STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 836 MARCH 21, 1949.

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
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1060 Broad Street Newark 2, N.J.

BULLETIN 836 MARCH 21, 1949.

1. COURT DECISIONS - PASSARELLA v. BOARD OF COMMISSIONERS OF ATLANTIC CITY ET ALS. - APPEAL DISMISSED AND DIRECTOR SUSTAINED.

SUPERIOR COURT OF NEW JERSEY
Appellate Division
No. A-42, September Term, 1948

ANNA PASSARELLA,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF ATLANTIC CITY and ANTHONY VENAFRO, trading as VILLAGE BAR,

Respondents,

-and-

ERWIN B. HOCK, Commissioner of the Department of Alcoholic Beverage Control,

Intervening-Respondent.

Argued February 14, 1949. Decided Mar. 7, 1949.

Before Jacobs, Eastwood and Bigelow, JJ.

Mr. Samuel Levinson argued the cause for the appellant.
(Mr. John A. Miller, Attorney)

Mr. Isaac C. Ginsberg argued the cause for the respondent, Anthony Venafro.
(Mr. Paul J. Farley, Attorney; Mr. Frank S. Farley, of counsel)

Mr. Daniel J. Dowling, attorney for the respondent, Board of Commissioners of the City of Atlantic City.

Mr. Samuel B. Helfand, Deputy Attorney-General, argued the cause for the intervening-respondent.
(Mr. Walter D. Van Riper, Attorney-General, Attorney)

The opinion of the Court was delivered by

EASTWOOD, J.

Appellant, Anna Passarella, invokes the aid of this court to reverse and set aside a transfer by the Board of Commissioners of the City of Atlantic City (hereinafter referred to as the municipal body) of a plenary retail consumption license issued in the name of respondent, Anthony Venafro, trading as Village Bar, for premises No. 16 North Missouri Avenue, Atlantic City, expiring June 30, 1948, to premises No. 12 North Missouri Avenue (a vacant lot), Atlantic City, upon the express condition that the transfer should not become effective until Venafro completed the erection and construction of a proposed building thereon wherein he would exercise the privileges of the liquor license in question. An appeal taken from the transfer to the Commissioner of the Department of Alcoholic Beverage Control (hereinafter referred to as "Commissioner"), resulted in an affirmance of the action of the municipal body. This appeal stems from the latter's determination.

Appellant relies upon several grounds for a reversal of the action of the municipal body. For the purposes of a determination of this appeal, we are convinced that it is only necessary to discuss what we consider as the only important ground urged by appellant, to wit: that the municipal body was without legal authority to approve the transfer of Venafro's license to a vacant lot, even though its effectiveness was restricted until the completion of the proposed building.

Appellant is the mother-in-law of the licensee, Venafro. She is the owner of the premises No. 16 North Missouri Avenue, was the holder of a plenary retail consumption license therefor for the period July 1, 1940 to June 30, 1941. On May 1, 1941, appellant leased said premises to Venafro and the license was subsequently transferred to him and under renewals thereof Venafro continued to exercise same until its transfer to premises No. 12 North Missouri Avenue. Prior to the transfer, commencing with April 1, 1948, appellant through her attorney, negotiated with Venafro for an increased rent for the ensuing year. Venafro refused to accede to appellant's demands, as a result of which Venafro sought a transfer of his license to the new location.

As stated, appellant argues that there is no statutory authority for the issuing or transferring of such a license to a vacant lot and consequently the municipal body exceeded their authority notwithstanding the exercise of the privileges thereof was restricted to a time when the proposed building would be completed and ready for occupancy. It is undisputed that there is no specific reference in the Alcoholic Beverage Control Act with respect to the issuance or transfer of a liquor license to a vacant lot, nor is there any prohibition of such action. Appellant argues that the municipal body approved the transfer for the sole purpose of qualifying the licensee as a renewal applicant for the proposed premises for the ensuing license year, with the understanding that any renewal license granted for the proposed premises would be subject to the same conditions. Appellant argues further that such action was taken purposely and deliberately to circumvent P. L. 1947, c. 94, p. 501 (R.S. 33:1-12.13 et seq.), which Act had for its purpose a limitation of the number of licenses for the several municipalities in the State; that, if the transfer here had not been so approved, it would have been impossible for Venafro to have obtained a license for the proposed premises; that the 1947 law would have then become effective; that, in view of the conceded fact that the number of licenses then in effect in Atlantic City, no new licenses could have been granted; that, also, no new license could have been granted for the proposed premises, as it would have violated a provision of the ordinance of Atlantic City prohibiting the issuance of a new license to premises within three hundred feet of other licensed premises. We think it is perfectly clear that under the Alcoholic Beverage Control Act the issuing authority has no authority to issue or effect a transfer of an existing license whereby the licensee will be authorized to exercise any of its privileges on wholly vacant land. Such was not the action undertaken by the municipal board. If it had done so, it would unquestionably have been invalid. Appellant's argument may well be summarized as a contention that the transfer in question was made to be exercised on a vacant lot. The license so transferred specifically restricted the licensee from exercising its privileges until such time as the proposed building was completed. The municipal body concluded that Venafro was about to be dispossessed from the premises No. 16 North Missouri Avenue. This finding of fact was affirmed by the Commissioner. It was on the basis of that finding of fact that the municipal body approved the transfer to No. 12 North Missouri Avenue subject to the conditions mentioned. If the transfer had not been approved under the 1947 statute limiting the number of future licenses to be issued, his license would have lapsed and no new license could have been issued for No. 12 North

Missouri Avenue. In addition, Venafro's application for transfer of his license was justified, to the end that he might ascertain the attitude of the municipal body with respect thereto. Otherwise, he would have been burdened with the expenditure of a large sum of money to erect and construct a building on the vacant lot in question at the risk of the possible refusal of the municipal body to approve such a transfer. While the applicable law makes no specific reference to the issuance or transfer of liquor licenses to vacant lands subject to the erection and construction of a proper building within which to conduct a liquor business, the Commissioner, under authority delegated to him by the Legislature and expressly found in R. S. 33:1-23 and R. S. 33:1-39, has consistently ruled that the municipal issuing authority may grant an application for liquor license pursuant to R. S. 33:1-32 upon "the express condition (imposed in the authorizing resolution, pursuant to Revised Statutes, 33:1-32) that the premises as described in the plans and specifications prepared and submitted by the applicant and found acceptable by the issuing authority shall first be completed. (Re Harris, Bulletin 183, Item 11; Re Salter, Bulletin 184, Item 8; Re Murphy, Bulletin 389, Item 11.)" Under the authority of this rule, the municipal body may not actually issue the license until the premises are completed in accordance with the filed plans and specifications. And, of course, it necessarily follows that if the license were not actually issued and in effect on June 30th of a given year, there could not be a renewal thereof on the year beginning July 1st, for the license then would be considered as a new license. If that situation had developed here, in view of the 1947 law, no new license could have been issued for the proposed premises. Under authority of the Commissioner's Bulletin No. 762, Item 5, issued on May 14, 1947, the issuing authority may not only grant an application for a license for a building not yet constructed or for a building in course of construction, effective subject to its completion, and provide by appropriate amendatory resolution that such license is authorized to be effective immediately for the sole purpose of permitting a renewal thereof subject to the aforementioned building restriction, but the issuing authority may, where the application for the transfer has been approved, and where the licensee still is in possession of the old licensed premises, and will continue in the old premises on or after July 1st until the proposed building is completed, to apply for a renewal for the old premises and the municipal body could, by appropriate action, transfer the license to the new premises when completed after July 1st. The action of the municipal body is accordingly grounded on express authority by the Commissioner in the rules and regulations heretofore mentioned and promulgated by him. Under R. S. 33:1-19, the governing body is given the jurisdiction to administer the issuance of retail liquor licenses. R. S. 33:1-26 authorizes the municipal governing body to transfer licenses from one premises to another. R. S. 33:1-24 directs the municipal governing body to receive applications for licenses; to inspect the premises sought to be licensed; to conduct public hearings on applications; "to enforce primarily the provisions of this chapter and the rules and regulations so far as the same pertain or are in any way concerned with retail licenses"; and "to do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration" of the statute. The latter section further provides that the "enumeration of the above specific duties shall not be construed to limit or restrict in any way the general authority given by this chapter to each said other issuing authority." It is apparent from this legislation that each municipal governing body has a wide discretion in the issuance and transfer of liquor licenses, subject to review of the Commissioner for any abuse thereof. As affecting the issue here, this legislative authority vested in the municipal governing body would

seem to clearly empower the municipal governing body to exercise such a preliminary step as was undertaken here in approving the transfer of Venafro's license and the exercise of such authority has almost always been sustained by our courts. This is evident from the opinion of Mr. Justice Heher, in the case of City Affairs Committee v. Jersey City, 134 N.J.L. 180 (E. & A. 1945), wherein he stated:

> "While a municipal corporation is a government of enumerated powers, acting by a delegated authority, it possesses also such rights as arise by necessary or fair implication, or are incident to the powers expressly conferred, and such as are essential to the declared objects and purposes of the municipality. N. J. Good Humor, Inc., v. Bradley Beach, 124 N.J.L. 162."

We think there is no merit to the contention raised by the appellant that the Commissioner was without authority to issue the regulations in question under the authority of which the municipal body approved the transfer. The Legislature, in the applicable statute, delegated broad powers and authority to the Commissioner to adopt "procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration" of the statute. R. S. 33:1-23. And to "make such general rules and regulations * * * as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages * * *". R. S. 33:1-39. The latter section expressly empowers the Commissioner to adopt rules and regulations for "instructions for municipalities and municipal boards" and "all forms necessary or convenient in the administration" of the statute. Such delegated authority has received the sanction of our courts. State Board of Milk Control v. Newark Milk Company, 118 N.J. Eq. 504 (E. & A. 1935). The construction of the law by the Commissioner, commencing with June, 1937, with respect to the issuing of licenses conditioned upon the erection and construction of a building on a vacant lot has been consistently pursued not only by the respondent, but his predecessors in office. Our courts have always given great weight to such constructions of the law by the Commissioner, especially where no legislative action has been subsequently taken to indicate a contrary view and have held that such a construction of long standing will not be lightly disturbed by the courts. Cino v. Driscoll, 130 N. J. L. 535 (Sup. Ct. 1943), wherein it was said:

> "Moreover, the legislature charged with the knowledge of the construction placed upon the Alcoholic Beverage Law, as evidenced by these rules, has done nothing to indicate its disapproval thereof. Cf. Young v. Civil Service Commissioner, 127 N. J. L. 329; 22 Atl. Rep. (2d) 523. The contemporaneous construction thus given to a law of the state for over a decade is necessarily respected by us."

Also, see State v. State Board of Tax Appeals, 134 N.J.L. at p. 48 (Sup. Ct. 1946) and Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948). Appellant cites the cases of Warren Street Chapel v. Excise Commissioners, 56 N.J.L. 411 (Sup. Ct. 1894); Winants v. Bayonne, 44 N.J.L. 114 (Sup. Ct. 1882); and Leeds v. Atlantic City, 81 N.J.L. 230 (Sup. Ct. 1911), in support of his argument that a liquor license may not be issued to a vacant land without a building thereon at the time of the issuance of the license. An examination of these decisions will reveal, however, that the factual situation in each case may be distinguished from the facts of this appeal. Therefore, they have no applicability to this issue. In addition, these cases, relied upon by the appellant, ante-date by many years the adoption of our present Alcoholic Beverage Control Act. The broad powers granted to the Commissioner and the municipal body to which reference has been made, were not vested in the local issuing authority, nor were they contained in or delegated by the statutory law controlling the cases cited by appellant. It is quite clear from a consideration of the

or, similarly, three drinks to two persons (Re Solomon, Bulletin 586, Item 2). Under these and comparable circumstances, a licensee's only safe and proper course is to take every precaution against his own and his employees' selling, serving or delivering to any minor and, with equal zeal, not to allow a minor to consume any alcoholic beverages on the licensed premises...."

As indicated, the testimony is conflicting. But upon a careful study and analysis of the entire record before me I am satisfied that the prosecution has sustained the burden of proving the charges herein by a clear preponderance of the believable evidence. (See Re Gahr, Bulletin 377, Item 7.) I therefore find the defendants guilty as charged.

The defendants' record being otherwise clear, I shall suspend the license for a period of ten days. Re Abrams, Bulletin 562, Item 8.

Accordingly, it is, on this 8th day of March, 1949,

ORDERED that Plenary Retail Consumption License C-229, issued by the Board of Commissioners of the City of Trenton to Benjamin Rogoff and Millie Rogoff, t/a Johnnie & Jerry's, for premises 13 E. Front Street, Trenton, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. March 15, 1949, and terminating at 2:00 a.m. March 25, 1949.

ERWIN B. HOCK
Director.

3. APPELLATE DECISIONS - NAPOLI v. BAYONNE.

LUIGI NAPOLI and PETER NAPOLI, )
Appellants, )
-vs- ) ON APPEAL
) CONCLUSIONS AND ORDER
BOARD OF COMMISSIONERS OF THE CITY OF BAYONNE, )
Respondent )

Rosario S. Mazzola, Esq., Attorney for Appellants.
Alfred Brenner, Esq., Attorney for Respondent.
Stephen F. Sladowski, Esq., Attorney for Chester and Mary Kosakowski.

BY THE DIRECTOR:

Appellants appeal from the action of respondent whereby it denied their application for a transfer to them of Plenary Retail Consumption License No. C-31 held by Chester Kosakowski for premises at 24 Prospect Avenue, Bayonne.

On November 23, 1948, the appellants and Chester Kosakowski entered into an agreement whereby appellants agreed to purchase from Kosakowski the tavern in question, described therein as the "Casablanca Tavern". The sum of $1,000.00 was paid on account and the balance of the purchase price was to be paid on closing and delivery of the bill of sale. The agreement also provided that a lease was to be entered into between the parties for a five-year term at a rental of $75.00 per month, with an option to renew for a further period of five years at a monthly rental of $100.00. Mary Kosakowski, the wife of Chester, was not a party to this agreement.

On November 26, 1948, appellants filed with respondent an application to transfer the license in question to them, which application bore the consent of Chester Kosakowski to said transfer. On December 2, 1948, Stephen F. Sladowski, an attorney, sent the following letter to the attorney for the appellants:

> "Dear Sir: Please be advised that Mrs. Chester Kosakowski has informed me that she is the owner of Premises #22 (sic) Prospect Avenue, Bayonne, New Jersey wherein the Casa Blanca Tavern is located, and that she will not execute any Lease for the Tavern portion of the said premises at a rental of $75.00 per month. Mrs. Chester Kosakowski feels that the aforesaid rental is grossly inadequate, and is asking $150.00 monthly.
>
> "Mr. Chester Kosakowski, who is the owner of the said Tavern is desirous of going thru with the contract entered into November 23rd 1948, but his wife refuses to execute any lease providing for the above mentioned rental.
>
> "Kindly take this matter up with your client and advise me as to their attitude and intentions in the matter."

On December 7, 1948, Mr. Kosakowski and his attorney, Mr. Sladowski, refused to carry out the further terms of the agreement, although it appears from the testimony that the appellants were ready, willing and able to pay the balance of the purchase price at that time. Mary Kosakowski was not present at said conference.

On December 16, 1948, Mary Kosakowski filed with the respondent a written objection to the proposed transfer of the license in question. She stated therein that she was the owner of the premises, and that she refused to enter into any lease of tenancy agreement with Luigi and Peter Napoli "for the tavern premises at 24 Prospect Avenue, Bayonne, N. J." On January 4, 1949, respondent adopted a resolution denying the application for transfer in accordance with the opinion of the City Attorney. In his written opinion the City Attorney advised the Board of Commissioners that the transfer should be denied because Mary Kosakowski, the owner of the premises, had filed a protest against the issuance of the transfer and the landlord could not be compelled to accept a tenant against her will. Appellants have never obtained possession of the premises in question, by lease or otherwise.

A local issuing authority is not the proper forum to try technical title or the definitive right to possession to real and personal property. However, an applicant must have a legal interest amounting to at least a tenancy in the premises for which he seeks a license. Jones v. Sea Girt, Bulletin 167, Item 14; Gimber v. Galloway, Bulletin 427, Item 9; Re Backer, Bulletin 449, Item 4; Rittenger v. Bordentown, Bulletin 547, Item 10; Albini v. Wildwood, Bulletin 603, Item 8; Leppert v. New Brunswick, Bulletin 760, Item 9; cf. Lavicoli v. DiMarco, 142 N. J. Eq. 699. Under the circumstances, the action of respondent was proper because appellants had not obtained any right of possession of the premises in question from Mary Kosakowski, the owner of the premises.

It is unnecessary to consider the other points raised by respondent herein, namely, that appellants had lost their right to appeal by accepting a return of the transfer fee and that they had improperly advertised the notice of intention to apply for a transfer, except to note, in passing, that appellants apparently were not entitled to a return of the transfer fee. R. S. 33:1-26. It is unnecessary also to consider what rights the appellants may have in a court of competent jurisdiction against Chester Kosakowski because of the alleged breach of the agreement dated November 23, 1948. The action of the respondent will be affirmed.

Accordingly, it is, on this 10th day of March, 1949,

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

ERWIN B. HOCK
Director.

4. APPELLATE DECISIONS - BIVONA v. PLAINFIELD.

CHARLES BIVONA, MICHAEL J. BIVONA and AUGUSTUS C. BIVONA, trading as CHARLIE'S TAVERN,

Appellants,

-vs-

COMMON COUNCIL OF THE CITY OF PLAINFIELD,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Hetfield and Hetfield, Esqs., by George F. Hetfield, Esq., Attorneys for Appellants.
Salvador Diana, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it denied appellants' application to transfer their plenary retail consumption license from 458 West 4th Street to 400 Liberty Street, Plainfield.

Respondent denied the application for the following stated reasons:

(a) "Because to grant the transfer would create an added attraction to young people through the expanded facilities made available at the new proposed location.
(b) "Because to grant the transfer will add to the disturbances near churches in the vicinity.
(c) "Because to grant the transfer will create greater annoyances and disturbances to the many children required to pass near the new proposed location to attend school and to persons required to pass near the new proposed location to attend church services and functions.
(d) "Because of the many citizens in the area and religious and civic leaders who have voiced their objections to the granting of the transfer."

Seven members of the Common Council voted to deny the transfer, and three members voted to grant the transfer.

The premises known as 458 West 4th Street, located at the northwest corner of Liberty Street and West 4th Street have been licensed for the consumption of alcoholic beverages since Repeal. The appellants have held a plenary retail consumption license for said premises since November 1945. No disciplinary proceedings have ever been instituted against them. There is testimony that they never received any complaints from the Police Department, churches or citizens. They now seek to transfer their license diagonally across the street to a building at the southeast corner of West 4th Street and Liberty Street, with an entrance at 400 Liberty Street, and no entrance on West 4th Street. Both buildings in question are located in a district zoned for business.

The 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 a transfer in the exercise of reasonable discretion. If denied on reasonable ground, such action will be affirmed. On the other hand, where it appears that refusal of a transfer is arbitrary or unreasonable, the action denying the transfer will, on appeal, be reversed. Grower v. Hackensack, Bulletin 789, Item 1. In Costa v. Verona, Bulletin 501, Item 2, it was said:

> "Thus, were appellant located in a different section of the municipality and seeking to transfer into the vicinity in question, or if, being within the area (as is the case), he were seeking to transfer to a site that would aggravate to any appreciable degree the existing concentration of licenses in that area, respondent would be justified in denying the transfer and, on appeal, I would sustain such denial. Neither of such situations, however, is present in this case. On the contrary, the facts herein indicate that the applicable ruling is that where no attack is made on the personal fitness of the applicant or the suitability of the premises, a refusal to transfer, whether from person to person or from place to place, cannot, in the absence of good independent cause, be sustained."

The question in the instant appeal is whether or not there is "good independent cause" for denial of the transfer.

The present licensed premises are approximately 20 ft. x 40 ft. and contain no tables or booths or facilities for serving food. According to the plans submitted, the proposed premises would be approximately 35 ft. wide by 43 ft. deep. They would contain a room marked "bar and grill" and an additional room marked "cocktail room". One of the appellants testified that they intend to sell sandwiches and spaghetti and meat balls, and intend to install kitchen facilities.

Three clergymen and three welfare workers testified at the hearing herein that, among other reasons, they objected to the transfer because the proposed expanded facilities would prove an undesirable, added attraction to the young people over the age of twenty-one years who reside in the vicinity.

Mayor Crane, who was a councilman at the time the transfer was denied, testified:

> "We felt that transferring it, it would be a larger place and more attractive and would attract additional persons. We also felt rather strongly that a place as proposed would tend to attract the younger element, *** over 21, and it also would tend to attract more of the older people to do their drinking and hanging around that establishment. *** it is a fact and I believe our welfare records will back it up, that the people in that area, many of them, can ill afford *** spending their money in taverns."

Testimony indicates that the section is populated, to a large extent, by persons among whom many of the objectors are carrying on welfare work. In this connection Mayor Crane testified:

> "In that particular area we have our poorest housing, our poorest recreational facilities, and a great deal of effort has got to be made there along those lines."

Councilmen Roll, Regan, Kuentz, Perkins and Dagostino testified that they voted to deny the transfer because, among other reasons, it would result in expanded facilities for the sale of alcoholic beverages in this section of the city.

In Peters v. Bloomfield, Bulletin 697, Item 1, the Commissioner said:

> "While technically the transfer of appellant's license would not increase the number of licenses outstanding, the practical effect of the transfer would be to increase the available facilities for the sale of liquor by the glass. *** a municipal issuing authority, in the exercise of its discretionary authority, may refuse to grant a transfer designed to increase the extent of licensed premises where, in its judgment, there are already ample facilities in the neighborhood for the sale of alcoholic beverages. Each case must, of course, stand upon its own merits."

Three councilmen could see no objection to the expanded facilities, and seven councilmen felt that the expansion would be contrary to public interest in this section of the city. My function on appeal is to determine whether the action of the issuing authority is reasonable and within the bounds of the discretion confided in it to determine, in the first instance, whether the application should be granted. The burden of showing that the issuing authority was arbitrary and abused such discretion is on the appellant. Curry v. Margate City, Bulletin 460, Item 9; Rule 6 of State Regulations No. 15. Considering all the testimony in this case, I conclude that appellants have not sustained the burden of proof in showing that the action of respondent was arbitrary or unreasonable and, therefore, respondent's action must be affirmed.

Accordingly, it is, on this 11th day of March, 1949,

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

ERWIN B. HOCK
Director.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

WITOLD MARZOL
113 So. Seventh Street
Harrison, N. J.,

Holder of Plenary Retail Consumption License C-78, issued by the Town Council of the Town of Harrison.

CONCLUSIONS AND ORDER

Witold Marzol, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he possessed an illicit alcoholic beverage, namely, one 4/5 quart bottle labeled "Dunbar's Blended Canadian Whiskey", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

On November 17, 1948, an Acting Inspector employed by the Alcohol Tax Unit, Internal Revenue Service, Treasury Department, examined 39 bottles of alcoholic beverages on defendant's premises and seized the bottle mentioned in the charge because the contents thereof were apparently at variance with the label on the bottle. Subsequent analysis by a Federal chemist disclosed that the contents of the seized bottle had a proof of 75.5°, whereas the label described a whiskey having a proof of 90.4°. His analysis also disclosed that the contents of the seized bottle had a slightly higher acid content, a much lower solid content, and a much higher percentage of natural coloring than that found in a bottle of "Dunbar's Blended Canadian Whiskey" opened by the Federal chemist and examined for comparative purposes.

Defendant alleges that neither he nor his wife or employee tampered with the seized bottle. He also states that he purchased the seized bottle in 1943, and that it had been opened for at least two years. The discrepancy in proof might be explained by evaporation, but I am advised by John Dunbar & Company, Ltd., of Vancouver, Canada (the distillers who bottled this product), that their formula for this whiskey in 1943 did not vary appreciably from the formula in 1945, when the bottle used for comparative purposes was prepared at the distillery. Hence, there appears to be no valid explanation for the variation in acids, solids and coloring. I must find defendant guilty as charged.

Defendant has no prior record. I shall suspend his license for the minimum period of fifteen days, less five for the plea, leaving a net suspension of ten days. See Re Fenichel, Bulletin 829, Item 5.

Accordingly, it is, on this 11th day of March, 1949,

ORDERED that Plenary Retail Consumption License C-78, issued by the Town Council of the Town of Harrison to Witold Marzol, 113 So. Seventh Street, Harrison, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. March 21, 1949, and terminating at 2:00 a.m. March 31, 1949.

ERWIN B. HOCK
Director.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

MARIACARMELINA MONTEMAGNO
T/a CARMON'S TAVERN
270 River Road
Edgewater, N. J.,

Holder of Plenary Retail Consumption License C-2 issued by the Mayor and Borough Council of the Borough of Edgewater.

CONCLUSIONS AND ORDER

Goldstein & Goldstein, Esqs., by Fred Goldstein, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that she possessed illicit alcoholic beverages at her licensed premises, in violation of Rule 28 of State Regulations No. 20.

On February 11, 1949, an agent of the Division of Alcoholic Beverage Control seized one 4/5 quart bottle labeled "Haig & Haig Five Star Liqueur Blended Scots Whisky", when his field tests indicated that the contents of said bottle were not genuine as labeled. Subsequent analysis by the Division chemist determined that said contents were not genuine "Haig & Haig". Said alcoholic beverages are, therefore, illicit alcoholic beverages. R. S. 33:1-88.

Defendant has no previous adjudicated record. I shall suspend her license for the minimum period for such violation — fifteen days. Re Rudolph, Bulletin 680, Item 1. Remitting five days thereof because of the plea will leave a net suspension of ten days.

Accordingly, it is, on this 14th day of March, 1949,

ORDERED that Plenary Retail Consumption License C-2, issued by the Mayor and Borough Council of the Borough of Edgewater to Mariacarmelina Montemagno, t/a Carmon's Tavern, for premises 270 River Road, Edgewater, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. March 21, 1949, and terminating at 3:00 a.m. March 31, 1949.

ERWIN B. HOCK
Director.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

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| In the Matter of Disciplinary Proceedings against<br><br>LEWIS M. FRIEDBAUER & MAX VERONICK<br>T/a FRIEDBAUER & VERONICK<br>343 Millburn Avenue<br>Millburn, N. J.,<br><br>Holders of Plenary Retail Distribution License D-3, issued by the Township Committee of the Township of Millburn. | CONCLUSIONS AND ORDER |

Lewis M. Friedbauer and Max Veronick, Defendant-licensees, Pro Se.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants plead guilty to a charge alleging that they sold alcoholic beverages in original containers, at retail, for a price below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

It appears from an examination of the file in the instant matter that defendants sold to a customer eleven cases of assorted brands of whiskey in case lots. Defendants allowed more than five per cent discount on said cases of whiskey, in violation of the Fair Trade price as published in Bulletin 814, effective September 1, 1948.

In instances where no aggravating circumstances are present and the defendant has no previous adjudicated record, the suspension of the license for a violation of this character would be for a minimum period of ten days, less five days in the event of a plea of guilty or non vult. See Re Zar, Bulletin 816, Item 9. In the instant case, however, the wholesale proportions of the sale constitute aggravating circumstances. Cf. Re Tarlow, Bulletin 326, Item 15. I shall, therefore, suspend defendants' license for a period of fifteen (15) days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten (10) days.

Accordingly, it is, on this 17th day of March, 1949,

ORDERED that Plenary Retail Distribution License D-3, issued by the Township Committee of the Township of Millburn to Lewis M. Friedbauer & Max Veronick, t/a Friedbauer & Veronick, 343 Millburn Avenue, Millburn, be and the same is hereby suspended for a period of ten (10) days, commencing at 9:00 a.m. March 22, 1949, and terminating at 9:00 a.m. April 1, 1949.

ERWIN B. HOCK
Director.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

JOAN A. and FRANK A. McGLYNN T/a McGLYNN'S RESTAURANT AND BAR) 414-434 State Highway 25 Elizabeth, N. J., ) CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-120, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth. )

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Joan A. & Frank A. McGlynn, Defendant-licensees, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendants pleaded non vult to a charge alleging that they possessed three bottles of alcoholic beverages containing whiskey not genuine as labeled, and also one bottle which did not bear any label describing its contents, in violation of Rule 28 of State Regulations No. 20.

The four bottles in question were part of the defendants' open stock of 62 bottles of whiskey tested by an ABC agent on February 16, 1949. Analysis of the contents of the four bottles disclosed that they varied in various respects from genuine samples of the same product.

Defendants have no previous adjudicated record. I shall, therefore, impose the usual twenty-day suspension of the license, less five days' remission for the plea, leaving a net suspension of fifteen days. Re Sweet, Bulletin 799, Item 7.

Accordingly, it is, on this 15th day of March, 1949,

ORDERED that Plenary Retail Consumption License C-120, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Joan A. and Frank A. McGlynn, t/a McGlynn's Restaurant and Bar, 414-434 State Highway 25, Elizabeth, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. March 21, 1949, and terminating at 2:00 a.m. April 5, 1949.

ERWIN B. HOCK
Director.

9. STATE LICENSES - NEW APPLICATIONS FILED.

F. Pirrone & Sons, Inc.
T/a Great Valley Wine Co., Vinoro Wine Co., Abbey Wine Co. and Golden West Wine Co.
92-94 Monroe St.
Garfield, N. J.
Application for Limited Wholesale License filed March 8, 1949.

Gordon O'Neill Co.
120 Sherman Ave.
Jersey City, N. J.
Applications for Rectifier and Blender and Warehouse Receipts Licenses filed March 8, 1949.

Perfection Distributors, Inc.
41-43 Jefferson St.
Newark, N. J.
Application filed March 9, 1949 for transfer of Limited Wholesale License WL-74 from George B. Chelius, Jr., t/a George B. Chelius, Jr. and Associates, 11 Commerce St., Newark, N. J.

William F. Drohan and Daniel D. Carmell, Trustees of Keeshin Motor Express Co., Inc.
221 West Roosevelt Road
Chicago, Illinois.
Application for Transportation License filed March 10, 1949.

George Ehret Brewery, Inc.
North Side of Peter St., between Hudson & Park Aves.
Union City, N. J.
Application for Plenary Brewery License filed March 15, 1949.

Madison Transportation Co., Inc.
304 Spring St.
New York, N. Y.
Application for Transportation License filed March 15, 1949.

Emil D Hock
Commissioner.