin, in Lubliner, et al v. Paterson, et als, 59 N.J. Super. 419 (1960), stated that violation of a zoning ordinance, building code, health code and the like would not in itself prevent a local issuing authority from granting a license to a particular premises but, before the liquor licensee could operate the establishment, he must comply with all applic-

able statutes and ordinances. On appeal to the Supreme Court of New Jersey (33 N.J. 428), Justice Jacobs, speaking for the court, with reference to an alleged zoning violation stated:

> "In dealing with that contention the Appellate Division properly pointed out that the grant of Mr. Hutchins' application would in nowise permit him to operate in contravention of any applicable zoning provisions; if he ever attempts to so operate, relief is readily available. See Garrou v. Teaneck Tyron Co., 11 N.J. 294 (1953)."

Thus it is unnecessary to consider the ground alleged by respondent that the approval of the transfer could not be given until all statutory prerequisites had been met since there has been no indication of any specific prerequisite that had not been met.

General objections to the transfer of a license to a business street, filed by residents of side streets which may be residential, are not in themselves sufficient reason for denying a transfer. Pistilli v. Bernardsville, Bulletin 1030, Item 2. Moreover, while in this case the evidence indicates that a large number of owners of property on nearby side streets opposed the transfer of the license to the proposed site, there were many owners of property on other side streets who favored the granting of the transfer. Hence, there appears to be no merit to that allegation in the answer.

Objectors' attorney refers to the decision of Fanwood v. Rocco, et al, 59 N.J. Super. 306 (App. Div. 1960), aff'd 33 N.J. 404 (Sup. Ct. 1960). However, that case concerned the transfer of a license to a section of a municipality in which liquor licenses had never been previously permitted. As Justice Jacobs said in his opinion:

> "...it appears clear to us that, consistent with and in furtherance of the foregoing, the municipal governing body may reasonably honor local sentiments by declining to license taverns and package stores in designated areas within the municipality."

I have carefully considered all of the grounds mentioned in the petition of appeal and which were expressed during the hearing and conclude that there has been insufficient proof with reference thereto which might warrant the denial of the transfer.

The burden of proof to establish that the action of the respondent was erroneous rests with the appellant. Rule 6 of State Regulation No. 15. The evidence presented indicates that the action of the respondent was unreasonable and constituted an abuse of discretion on its part.

Under the circumstances, after carefully examining all of the evidence presented, it is apparent that appellant has sustained the burden imposed upon it. Thus it is recommended that the action of the respondent be reversed.

Conclusions and Order

Pursuant to the provisions of Rule 14 of State Regulation No. 15, exceptions to the Hearer's Report and written argument thereto were filed with me by the attorney for objectors.

My attention was particularly attracted by the positive

statements made by the attorney for objectors that the Hearer in this matter was in error when he mentioned in the Hearer's Report that Lincoln School "according to the undisputed testimony, is slightly less than 250 feet distant" and that "the attorney for respondemt agreed that there is no municipal policy presently in being to prohibit transfers of liquor licenses in close proximity to schools."

Under the circumstances, I shall not attempt to paraphrase the testimony with reference to both assertions made by the objectors' attorney but will set forth the pertinent questions and answers as they appear in the transcript of the testimony taken at the hearing herein. Considering the distance between the proposed site and Lincoln School, the answer filed by respondent sets forth as its First Separate Defense that the members of respondent Board considered that "(a) The proposed location of the tavern is less than 250 feet from the Lincoln Public School and on the same side of the Street."

Respondent's attorney, during direct examination, asked Eli A. Kane, Superintendent of Schools, the distance between the proposed premises and the Lincoln School and received the following answer:

> "Well, a figure of 250 feet is probably close. I don't really know the distance."

Again, respondent's attorney asked the same question of Commissioner Russo and he answered, "Approximately 250 feet."

When Commissioner Polito was asked the same question by respondent's attorney, the Commissioner said:

> "Well, from my own observations of the area, having been located in that area for many years, my best judgment is that it is approximately between 200 feet and 250 feet."

I am satisfied that in view of the aforesaid testimony, the Hearer was justified when he concluded that the distance between the school and the proposed licensed premises was slightly less than 250 feet.

Now concerning the question of municipal policy regarding transfers of liquor licenses to premises in an area near schools, the transcript (page 83) reads as follows:

> "THE HEARER: And you could stipulate there is no policy in effect, is that right?
>
> MR. BRESLIN: Of course there is no policy in effect, no."

After careful examination and consideration of the record herein, including the transcript of the testimony, the exhibits, the memoranda presented by the respective attorneys, the Hearer's Report, and the written exceptions and argument thereto submitted by the attorney for objectors, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein. I find that the denial of the transfer was unreasonable. The action of respondent will therefore be reversed.

The license originally sought to be transferred expired at midnight, June 30, 1964. Appellant, during the pendency of this appeal, obtained a renewal of his license for the current licensing year for premises 614 Freeman Street, which renewal is subject to the ultimate outcome of the appeal. Rule 13 of State Regulation No. 15.

Accordingly, it is, on this 27th day of July, 1964,

ORDERED that the action of respondent be and the same is hereby reversed, and respondent is directed to transfer appellant's current plenary retail consumption license in accordance with the transfer application heretofore filed by appellant.

JOSEPH P. LORDI
DIRECTOR

4. APPELLATE DECISIONS - BONJ'S v. ELIZABETH.

BONJ'S (a corporation),
Appellant,
v.
CITY COUNCIL OF THE CITY OF ELIZABETH,
Respondent.

ON APPEAL
ORDER OF DISMISSAL

Anthony Luongo, Esq., Attorney for Appellant.
John M. Boyle, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant appeals from denial by respondent on June 9, 1964, of its application for person-to-person and place-to-place transfer of Plenary Retail Consumption License C-104 from Antonina Obertz and Alexander M. Sawon to appellant and from premises 117-119 Front Street to premises 419 Rahway Avenue, Elizabeth.

Prior to the hearing on appeal, by letter dated July 15, 1964, appellant advised me that the appeal was withdrawn. A written stipulation of withdrawal and dismissal of petition of appeal, signed by the attorneys for the respective parties, was also presented. No reason appearing to the contrary,

It is, on this 20th day of July, 1964,

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

JOSEPH P. LORDI
DIRECTOR

5. ACTIVITY REPORT FOR JULY 1964

ARRESTS:			
Total number of persons arrested			17
Licensees and employees	8		
Bootleggers	9		
SEIZURES:			
Motor vehicles - cars			1
Alcohol - gallons			.105
Distilled alcoholic beverages - gallons			355.512
Wine - gallons			6.0
Brewed malt alcoholic beverages - gallons			3.138
RETAIL LICENSEES:			
Premises inspected			552
Premises where alcoholic beverages were gauged			312
Bottles gauged			4,871
Premises where violations were found			69
Violations found			91
Unqualified employees	38	Other mercantile business	4
Reg. #38 sign not posted	24	Disposal permit necessary	2
Application copy not available	14	Other violations	5
Prohibited signs	4		
STATE LICENSEES:			
Premises inspected			18
License applications investigated			17
COMPLAINTS:			
Complaints assigned for investigation			370
Investigations completed			322
Investigations pending			212
LABORATORY:			
Analyses made			68
Refills from licensed premises - bottles			7
Bottles from unlicensed premises			4
IDENTIFICATION:			
Criminal fingerprint identifications made			10
Persons fingerprinted for non-criminal purposes			480
Identification contacts made with other enforcement agencies			326
DISCIPLINARY PROCEEDINGS:			
Cases transmitted to municipalities			10
Violations involved			11
Sale during prohibited hours	8	Failure to close prem. dur. proh. hrs.	1
Sale to minors	1	Sale to non-members by club	1
Cases instituted at Division			26*
Violations involved			30
Permitting lottery activity on prem.	9	Fraud and front	1
Permitting bookmaking on prem.	5	Failure to file notice of change in appl.	1
Sale to minors	4	Possessing pinball machine on prem.	1
Sale below filed price	2	Sale during prohibited hours	1
Possessing liquor not truly labeled	2	Failure to close prem. during proh. hrs.	1
Sale outside scope of license	1	Fraud in application	1
Conducting business as a nuisance	1		
Cases brought by municipalities on own initiative and reported to Division			26
Violations involved			36
Sale to minors	11	Permitting immoral activity on prem.	1
Permitting brawl on premises	10	Conducting business as a nuisance	1
Sale during prohibited hours	3	Permitting noise on prem. (local reg.)	1
Failure to close prem. dur. proh. hrs.	3	Permitting foul language on prem.	1
Permitting gambling on premises	2	Permitting female at bar (local reg.)	1
Act of violence	1	Failure to afford view into prem. dur. prohibited hours	1
HEARINGS HELD AT DIVISION:			
Total number of hearings held			37
Appeals	12	Eligibility	10
Disciplinary proceedings	15		
STATE LICENSES AND PERMITS ISSUED:			
Total number issued			2,530
Licenses	746	Social affair permits	396
Solicitors' permits	42	Miscellaneous permits	334
Employment permits	495	Transit insignia	345
Disposal permits	120	Transit certificates	52
OFFICE OF AMUSEMENT GAMES CONTROL:			
Licenses issued	88	Number of violations found	7
Premises inspected	321	Disciplinary proceedings instituted	3
Enforcement files established	40	Violations involved:	
Premises where violations were found	6	Charge in excess of 25¢	3

JOSEPH P. LORDI
Director of Alcoholic Beverage Control
Commissioner of Amusement Games Control

*Includes two cancellation proceedings - licenses improvidently issued to licensees convicted of crimes involving moral turpitude.

Dated: August 6, 1964

6. DISCIPLINARY PROCEEDINGS - SALE BY CLUB LICENSEE FOR OFF-PREMISES CONSUMPTION - SALE BELOW FILED PRICE - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
GUISEPPI GARIBALDI LODGE #1568 427 N. Third Street Hammonton, N. J.	) CONCLUSIONS AND ORDER
Holder of Club License CB-1, issued by the Mayor and Common Council of the Town of Hammonton.	)

Licensee, by Guy Gibase, President, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to the following charges:

"1. On divers days during the months of January, February, March, April and May 1964, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of bottles of various kinds and brands of alcoholic beverages except for consumption on your licensed premises; in violation of Rule 9 of State Regulation No. 7.

"2. On divers days during the months of January, February, March, April and May 1964, you sold and offered for sale at retail, directly or indirectly, bottles of various kinds and brands of alcoholic beverages at less than the prices thereof filed with the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulation No. 30."

Absent previous record, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Circolo Progressivo Caposelese, Inc., Bulletin 1266, Item 8.

Accordingly, it is, on this 20th day of July 1964,

ORDERED that Club License CB-1, issued by the Mayor and Common Council of the Town of Hammonton to Guiseppi Garibaldi Lodge #1568, for premises 427 N. Third Street, Hammonton, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Tuesday, July 28, 1964, and terminating at 2 a.m. Monday, August 17, 1964.

JOSEPH P. LORDI
DIRECTOR

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

In the Matter of Disciplinary Proceedings against JOSEPH MACCIOCCA t/a GENOVA CAFE 304-306 Arch Street and 305 Federal Street (connected) Camden, N. J. Holder of Plenary Retail Consumption License C-112, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.	CONCLUSIONS AND ORDER

Licensee, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on July 8, 1964, he sold a half-pint of liqueur for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension by the Director for ten days effective July 24, 1961, for a similar violation. Re Macciocca, Bulletin 1409, Item 7.

The prior record of similar violation within the past five years considered, the license will be suspended for thirty days (Re Villa Rosa, A Corporation, Bulletin 1563, Item 2), with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 27th day of July, 1964,

ORDERED that Plenary Retail Consumption License C-112, issued to Joseph Macciocca, t/a Genova Cafe, for premises 304-306 Arch Street and 305 Federal Street (connected), Camden, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Monday, August 3, 1964, and terminating at 2:00 a.m. Friday, August 28, 1964.

Joseph P. Lordi
Director