

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

BULLETIN 1100

FEBRUARY 29, 1956.

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - GLAGOLA v. NEWARK (AMENDED ORDER)
2. APPELLATE DECISIONS - DESIMONE v. NEWARK.
3. DISCIPLINARY PROCEEDINGS (Asbury Park) - CHARGE ALLEGING SALE TO MINOR, DISMISSED.
4. DISCIPLINARY **PROCEEDINGS** (Asbury Park) - CHARGE ALLEGING SALE TO MINOR, DISMISSED.
5. DISCIPLINARY PROCEEDINGS (Neptune Township) - SALES TO MINORS - LICENSE SUSPENDED FOR 10 DAYS.
6. DISCIPLINARY PROCEEDINGS (Neptune) - SALES TO MINOR -- LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Asbury Park) - SALE TO MINOR -- PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS.
8. APPELLATE DECISIONS - DOAKLEY v. HAMILTON TOWNSHIP (ATLANTIC COUNTY) AND STARR.
9. APPELLATE DECISIONS - THE ALOHA, INC. v. BELMAR.
10. APPELLATE DECISIONS - SULZMAN AND GELTZEILER v. NEWARK.
11. DISCIPLINARY PROCEEDINGS (North Bergen) - SALES TO MINORS - PRIOR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

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

BULLETIN 1100

FEBRUARY 29, 1956.

1. APPELLATE DECISIONS - GLAGOLA v. NEWARK (AMENDED ORDER).

CHARLES GLAGOLA, trading as)	
THE BOAT HOUSE,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	AMENDED ORDER
)	
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF NEWARK,)	
)	
Respondent.)	

Benjamin Romano, Esq., by Durand A. Metrione, Esq., Attorney
for Appellant.

Vincent P. Torppey, Esq., by Nicholas Albano, Esq., Attorney
for Respondent.

BY THE DIRECTOR:

After a hearing on appeal from respondent's action in suspending appellant's plenary retail consumption license for forty (40) days, upon a finding of guilt in disciplinary proceedings on a charge alleging the sale to and consumption by two minors of alcoholic beverages on appellant's licensed premises, I, by Orders dated January 23, 1956 affirmed respondent's action and reimposed the aforesaid suspension to commence at 2:00 a.m. February 1, 1956, and to terminate at 2:00 a. m. March 12, 1956.

After entry of said Orders it was discovered that a further suspension of ten (10) days was imposed by respondent against appellant to commence at 7:00 a.m. January 23, 1956 and to terminate at 7:00 a.m. February 2, 1956.

To correct the one-day overlapping of the said suspensions and have the reimposed suspension commence at the expiration of the suspension now in force,

It is, on this 27th day of January, 1956,

ORDERED that the Conclusions and Orders heretofore entered herein on January 23, 1956 be and the same are hereby amended as to the final paragraph, as follows:

ORDERED that the forty (40) day suspension of appellant's Plenary Retail Consumption License C-917, for premises 178-182 Doremus Avenue, Newark, imposed by respondent, be and the same is hereby restored and reimposed against appellant's license for the same premises to commence at 7:00 a.m. February 2, 1956 and to terminate at 7:00 a.m. March 13, 1956.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - DESIMONE v. NEWARK.

AUGUSTINE DESIMONE,)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF NEWARK,)	
Respondent.)	

Joseph D. Bozza, Esq., Attorney for Appellant, by Ovid J. Colalillo, Esq., on Appeal.
 Vincent P. Torppey, Esq., by Nicholas Albano, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action whereby, on August 2, 1955, it suspended appellant's Plenary Retail Consumption License C-373, for premises located at 201 Bruce Street and 46 - 14th Avenue, Newark, for a period of fifteen days, effective August 15, 1955, after finding him guilty in disciplinary proceedings on a charge alleging that he allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to and the consumption of such beverages by a minor, in and upon his licensed premises, in violation of Rule 1 of State Regulations No. 20.

Upon the filing of the appeal, I entered an Order on August 15, 1955, staying respondent's order of suspension until entry of a further Order herein. R. S. 33:1-31.

The appeal was presented upon the transcript of the proceedings before respondent Board pursuant to Rule 8 of State Regulations No. 15.

The Petition of Appeal alleges in substance that the action of respondent was erroneous in that it was contrary to the weight of the evidence.

On November 21, 1955, counsel for the respective parties appeared before me on oral argument.

At the hearing the testimony of respondent's witnesses is substantially as follows: Segert --- (age 18) testified that she was seventeen years of age at the time alleged in the charge; that she was separated from her husband who then lived with their eighteen-month-old child at 54 - 14th Avenue, Newark; that on the evening of December 27, 1954, she went to that address to see her child but decided, instead, to visit a nearby tavern; that at about 7:00 p.m. she entered the tavern, the name of which she didn't know and didn't know the street on which it was located; that she was served two or three glasses of beer by a bartender therein who made no inquiry as to her age; that after consuming the beer, she left the tavern to go home and later was taken to the hospital "because I was drunk"; and that she remained there for two days. On cross-examination Segert testified that she did not visit any other tavern; that she was placed in the "Mental Department" of the hospital; that after she was released therefrom, she was accompanied by the police on two different occasions to defendant's licensed premises wherein the owner, bartender, and porter were present; and that she could not identify the person

who served her. The owner and his employees were present at the hearing and were pointed out to Segert who then testified that none of them sold her the beer.

A police officer testified that he came upon Segert in the main business section of Newark at 9:25 p.m. on the date in question; that she was under the influence of intoxicants and staggered; that she was hysterical and was later taken to the hospital. Segert could give no account of her actions during the several hours which elapsed between the time she entered the tavern and the time she was taken in charge by the police. Another police officer testified that after Segert's discharge from the hospital, he escorted her to the licensed premises herein; that prior to visiting it, she did not give a description of the tavern and she denied that the owner or his employees, who were present therein, served her alcoholic beverages.

Appellant Desimone testified that he was on duty between 7:00 p.m. until 2:00 a.m. on the night in question; that he has a strictly "colored trade"; that white girls never frequent his establishment and that Segert was not in his tavern as alleged. His bartender testified that he worked from 9:00 a.m. until 7:00 p.m. on December 27, 1954 and the porter testified that he worked from 6:00 to 9:00 a.m. on that date and both denied having seen Segert on the premises at any time other than when she appeared with the police officers at which time she denied that she was served by either of them or the owner.

Considering all the facts and circumstances herein, I conclude that respondent has not established its case by a fair preponderance of the believable evidence. Its action will be reversed.

Accordingly, it is, on this 30th day of January, 1956,

ORDERED that respondent's action in finding appellant guilty of the charge hereinabove referred to and suspending his license for a period of fifteen days, which suspension was stayed during the pendency of these proceedings, be and the same is hereby reversed.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE TO MINOR, DISMISSED.

In the Matter of Disciplinary
Proceedings against

ROBERT-ALAN HOTEL, INC.
T/a ROCKY'S NEW CLUB ZULLA
111-113 Second Avenue
Asbury Park, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-11, issued by the
City Council of the City of
Asbury Park.

Bruno Leopizzi, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On Wednesday, August 31, 1955, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Pvt. William ---, U. S. Army, age 18, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

At the hearing held herein Private Mallie ---, 25 years of age, testified that on August 31, 1955, at about 7:30 p.m., he and Private William --- entered defendant's licensed premises and went to the bar. He further testified that he ordered two drinks of beer from a male bartender, whom he could not identify; that the bartender placed two glasses on the bar and filled the glasses from bottles; that he and William --- each consumed the contents of one glass and that no one questioned William --- as to his age.

At the hearing two ABC agents testified that they accompanied Private Mallie --- and Private William --- to defendant's licensed premises on September 12, 1955; that both of the men identified the premises but could not identify the person who served them.

At the close of the Division's case, the attorney for defendant moved to dismiss the proceeding upon the ground, among others, that there was no competent evidence as to the age of Private William ---. It appears that arrangements had been made with Military authorities to have Private William --- appear at the scheduled hearing but, through some misunderstanding, he was transferred to another State prior to the hearing and, hence, was not available to testify. In the absence of competent proof as to the age of the alleged minor, I have no alternative except to grant the motion to dismiss. The motion is granted.

Accordingly, it is, on this 19th day of January, 1956,

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

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE TO MINOR,
DISMISSED.

In the Matter of Disciplinary)
Proceedings against)

CARL A. MONTROSE)
T/a BLACKIE'S CAFE)
816-818 Lake Avenue)
Asbury Park, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-56, issued by the)
City Council of the City of Asbury)
Park.)

-----)
Patterson & Cooper, Esqs., by Peter Cooper, Esq., Attorneys
for Defendant-licensee.

Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charge:

"On Wednesday, August 31, 1955, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Pvt. George ---, U. S. Army, age 18, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

At the hearing held herein Private George ---, 18 years of age, testified that he and Private Mallie --- entered defendant's licensed premises on August 31, 1955 between 11:00 p.m. and 11:30 p.m. and went to the bar. He further testified that he asked the bartender for a "screwdriver" which, he stated, was "vodka and orange juice to my knowledge"; that Private Mallie --- asked for Scotch and soda; that the bartender prepared "our drinks and brought them back and set them in front of us"; that he and Mallie ordered a second round of the same drinks; that they consumed their drinks and that no one questioned him as to his age. Private Mallie ---, 25 years of age, testified that he and Private George --- entered the premises about 10:15 p.m. on the evening in question but otherwise substantially corroborated the testimony given by the previous witness. Two ABC agents testified that on September 12, 1955, the aforesaid witnesses accompanied them and other soldiers to Asbury Park and pointed out defendant's premises as "the tavern we visited on the night in question". They further testified that neither of these witnesses was able to identify Carl A. Montrose, Anthony Montrose or Anthony Ferruggiero as the person who served the drinks.

At the hearing herein defendant, Carl A. Montrose, testified that he and his bartender, Anthony Ferruggiero, were working on the licensed premises on the evening in question and that his brother, Anthony Montrose, is employed only as day bartender. Defendant further testified that he has had no vodka in his place of business during the past nine years and that they do not serve any mixed drinks. Anthony Ferruggiero testified that he has been continuously employed as a bartender by defendant for the past twelve years, except for a time prior to 1946 when he was in Military Service. He corroborated the licensee's testimony that

there has been no vodka on the premises during the past nine years. Both of these witnesses denied that they had ever seen the soldiers prior to September 12, 1955.

This case presents a close question of fact. Admittedly, the two soldiers had numerous drinks before the time they allegedly entered defendant's premises (see Re Robert-Alan Hotel, Inc.; Re Boardman, Inc.; Re Tu-Door Tavern, Inc.; Re Kurinsky and Ancel, decided herewith). Private George --- denied he was intoxicated but admitted "feeling these drinks". Weighing their recollection (which under the circumstances may not have been too clear) against the positive testimony of defendant and his bartender that the soldiers were not in the premises and that there was no vodka on the premises at the time in question, I conclude that the Division has not sustained the burden of proof in establishing defendant's guilt by a preponderance of the evidence. Cf. Re Simkins, Bulletin 1090, Item 7. Hence, I find defendant not guilty as charged.

Accordingly, it is, on this 19th day of January, 1956,

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

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary)
Proceedings against)

BOARDMAN, INC.)
T/a "HAMPTON INN")

1718 Springwood Avenue)

Neptune Township, PO Neptune, N.J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-12, issued by the Township)
Committee of the Township of Neptune.)
-----)

Kaplan & Poznak, Esqs., by Henry A. Kaplan, Esq., Attorneys
for Defendant-licensee.

Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charge:

"On Wednesday, August 31, 1955, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Pvt. Thomas ---, U. S. Army, age 17, Pvt. William ---, U. S. Army, age 18, and Pvt. George ---, U. S. Army, age 18, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

Although arrangements with the military authorities had been made to have Private Thomas --- and Private William --- appear at the hearing scheduled to be held herein, it appears

that, through some misunderstanding, both were transferred by the military authorities to duty outside the State and, hence, were not available to testify at the scheduled hearing. Since it was not possible to produce evidence at the hearing as to the age of either of these individuals, I find it necessary to dismiss the charge in so far as it applies to Private Thomas --- and Private William ---.

At the hearing held herein Private George --- (18 years of age) and Private Mallie --- (who is of full age) testified that on August 31, 1955, at about 8:45 p.m., they entered defendant's premises with the two other Privates heretofore mentioned. Private George --- testified that he ordered a bottle of beer from the bartender; that the other soldiers ordered drinks; that he paid for all the drinks; that, pursuant to his order, the bartender opened a bottle of beer and placed it with a glass in front of him; that he poured the beer into a glass and drank it. Private Mallie corroborated the testimony of Private George and stated that they remained in the licensed premises for fifteen to twenty minutes. ABC agents testified that on September 12, 1955, they met the four soldiers at Fort Monmouth and the soldiers directed them to defendant's tavern which they identified as the premises in which they had been served alcoholic beverages on August 31. The agents further testified that, at that time, Charles Boardman (president of defendant corporation), Maurice Edwards (a bartender) and Richard Thompson (a bartender) were present, but that none of the soldiers was able to identify any of them as the person who had served the drinks. At the hearing held herein neither Private George nor Private Mallie was able to identify Boardman, Edwards or Thompson as the person who had served the drinks.

On behalf of defendant, Charles Boardman testified that he has been in the tavern business for more than twenty years and that he has never been convicted of any violation of the Alcoholic Beverage Law. He denied that he had seen any of the minors on the licensed premises on the evening in question, and further testified that he has instructed his bartenders not to serve any minors. Maurice Edwards testified that he was acting as bartender in defendant's premises on the evening in question from 6:00 p.m. until 3:00 a.m. the following morning, and that he did not see any of the aforesaid soldiers in the licensed premises on the evening in question. Richard Thompson testified that he also was acting as bartender in defendant's premises on the evening in question, and that none of the aforesaid soldiers was in the licensed premises at any time on that evening. The three witnesses who testified on behalf of defendant admitted that bottled beer was served on the premises, but denied that defendant carried the particular brand of beer which the two soldiers testified they ordered.

I have carefully considered the record herein, and conclude that the two soldiers who testified are telling the truth. Their failure to identify the person who served the beer is not a fatal defect in disciplinary proceedings (Re Dante, Bulletin 771, Item 9). Even if the soldiers were mistaken as to the brand of beer they ordered, it appears from the record that various brands of bottled beer were served on defendant's premises. I find defendant guilty of the charge in so far as it refers to Private George ---.

Defendant has no prior adjudicated record. I shall suspend its license for a period of ten days, which is the minimum suspension imposed in a case involving sale and service of alcoholic beverages to an eighteen-year-old minor.

Accordingly, it is, on this 19th day of January, 1956,

ORDERED that Plenary Retail Consumption License C-12, issued by the Township Committee of the Township of Neptune to Boardman, Inc., t/a "Hampton Inn", for premises 1718 Springwood Avenue, Neptune Township, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. January 30, 1956, and terminating at 3:00 a.m. February 9, 1956.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - SALES TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

TU-DOOR TAVERN, INC.
T/a "TU-DOR TAVERN"
1513 Springwood Avenue
Neptune, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-2, issued by the)
Township Committee of Neptune)
Township.)

Defendant-licensee, by Irving Kurinsky, President.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On Wednesday, August 31, 1955, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Pvt. Thomas ---, U. S. Army, age 17, Pvt. William ---, U. S. Army, age 18, and Pvt. George ---, U. S. Army, age 18, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

The file herein discloses that Private George --- (18 years of age) gave a statement to ABC agents wherein he said that he and Private Mallie ---, Private Thomas --- and Private William --- entered defendant's licensed premises on August 31, 1955, at about 9:15 p.m., and that he had two "shots of Scotch and soda." Private Mallie --- is of full age, and Private Thomas --- and Private William --- had been transferred to duty outside the State prior to the date fixed for hearing (Re Boardman, Inc., decided herewith).

Defendant has no prior adjudicated record. Under the circumstances of this case, I shall suspend defendant's license for ten days, the minimum penalty imposed in a case involving sale to an eighteen-year-old minor. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 19th day of January, 1956,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of Neptune Township to Tu-Door Tavern, Inc., t/a "Tu-Dor Tavern", for premises 1513 Springwood Avenue, Neptune, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m. January 30, 1956, and terminating at 3:00 a.m. February 4, 1956.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR RECORD -
LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary)
Proceedings against)

LESTER KURINSKY and ROSE ANCEL)
T/a CAPITOL TAVERN)
1210-1212 Springwood Avenue)
Asbury Park, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-)
tion License C-49, issued by the)
City Council of the City of Asbury)
Park.)

Harry L. Shure, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendants pleaded not guilty to the following charge:

"On Wednesday, August 31, 1955, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Pvt. George ---, U. S. Army, age 18, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

At the hearing herein Private George --- (18 years of age) testified that he and Private Mallie --- entered defendants' licensed premises on August 31, 1955, at about 10:45 p.m., and went to the bar. He further testified that they remained there for about one-half hour; that during that period a male bartender served to each of them two Scotch and sodas which they consumed, and that no one questioned him as to his age. Mallie --- (25 years of age) testified that he and Private George --- entered the premises on August 31, 1955, at about 10:00 p.m., but otherwise substantially corroborated the testimony given by the previous witness. Two ABC agents testified that on September 12, 1955, both Privates directed them to defendants' premises which they identified as the place in which they had been served. They further testified that neither Private identified Lester Kurinsky, Norma Milton or Janet Taylor as the person who had served the drinks.

On behalf of defendants, Lester Kurinsky testified that he was on the licensed premises on the evening of August 31 between 7:30 p.m. and closing time, and that Norma Milton and Janet Taylor were acting as barmaids on the evening in question.

He denied that any male bartender was on duty on that evening, but admitted that on that evening he tended bar "on and off intermittently." He and the two barmaids testified that they had never seen either of the Privates prior to September 12, 1955.

After carefully considering the evidence, I conclude that the two soldiers are telling the truth. Their failure to identify the person who served the minor is not fatal in disciplinary proceedings (Re Dante, Bulletin 771, Item 9). I find defendants guilty as charged.

Defendants have a prior record. Effective October 5, 1953, the local issuing authorities suspended their license for five days for selling during prohibited hours. The minimum suspension for sale to a minor eighteen years of age or over is ten days. In view of the prior dissimilar violation within five years, I shall suspend defendants' license in this case for fifteen days.

Accordingly, it is, on this 19th day of January, 1956,

ORDERED that Plenary Retail Consumption License C-49, issued by the City Council of the City of Asbury Park to Lester Kurinsky and Rose Ancel, t/a Capitol Tavern, for premises 1210-1212 Springwood Avenue, Asbury Park, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. January 30, 1956, and terminating at 2:00 a.m. February 14, 1956.

WILLIAM HOWE DAVIS
Director.

8. APPELLATE DECISIONS - DOAKLEY v. HAMILTON TOWNSHIP AND STARR.

A. J. DOAKLEY,)	
Appellant,)	
-vs-)	ORDER OF DISCONTINUANCE
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF HAMILTON (Atlantic)	
County), and GEORGE W. STARR,)	
Respondents.)	

McAllister & Hunter, Esqs., by William B. Hunter, Esq.,
Attorneys for Appellant.
Glenn & Glenn, Esqs., by Alfred T. Glenn, Jr., Esq., Attorneys
for Respondent Township Committee.
William T. Cahill, Esq., Attorney for Respondent George W. Starr.

BY THE DIRECTOR:

The parties hereto having agreed to discontinue the within appeal, and no reason appearing to the contrary,

It is, on this 30th day of January, 1956,

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

WILLIAM HOWE DAVIS
Director.

9. APPELLATE DECISIONS - THE ALOHA, INC. v. BELMAR.

THE ALOHA, INC.,)	
t/a THE ALOHA,)	
)	
Appellant,)	ON APPEAL
-vs-)	CONCLUSIONS AND ORDER
)	
BOARD OF COMMISSIONERS OF THE)	
BOROUGH OF BELMAR,)	
)	
Respondent.)	
-----)		
Harry R. Cooper, Esq., Attorney for Appellant.		
Harold Feinberg, Esq., Attorney for Respondent.		

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it denied appellant's application to transfer its seasonal retail consumption license (expiring November 1, 1955) from McCann's Atlantic Hotel on 15th and Ocean Avenues to the Seacrest Hotel on 4th Avenue between Ocean Avenue and A Street, Belmar. The application was denied on October 25, 1955 by a three-to-two vote of the members of the Board for the following stated reasons:

1. There is no public necessity for an additional license in the neighborhood.
2. There is no public convenience to be served by an additional license in the neighborhood.
3. The neighborhood of the premises in question is amply supplied with liquor establishments.

Appellant has conducted business at McCann's Atlantic Hotel under successive seasonal retail consumption licenses since its incorporation in April 1952. Prior to that time Vincent P. McCarthy, President of appellant corporation, conducted business at said hotel under similar licenses issued to him individually from 1946 to 1952. When the owner of McCann's Atlantic Hotel refused to renew appellant's lease, which expired in 1955, appellant arranged to lease the Seacrest Hotel and applied to respondent for a transfer of its license to said premises. The denial of said application is the subject of this appeal.

In oral summation at the close of the hearing herein, the attorney for respondent argued that appellant herein is trying to evade the effect of the decision in Durr and McDevitt v. Belmar, Bulletin 1086, Item 1. In that case appellants sought a new seasonal retail consumption license for 102-104 Fourth Avenue (Seacrest Hotel). They contended that as owners and operators of a fifty-room hotel they were "entitled as of right" to a license, pursuant to R. S. 33:1-12.20. They presented no evidence as to public necessity and convenience. It was therein decided that "R. S. 33:1-12.20 does not mean that the operator of a fifty-room hotel is entitled to a license" and the action of respondent was affirmed because it appeared from the evidence therein presented that "the neighborhood of the premises in question is amply supplied with liquor establishments." I do not agree with respondent's apparent contention that the decision in the Durr and McDevitt case is binding in the present appeal as to the issue of public convenience and necessity. While it is true that there were and are four licensed premises in the immediate area, there is much additional testimony herein which must be considered in deciding this case, none of which was produced in the Durr and McDevitt case.

At the hearing held herein, Vincent P. McCarthy testified that appellant is seeking to transfer its license a distance of about ten blocks from the southern section of the Borough to a northern section of the Borough located between Silver Lake and Shark River; that this northern section contains rooming houses, hotels, two bathhouses, hot dog stands, a swimming pool and a sandwich shop, in addition to numerous residences; that, in his opinion, the summer population of the Borough is approximately eight times its winter population and that the increase is "distributed through the town." His estimate of increased population may be somewhat exaggerated but it is supported to some extent by the testimony of the Borough Clerk who testified, on behalf of respondent, that the Borough had a population of 4,636 according to the last Federal Census and that 30,000 bathing licenses were issued for the first half and about 25,000 bathing licenses were issued for the second half of last year's summer season. The Seacrest Hotel is about 150 feet west of Ocean Avenue, which parallels the bathing beach. The application for transfer sets forth that appellant intends to operate the premises as a "restaurant and hotel." Two of the other four licensed premises are more than one block from and the other two are more than two blocks from the Seacrest Hotel. A real estate broker and Commissioner Ferruggiaro, who voted in favor of the transfer, each testified that, in his opinion, the transfer of the license would not depreciate the value of surrounding properties. The operator of a rooming house located three blocks away testified that the transfer would not create a traffic hazard.

On behalf of respondent, Mayor Maclearie and Commissioner Taylor testified that they voted to deny the transfer because they believed there were sufficient licenses in that section of the Borough. Four persons testified that they opposed the transfer because it would depreciate property and create a traffic hazard and because of contemplated noises and confusion. However, one objector resides 1 1/2 blocks, the second resides 2 1/2 blocks, and the other two reside 3 1/2 blocks from the Seacrest Hotel. Petitions containing the names of 36 persons who objected to the transfer were presented at the hearing below and introduced into evidence at the hearing herein.

The transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Van Schoick v. Howell, Bulletin 120, Item 6. On the other hand, where it appears that the denial was arbitrary or unreasonable, the action will be reversed. Shapley v. Delaware, Bulletin 294, Item 7.

It has been recognized that the transfer of a license in a municipality from one section to another section containing other licenses may result in unsatisfactory conditions sufficient to warrant denial of the transfer. Di Giacchino v. Atlantic City, Bulletin 1030, Item 3; Herbert H. Levine, Inc. v. Harrison, Bulletin 1032, Item 1, and cases therein cited. On the other hand, the reasons assigned for denial must be reasonably supported by the evidence. Palmer v. Atlantic City, Bulletin 1017, Item 1. The Borough of Belmar is essentially a summer resort. Considering its large increase in population and the number of visitors during the summer season and all the other evidence herein, I conclude that the denial of the transfer of an existing seasonal license from premises operated as a hotel in the southern part of the Borough to another hotel in the northern part of the Borough was unreasonable. Hence, I shall reverse the action of respondent.

The license in question has expired and, hence, no order to transfer the license will be entered. However, as a result of this decision, the seasonal retail consumption license held by appellant will be deemed to have been held as of November 1, 1955

for premises known as Seacrest Hotel, on 4th Avenue, between Ocean Avenue and A Street, Belmar, for the purposes of renewal of said license for the 1956 summer season. See R. S. 33:1-12.17.

Accordingly, it is, on this 8th day of February, 1956,

ORDERED that the action of respondent be and the same is hereby reversed and the license held by appellant will be deemed to have been transferred in accordance with its application, for the purposes of renewal of said license.

WILLIAM HOWE DAVIS
Director.

10. APPELLATE DECISIONS - SULZMAN AND GELTZEILER v. NEWARK.

MURRAY SULZMAN and)	
IRVING GELTZEILER,)	
Appellants,)	ON APPEAL
-vs-)	CONCLUSIONS AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF NEWARK,)	
Respondent.)	

Joseph A. D'Alessio, Esq., Attorney for Appellants.
Vincent P. Torppey, Esq., by Nicholas Albano, Esq., Attorney
for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action whereby it suspended appellants' Plenary Retail Consumption License C-887, for premises 506 Hunterdon Street, Newark, for a period of fifteen days, effective November 14, 1955, after finding them guilty of charges alleging that on February 5, 1955 (1) they sold, served and delivered alcoholic beverages to two minors (ages 17 and 20) and permitted the consumption of such beverages by said minors in and upon their licensed premises; and (2) they sold, served and delivered alcoholic beverages to and permitted the consumption of such beverages on their licensed premises by said minors, who were actually or apparently intoxicated; both charges being in violation of Rule 1 of State Regulations No. 20.

Upon the filing of this appeal I entered an order on November 10, 1955 staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31.

The case was presented upon the transcript of the proceedings before respondent, pursuant to Rule 8 of State Regulations No. 15.

On December 21, 1955 counsel for the respective parties appeared before me on oral argument.

The Petition of Appeal alleges, in substance, that respondent's action was erroneous in that it was founded upon incompetent evidence; that respondent impeached its own witnesses; and that its action was the result of passion and prejudice.

At the hearing below, Earl --- (age 17) testified that he and William --- (age 20) visited defendants' licensed premises at

about 11:00 p.m. Saturday, February 5, 1955; that between 7:00 and 9:00 p.m. that evening he had consumed "I think about two or three pints of whiskey * * * and one pint of gin * * * I had so many that I couldn't count" and "I was really high"; that "I didn't order anything. I don't know whether he [William] ordered anything. I know I didn't"; that he remained on the premises about five minutes; that "All I know I was looking around. There is a bottle of beer I saw with two glasses * * * on the bar * * * I didn't buy it"; and that he didn't drink any beer. Earl admitted that he signed a statement for the police only after they "hit [him] on the side of the head a couple of times." In his statement he stated that "We * * * went into the tavern known as Irving's Tavern, and we had some drinks"; that "In Irving's Tavern William --- ordered a bottle of beer and split the beer between us"; that "This bottle of beer was served to him (William) by a colored bartender." He testified that these extracts from his statement were untrue.

William testified that at about 1:00 a.m. on the date alleged he and Earl went to defendants' tavern; that he went to the men's room; that Earl was at the bar; that "Only when I came out there was a bottle of beer with a glass * * * in front of him [Earl]"; and that he didn't have anything to drink. He admitted that he gave a signed statement to the police "most of it" true. In his statement he stated "I asked the bartender for a glass of beer and he said that he didn't serve by the glass, just bottles"; that "I asked for a bottle of beer and two glasses"; that "The bartender charged me thirty-five cents for the beer"; and that "The bartender who served me was a colored man. I don't know his name." He testified that the statement was signed after he was threatened by the police and that the extracts above quoted therefrom were not true. Both minors testified that no one in the tavern made any inquiry respecting their ages.

Respondent's attorney pleaded surprise before examining the minors as to their prior contradictory statements. The police officers who took the statements and witnessed their signing testified that the said statements, given under oath, contained a true account of what the minors had related to them and they denied categorically that the affiants were threatened or abused. The statements were introduced in evidence without objection and at the close of respondent's case appellants moved to dismiss the charges on the grounds that the testimony of respondent's witnesses was neutralized by the contradictory statements and that there was no competent evidence for the Board's consideration. Respondent Board reserved decision thereon and appellants rested on respondent's case. On November 1, 1955 respondent rendered an opinion in which it found appellants guilty as charged. The pertinent sections of the opinion read:

"One of the witnesses in the case evidently changed his story, which he stated was under duress by the Police Department, that he was told to say certain things which the detectives categorically denied.

"The statement which he presented to the Police Department, at the time, was given to the investigating detectives, and was placed in evidence and as such stands as moot testimony in contradiction to the testimony that the witness gave orally."

It is apparent that respondent considered the ex parte affidavits of the minors as evidential of the happenings mentioned therein. In Zimmerman v. Zimmerman, 12 N. J. Super. 61,

at 68, the Court in referring to prior contradictory statements said, "They could properly be used only to enable the court to determine whether taken as a whole they contradicted the testimony of the affiants, given in court in the proceeding against appellant, or otherwise weakened the credibility of such testimony. Affronti v. U. S., 145 F. 2d 3 (1944)." The prior contradictory statements of the minors have no "substantive or independent testimonial value," Kulinka v. Flockhart Foundry Co., 9 N. J. Super. 495; and are not "affirmative evidence of what they assert," United States v. Michener, 152 F. 2d 880; and could not establish a cause of action, Moon v. Lewis, 116 N.J.L. 521.

As in the instant case "Where state is surprised by testimony of one of its witnesses in a manner contrary to a prior statement, it may neutralize effect of such evidence by proving self-contradictory statements of witness to show that such evidence was untrustworthy, but the prior statement, not made in presence of defendant and not subject to cross-examination by him, is not admissible as probative evidence against defendant." State v. Rappise, 3 N. J. Super. 30.

Although I differ with what appears to be respondent's reasons upon which it found appellants guilty of the charges herein, I am in accord with its conclusion. The record discloses positive and uncontradicted testimony of the minors that they were in appellants' tavern on the date alleged; that on the bar in front of them were a bottle of beer and two glasses; that one of the minors was "really high," having consumed a considerable amount of liquor shortly before entering the licensed premises; and that no one on the premises made inquiry as to their ages. These facts, standing alone, give rise to a factual inference that appellants served alcoholic beverages to the two minors, one of whom was apparently intoxicated, and that no one made inquiry as to their ages. There is no proof that the minors consumed the alcoholic beverages on the licensed premises. I conclude, therefore, that appellants are guilty of the charges other than those parts of Charge 1 and Charge 2 which allege that they permitted the consumption of alcoholic beverages on their licensed premises.

Accordingly, it is, on this 31st day of January, 1956,

ORDERED that the action of respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the fifteen (15) day suspension of appellants' Plenary Retail Consumption License C-887, for premises 506 Hunterdon Street, Newark, heretofore imposed by respondent, be and the same is hereby reimposed against appellants' license for the same premises, to commence at 2:00 a.m. February 8, 1956, and terminate at 2:00 a.m. February 23, 1956.

WILLIAM HOWE DAVIS
Director.

11. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD
OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 25 DAYS,
LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

ROBERT BELISONZI and
FRANK MAURICE
T/a HUDSON PIZZERIA
5101-7 Hudson Boulevard
North Bergen, N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-
tion License C-42, issued by the
Municipal Board of Alcoholic Beverage
Control of the Township of North Bergen.)

Nicholas J. Paladino, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

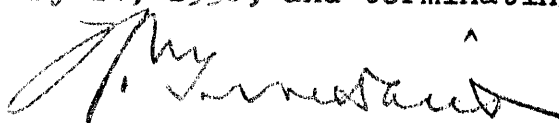
Defendants have pleaded non vult to a charge alleging
that on December 30, 1955, they sold, served and delivered
alcoholic beverages to two minors and permitted the consumption
of such beverages by said minors in and upon their licensed
premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that at about 10:15 p.m.,
Friday, December 30, 1955, two ABC agents who were in defend-
ants' licensed premises observed Robert Belisonzi, one of the
licensees, serving a glass of beer to a young man and a glass
of beer to a young woman. After the young man had consumed his
drink, the bartender served a second glass of beer to him.
While both youths were consuming their drinks, the agents iden-
tified themselves. Subsequent investigation disclosed that the
young man (Raymond ---) was 18 years of age and that the young
woman (Dorothy ---) was 16 years of age.

The records of the Division show that, effective August
23, 1948, the local issuing authority suspended the license
then held by Robert Belisonzi, individually, for a period of
five days for sale to minors. The minimum suspension for a
violation prior to January 16, 1956 involving sale to a minor
16 years of age is twenty days. Considering the prior similar
violation which occurred more than five years ago, I shall sus-
pend defendants' license for twenty-five days. Five days will
be remitted for the plea entered herein, leaving a net suspen-
sion of twenty days.

Accordingly, it is, on this 6th day of February, 1956,

ORDERED that Plenary Retail Consumption License C-42,
issued by the Municipal Board of Alcoholic Beverage Control of
the Township of North Bergen to Robert Belisonzi and Frank
Maurice, t/a Hudson Pizzeria, 5101-7 Hudson Boulevard, North
Bergen, be and the same is hereby suspended for twenty (20) days,
commencing at 3:00 a.m. February 14, 1956, and terminating at
3:00 a.m. March 5, 1956.



William Howe Davis
Director.