

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

BULLETIN 941

AUGUST 6, 1952.

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STATE OF NEW JERSEY
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1060 Broad Street Newark 2, N. J.

BULLETIN 941

AUGUST 6, 1952.

1. APPELLATE DECISIONS - DE CAPUA v. OCEAN TOWNSHIP (MONMOUTH COUNTY).

ROSE DE CAPUA,)

Appellant,)

-vs-

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF OCEAN (MONMOUTH)
COUNTY),)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

John A. Petillo, Esq. and Stanley Blasi, Esq., Attorneys for
Appellant.

Henry H. Patterson, Esq., Attorney for Respondent.

Stout & O'Hagan, Esqs., by William J. O'Hagan, Esq., Attorneys for
Charles E. Betz, an Objector.

BY THE DIRECTOR:

This is an appeal from the denial of a transfer of a plenary retail consumption license from Edwin Gage, t/a Ross-Fenton Farms, to appellant and from premises on Deal Lake to premises on Highway 35, Oakhurst, Township of Ocean, Monmouth County.

The three members of respondent Township Committee voted unanimously to deny the transfer in question.

Respondent denied the application to transfer upon the grounds, inter alia, "That the Township Committee in denying said transfer was of the opinion that there were more than sufficient liquor licenses in the Township of Ocean in general, and on Route #35 in particular, to serve the needs of the public, and further felt that it would be detrimental to the public good to grant said application and that traffic hazards on said Route #35 would be increased."

The undisputed facts disclose that appellant's proposed site is located on the west side of the highway known as Route 35; that the building is approximately one hundred feet long and twenty to twenty-five feet in width; that it is located about eighty to eighty-five feet from the highway and the grounds upon which it is situated have a frontage on the highway of four hundred feet and a depth of five hundred feet; that the restaurant part of the building is 20x50 feet; that the proposed barroom is 20x20 feet; that it contains a large kitchen, a modern ladies' room and a modern men's room; that immediately to the south of appellant's land is a plot of vacant land about fifty feet in width and adjoining said plot of ground is a gasoline station; that immediately to the north of appellant's ground is a wooded area about 50 to 100 feet in width; that on said highway continuing north on the same side thereof is a golf driving range; that in the same general direction about twelve hundred feet away from appellant's premises is a liquor licensed premises operated by Charles E. Betz, an objector; that on the other side of the highway at a distance south for more than eight hundred feet is another licensed premises which has not been in operation for some time.

There are very few homes within the immediate vicinity of the proposed premises and, apparently, appellant will be dependent for business upon transient trade, mostly motorists traveling on said highway to and from the shore. The license in question was originally issued for premises in a different section of the township but the license, although renewed from year to year, has not been in use.

for approximately two or three years because of the destruction of the building by fire. The last renewal indicated that it was for the sole purpose of permitting its transfer to some other premises.

It has been stipulated that appellant's premises are located "about a mile and a half or two miles" from the site for which the license was originally issued.

The three members of the Township Committee testified that there is no need or necessity for another liquor outlet at appellant's premises; that nine plenary retail consumption licenses have been issued for various premises on the two-and-a-half miles of said highway in the township. Furthermore, they were of the opinion "that any more drinking establishments would add to the traffic hazard".

The only testimony produced by the appellant tending to establish a need and convenience by the residents of the township was the testimony of appellant's husband. He testified that persons dining at his restaurant might be desirous of obtaining alcoholic beverages with their meals. This in itself fails sufficiently to indicate a public need and necessity for a liquor license.

A transfer of a liquor license to other persons or premises, or both, is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of a reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Fafalak v. Bayonne, Bulletin 95, Item 5; VanSchoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; Semento v. West Milford, Bulletin 253, Item 2; Masarik v. Milltown, Bulletin 283, Item 10. On the other hand, where it appears that the refusal of a transfer was arbitrary or unreasonable, the action of the respondent in refusing the transfer will be reversed. Blumenthal v. Wall, Bulletin 169, Item 6; Conn v. Kearny, Bulletin 173, Item 1; Miller v. Paterson, Bulletin 219, Item 6; Rucereto v. Dumont, Bulletin 253, Item 6; Shapley v. Delaware, Bulletin 294, Item 7.

The number of licensed places to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. Santoriello v. Howell, Bulletin 252, Item 8; Mita v. Orange, Bulletin 266, Item 10; Sudol v. Wallington, Bulletin 267, Item 10; Pitman v. Pemberton, Bulletin 277, Item 6; Boody v. Gloucester, Bulletin 300, Item 11; Smith v. Winslow, Bulletin 334, Item 1; Alpert v. Asbury Park, Bulletin 380, Item 2; Winslow v. Pennsauken, Bulletin 401, Item 11; Bodrato v. Northvale, Bulletin 433, Item 1; Hearty et al. v. Liberty et al., Bulletin 671, Item 5; Segal et al. v. Clifton et al., Bulletin 732, Item 5; McGill v. Orange et al., Bulletin 900, Item 2.

In all appeals to the Director of the Division of Alcoholic Beverage Control the burden of proof to establish "that the action of the respondent issuing authority was erroneous and should be reversed shall rest with the appellant". Rule 6 of State Regulations No. 15. After careful review of the evidence presented in the instant case, there is no indication that respondent's denial was so arbitrary or unreasonable as to warrant a reversal of its action. I find, therefore, that appellant has failed to carry the required burden of proof. The denial of appellant's application for transfer will be affirmed.

Accordingly, it is, on this 17th day of July, 1952,

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

DOMINIC A. CAVICCHIA

Director

2.

ACTIVITY REPORT FOR JULY 1952

ARRESTS:		
Total number of persons arrested	-----	20
Licensees and employees	----- 10	
Bootleggers	----- 10	
SEIZURES:		
Motor vehicles - cars	-----	1
Stills - 50 gallons or under	-----	6
Mash - gallons	-----	1,415.00
Distilled alcoholic beverages - gallons	-----	1.54
Wine - gallons	-----	1.23
Brewed malt alcoholic beverages - gallons	-----	60.62
RETAIL LICENSES:		
Premises inspected	-----	1,001
Premises where alcoholic beverages were gauged	-----	720
Bottles gauged	-----	13,321
Premises where violations were found	-----	118
Violations found	-----	152
Type of violations found:		
Unqualified employees	----- 66	Probable fronts ----- 3
Other mercantile business	----- 10	Reg. #38 sign not posted ----- 2
Disposal permit necessary	----- 6	Prohibited signs ----- 1
		Other violations ----- 64
STATE LICENSEES:		
Premises inspected	-----	9
License applications investigated	-----	12
COMPLAINTS:		
Complaints assigned for investigation	-----	473
Investigations completed	-----	412
Investigations pending	-----	156
LABORATORY:		
Analyses made	-----	110
Refills (from licensed premises) - bottles	-----	2
Bottles from unlicensed premises	-----	17
IDENTIFICATION BUREAU:		
Criminal fingerprint identifications made	-----	26
Persons fingerprinted for non-criminal purposes	-----	437
Identification contacts made with other enforcement agencies	-----	314
Motor vehicle identifications via N. J. State Police Teletype	-----	11
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities	-----	15
Violations involved:		
Sale to minors	----- 7	
Sale during prohibited hours	----- 6	
Permitting bookmaking on premises	----- 2	
Permitting gambling on premises (wagers)	----- 1	
Sale to non-members by clubs	----- 1	
Cases instituted at Division	-----	18
Violations involved:		
Sale to minors	----- 10	Failure to afford view into premises
Sale during prohibited hours	----- 4	during prohibited hours ----- 1
Permitting immoral activity on premises	----- 2	Permitting hostesses on premises ----- 1
Possessing illicit liquor	----- 2	Employing unqualified persons ----- 1
Hindering investigation	----- 2	Licensee working while intoxicated ----- 1
Unauthorized transportation	----- 1	Aiding and abetting sale during
Permitting lottery activity on premises	----- 1	prohibited hours ----- 1
Cases brought by municipalities on own initiative and reported to Division	-----	4
Violations involved:		
Sale to minors	----- 2	
Permitting bookmaking on premises	----- 1	
Sale during prohibited hours	----- 1	
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-----	30
Appeals	----- 2	Seizures ----- 1
Disciplinary proceedings	----- 1	Applications for license ----- 3
Eligibility	----- 1	
PERMITS ISSUED:		
Total number of permits issued	-----	5,546
Employment	----- 1,864	Social affairs ----- 349
Solicitors	----- 2,818	Special wine ----- 93
Disposal of alcoholic beverages	----- 124	Miscellaneous ----- 298

Dated: August 1, 1952.

DOMINIC A. CAVICCHIA
DIRECTOR

3. APPEAL CASES - JULY 1, 1950 THROUGH JUNE 30, 1952.

July 31, 1952.

MEMORANDUM TO: Dominic A. Cavicchia, Director.
FROM: Edward J. Dorton, Deputy Director.

Cases undecided June 30, 1950	8
Cases filed for period July 1, 1950 through June 30, 1951	<u>.59</u>
Total67

Disposition

Affirmed36
Reversed	9
Remanded	3
Withdrawn	5
Undecided (4 cases heard, 4 cases partially heard, 6 cases not heard)	<u>.14</u>
Total67

Cases undecided June 30, 195114
Cases filed for period July 1, 1951 through June 30, 1952	<u>.36</u>
Total50

Disposition

Affirmed30
Reversed	7
Remanded	3
Withdrawn	4
Undecided (2 cases heard; 4 cases not heard)	<u>.6</u>
Total50

Edward J. Dorton
Deputy Director.

4. APPELLATE DECISIONS - THE FIRESIDE, INC. v. ORANGE.

THE FIRESIDE, INC.,)
Appellant,)
-vs-)
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
ORANGE,)
Respondent.)

ON APPEAL
ORDER OF DISCONTINUANCE

Anthony P. Bianco, Esq., Attorney for Appellant.
Edmond J. Dwyer, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's denial of an application for transfer to appellant of the plenary retail consumption license held by Nicholas Del Presto and from premises 145 Lincoln Avenue to 18 So. Essex Avenue, Orange.

At the time scheduled for the hearing herein, appellant, by its attorney, moved that it be permitted to withdraw its appeal, and that said appeal be discontinued. The attorney for the respondent consenting thereto, and no reason appearing why said motion should not be granted,

It is, on this 17th day of July, 1952,

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

DOMINIC A. CAVICCHIA
Director

5. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT LANGUAGE AND ACTIONS) - SALE TO INTOXICATED PERSONS - PRIOR WARNING - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against GEORGE MOLTA T/a GEORGE'S TAVERN 130 River Street Hoboken, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-139 for the 1951-52 licensing year and C-134 for the 1952-53 licensing year, issued by the Board of Commissioners of the City of Hoboken.

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

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging that he (1) allowed, permitted and suffered a female patron to use foul, filthy and obscene language in and upon the licensed premises, in violation of Rule 5 of State Regulations No. 20, (2) allowed, permitted and suffered said female patron and a male patron to engage in lewd and immoral conduct upon the licensed premises, in violation of the same Rule 5 of State Regulations No. 20, and (3) sold, served and delivered alcoholic beverages to said male and female patrons and permitted them to consume such beverages while actually or apparently intoxicated, in and upon the licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file discloses that two ABC agents entered the barroom of the licensed premises at approximately 11:15 p.m. on June 14, 1952. Among the patrons were a man and woman who were seated together at the bar. They were later identified as Daniel --- and Jean ---. Daniel was drinking a highball while Jean was drinking beer. Both appeared to be intoxicated. According to the agents, Daniel was "bleary-eyed", his clothing was disheveled and his speech incoherent, he swayed from side to side while seated on the bar stool and, when he attempted to walk, he staggered against the wall. Jean's speech was thick, her eyes were nearly closed, her hair was disheveled; she, too, staggered when she walked, and at one time she fell against the cigarette machine.

From time to time Jean would lean toward Daniel and he would take her in his arms, meanwhile running his hands over her breasts and private parts. On some of these occasions Jean seemed to "pass out". Although the pawing just described occurred while Daniel and Jean were seated at the bar, neither the licensee, who was present in the barroom, nor his bartender took any steps to prevent or terminate it.

On several occasions Jean shouted at another female patron numerous foul, filthy and obscene words. On one such occasion, the licensee, who was standing near the bar, told Jean to stop using such language and threatened to evict her from the licensed premises. However, when Jean resumed, shortly thereafter, the use of language equally loud, foul, filthy and obscene, neither the licensee nor his bartender made any effort to stop her or to eject her.

After one of these outbursts and while in an intoxicated condition, Jean ordered a glass of beer. The beer, for which she paid ten cents, was served to her by the bartender. Thereafter, the local police, who had been summoned by the agents, took Daniel, Jean and the bartender to police headquarters, where a signed statement was obtained from the bartender in which he stated that both Daniel and Jean had entered the licensed premises in an intoxicated condition and that he had served them drinks of alcoholic beverages. He denied hearing any conversation between Jean and other patrons.

The language and conduct which occurred in the barroom on the night in question cannot be tolerated upon licensed premises. The public is entitled to protection from these evils. It is the duty of every licensee to see to it that his licensed premises are conducted in such a manner as not to be obnoxious or offensive to the public or to endanger public morals. As said by the former Supreme Court in Kravis v. Hock, 135 N.J.L. 259, at page 262:

"The whole machinery of the Alcoholic Beverage Control statute is designed to control and keep within limits a traffic which, unless tightly restrained, tends toward abuse and debasement."

Defendant has no prior adjudicated record. However, as a result of conditions found to exist on a previous investigation, defendant was warned, by letter dated May 13, 1952 and in a conference at the offices of this Division on May 20, 1952, that he must not allow indecent language or other immoral activities upon his licensed premises. The record discloses that he pledged compliance. Since the pledge was given only a month prior to the violations charged herein, the defendant either has a short memory or his promise was made without any intention of performance.

The minimum suspension for the violations set forth in charges (1) and (3) is thirty days, Re Mansbach, Bulletin 939, Item 2. In view of the further offense set forth in charge (2), and of defendant's careless or callous disregard of his duty as a licensee, I shall suspend the license for fifty days. Five days will be remitted for the plea herein, leaving a net suspension of forty-five days.

Although this proceeding was instituted during the 1951-52 licensing period, it does not abate but remains fully effective against the renewal license for the 1952-53 licensing period. State Regulations No. 16.

Accordingly, it is, on this 28th day of July, 1952,

ORDERED that Plenary Retail Consumption License C-134, issued for the 1952-53 licensing year by the Board of Commissioners of the City of Hoboken to George Molta, t/a George's Tavern, 130 River Street, Hoboken, be and the same is hereby suspended for a period of forty-five (45) days, commencing at 2:00 a.m. August 4, 1952, and terminating at 2:00 a.m. September 18, 1952.

DOMINIC A. CAVICCHIA
Director.

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PROOF OF AGE - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against)

HYMAN GRABER and SARAH GRABER)
T/a THE BARRACKS)
Cookstown-New Egypt Road)
North Hanover Township)
P.O. Cookstown, N. J.,)

Holder of Plenary Retail Consumption License C-2 for the 1951-52 licensing year, issued by the Township Committee of the Township of North Hanover; and renewed individually for the 1952-53 licensing year by)

HYMAN GRABER)
T/a THE BARRACKS,)

for the same premises.)

-----)
Parker McCay and Criscuolo, Esqs., by Robert W. Criscuolo, Esq.,)
Attorneys for Defendant-licensees.)
Edward F. Ambrose, Esq., appearing for Division of Alcoholic)
Beverage Control.)

BY THE DIRECTOR:

The following charges were preferred against the defendants:

"1. On Thursday, March 20, 1952, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Olive B. --- and Mary Ellen ---, persons under the age of twenty-one (21) years and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises; in violation of Rule 1 of State Regulations No. 20.

"2. On Friday, March 21, 1952, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Olive B. ---, a person under the age of twenty-one (21) years and allowed, permitted and suffered the consumption of alcoholic beverages by such person upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

Defendants pleaded not guilty to charge (1) and non vult to charge (2).

As to charge (1): The testimony of Olive ---, seventeen years of age, and Mary ---, nineteen years of age, is substantially in agreement. Both girls testified that they and another girl companion visited defendants' licensed premises on the evening of March 20, 1952; that they sat at a table in the barroom; that Mary went to the bar and ordered from an unidentified male bartender, a beer, a Tom Collins, and a Sloe Gin Fizz, which he served to her at the bar and which she brought to the table where the other girls were seated; that Mary --- consumed the Sloe Gin Fizz, Olive --- consumed

CONCLUSIONS
AND
ORDER

the beer, and the third girl consumed the Tom Collins; that no one questioned any of the girls as to their respective ages; that Olive --- left her girl companions and sat at a table with a man named "Joe". Mary --- testified that she purchased several more drinks of Sloe Gin that evening. Olive --- testified that "Joe" purchased for her at the bar a glass of beer; that another man also purchased for her at the bar a glass of beer; and that she consumed the contents of both glasses during the time she remained in the defendants' licensed premises. The third girl alleged to have been with Olive --- and Mary --- (on March 20, 1952) was not available to testify at the hearing.

Defendants rested their case without calling any witnesses to testify on their behalf.

Defendants' attorney objected to the admission of testimony of the two girls with reference to their respective ages. A person is competent to testify as to his or her own age, irrespective of the consideration that the fact of age is one of the essentials necessary to be established in order to constitute the violation charged. State v. Huggins, 83 N.J.L. 43; State v. Girone, 91 N.J.L. 498; Re Slansky, Bulletin 569, Item 7. Moreover, the Division introduced into evidence birth certificates indicating that females bearing the names of the minors in question were born on the dates testified to by them.

After careful review of the testimony adduced herein I find defendants guilty of charge (1).

The defendants pleaded non vult to charge (2). The file herein discloses that Olive again visited defendants' premises on the afternoon of March 21, 1952, at which time a female bartender served to her a glass of beer, which she consumed.

Defendants have no previous adjudicated record. Since one of the minors was but seventeen years of age, I shall suspend the license for a period of fifteen days. Re Jackson, Bulletin 824, Item 8. There will be no remission for the plea entered as to charge (2) because it was necessary to hold a hearing as to charge (1).

Although this proceeding was instituted during the 1951-52 licensing period it does not abate but remains fully effective against the renewal license for the licensing year 1952-53. State Regulations No. 16.

Accordingly, it is, on this 23rd day of July, 1952,

ORDERED that Plenary Retail Consumption License C-2 for the 1952-53 licensing year, issued by the Township Committee of the Township of North Hanover to Hyman Graber, t/a The Barracks, Cookstown-New Egypt Road, North Hanover Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. July 29, 1952, and terminating at 2:00 a.m. August 13, 1952.

DOMINIC A. CAVICCHIA
Director.

- 7. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE NOT PURSUANT TO AND WITHIN TERMS OF LICENSE DISMISSED - CHARGE ALLEGING THAT LICENSEES AIDED AND ABETTED NON-LICENSEE TO SELL ALCOHOLIC BEVERAGES DISMISSED - LICENSEES FOUND GUILTY ON CHARGE ALLEGING THAT THEY ALLOWED, PERMITTED AND SUFFERED A MINOR TO CONSUME ALCOHOLIC BEVERAGES ON LICENSED PREMISES - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against)

ANNE L. & GEORGE R. LISS)
 990 Frelinghuysen Avenue)
 Newark 5, N. J.,)

CONCLUSIONS AND ORDER

-----)
 Holders of Plenary Retail Consumption License C-180 for the 1951-52 and 1952-53 licensing years, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
 -----)

James J. Farley, Esq., by Charles J. Farley, Esq., Attorney for Defendant-licensees.
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded not guilty to charges alleging that they (1) sold alcoholic beverages not pursuant to and within the terms of their plenary retail consumption license (to an organization for resale), in violation of R. S. 33:1-2, (2) knowingly aided and abetted said organization to sell alcoholic beverages without license or permit, in violation of R. S. 33:1-52, and (3) sold, served and delivered alcoholic beverages to a minor and allowed, permitted and suffered the consumption of alcoholic beverages by such minor upon the licensed premises, in violation of Rule 1 of State Regulations No. 20.

Charges (1) and (2) arose out of a combination of circumstances surrounding a dance held at the licensed premises on February 22, 1952, by the Employees Recreation Fund of Peter J. Schweitzer, Inc. (hereafter called the association). Admission tickets were sold by the association and, in addition, arrangements were made with defendant-licensees for the dispensing of drinks in defendants' dining room which had been rented to the association for the occasion. Apparently because the association had sold alcoholic beverages under a special permit at its dance the previous year with disappointing financial results, the licensees were requested to handle the sale of drinks and to set up, in a room adjoining the dining room, a private bar for the exclusive use of the association and its guests. Prior to the date of the dance, the licensees agreed to supply to the chairman of the committee of the association a roll of tickets to be sold at ten cents each, redeemable for drinks (alcoholic or otherwise) at the "private bar" or at tables in the dining room, the proceeds from the sale of these tickets to be retained by the committee chairman until the end of the evening and thereafter paid over to the licensees. It was explained by George R. Liss (one of the licensees) that this was the first time the licensees had employed this system and that its purpose was to keep the guests together (away from the front bar) and to make payment for drinks easier and to avoid "mistakes" by the waiter and waitress.

After these arrangements had been made, the chairman of the committee, at the suggestion of George R. Liss, inquired of the Secretary of the Municipal Board of Alcoholic Beverage Control whether a special permit was required and was advised that no such permit was required. The Secretary of the Board testified at the hearing herein that he had not been informed that an admission was to be charged or that tickets were to be used for the sale of drinks. Apparently, if he had known all the facts, he would have advised the chairman to obtain a special permit from the Director.

Some time after the arrangements were completed, but before the night of the dance, the licensees were approached to purchase tickets and make other contributions to the financial success of the enterprise, but George R. Liss offered instead to make a "donation" of twenty-five per cent. of the gross receipts of the sale of the "drink tickets" and, pursuant to such offer, paid the agreed percentage to the committee of the association several days after the dance.

Both the chairman of the committee and George R. Liss, who made the arrangements, testified that the alcoholic beverages were at all times under the control of the licensees; that the "drink tickets" were sold by the chairman as "agent" for or as a "favor" to the licensees, who, on the evening the dance was held, received the entire proceeds from the sale thereof.

While the percentage arrangement hereinabove described gives rise to the suspicion that it may have been in the nature of a "kick-back" resulting in the licensees sharing with a non-licensee the profits from the licensed business and thus permitting the non-licensee to enjoy some of the privileges of the license, nevertheless I am convinced that the arrangement, involving this one isolated instance, was an inept method of admeasuring the quantum of a bona fide gift or donation (described by George R. Liss as "good will"). This conclusion is supported by the fact that the Schweitzer plant is directly across the street from the licensed premises and that the licensees are personally acquainted with many of the members of the association. In addition, it is highly significant that inquiry was made by the association to ascertain whether or not it needed a special permit.

From the evidence I find that the Division has failed to sustain the burden of proof as to charges (1) and (2). Accordingly, I find the defendants not guilty as to these two charges.

I consider the payment to another of a percentage of the proceeds arising from sales by the licensees (including sales of alcoholic beverages) to be highly objectionable. Not only could this practice become a device for "farming out" a license but it could as readily become the means of increasing unduly the consumption of alcoholic beverages. Therefore, pursuant to authority vested in me by R. S. 33:1-39, I specially rule that the licensees shall not again participate in any percentage arrangement as hereinabove described or any similar arrangement whether as a gift or otherwise.

As to charge (3): Nineteen-year-old Marion ---, her father, and her adult male cousin testified essentially as follows: At approximately 9:15 p.m. on February 22, 1952, they entered the front barroom of the licensed premises to attend the dance aforementioned; the father stopped at the bar while the minor and her cousin proceeded to the rear room where they sat at a table and, during the course of the evening, the minor consumed a number of whiskey highballs while seated at the table. The minor further testified that she obtained most of these drinks from her cousin, her father and another man, all of whom from time to time went to the back bar and returned with the

drinks, but that on one occasion she and her cousin were served drinks of alcoholic beverages by a waiter who took their order from her cousin and later returned to the table with the drinks which he served directly to them. The father and the cousin testified that they and another man bought whiskey highballs for the minor at the back bar and transported them to the table where the minor consumed them, but both denied seeing service to the minor by any waiter.

During the course of the investigation the minor pointed out to the ABC agents the waiter who, she claims, served her that night. While the waiter admitted on the witness stand that he waited on tables in the rear room that night, he denied that he served the minor. He, both licensees and the waitress who was on duty that night deny that they saw the minor at the licensed premises on that night.

From the evidence I conclude that the minor was not served by the waiter. Nevertheless, the testimony that she consumed a number of whiskey highballs at a table in the rear room of the licensed premises is convincing. The licensees seek to avoid responsibility for this by claiming that (1) they policed the premises as best they could, considering the number of people present (estimated at 150 to 250); (2) they could not have prevented the consumption of the alcoholic beverages by the minor, and (3) the unlawful act was not brought home to the defendants (citing State v. Pinto, 129 N.J.L. 255). These contentions are without merit and were disposed of in Essex Holding Corp. v. Hock, 136 N.J.L. 28.

I therefore find the defendants guilty as to so much of charge (3) as alleges that the licensees allowed, permitted and suffered the minor to consume alcoholic beverages upon the licensed premises.

The licensees have no prior adjudicated record. I shall suspend the license on charge (3) for a period of ten days (the minimum suspension in such cases). Re Aldarelli, Bulletin 757, Item 6.

Although this proceeding was instituted during the 1951-52 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1952-53. State Regulations No. 16.

Accordingly, it is, on this 15th day of July, 1952,

ORDERED that Plenary Retail Consumption License C-180, issued for the 1952-53 licensing year by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Anne L. & George R. Liss, for premises 990 Frelinghuysen Avenue, Newark, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. July 22, 1952, and terminating at 2:00 a.m. August 1, 1952.

DOMINIC A. CAVICCHIA
Director.

8. DISQUALIFICATION - APPLICANT PREVIOUSLY ADVISED AS TO HIS INELIGIBILITY - FIVE YEARS' GOOD CONDUCT - APPLICATION HEREIN GRANTED.

In the Matter of an Application)
to Remove Disqualification)
because of a Conviction, Pursuant)
to R. S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 992.
-----)

BY THE DIRECTOR:

In March 1940 petitioner pleaded non vult to the crime of embezzlement, as the result of which he was placed on probation for three years and required to make restitution. On November 18, 1942, his application to the then Commissioner of Alcoholic Beverage Control for a solicitor's permit was denied, and he was advised that he was ineligible to hold a license or to be employed by a licensee in New Jersey because of said conviction. Re Case No. 469, Bulletin 539, Item 6. At that time petitioner was not eligible to apply for removal of such disqualification because the statutory period of five years had not yet elapsed. Petitioner has no other criminal record.

At the hearing herein petitioner produced three witnesses, two municipal officials and a printer, all of whom have known him for at least six years. They testified that he bears a good reputation in the community, and that he has been law-abiding for at least five years last past.

Petitioner testified that since his conviction in 1940 he has been engaged as a salesman selling cigars, novelties and calendars. He denied having any difficulty with the law other than as above indicated, and said that he seeks to have his disqualification resulting from conviction of crime removed because he has an opportunity for employment as a solicitor for a New Jersey wholesaler of alcoholic beverages.

Under all the circumstances I find that petitioner has been law-abiding for more than five years last past, and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 15th day of July, 1952,

ORDERED that petitioner's statutory disqualification, because of the conviction of crime described herein, be and the same is hereby removed in accordance with the provisions of R. S. 33:1-31.2.

DOMINIC A. CAVICCHIA
Director.

9. STATE BEVERAGE DISTRIBUTOR LICENSE - OBJECTIONS TO TRANSFER OF LICENSE HELD TO BE WITHOUT MERIT.

In the Matter of Objections to an)
 Application for Transfer of State)
 Beverage Distributor's License)
 SBD-13 for the year 1951-52 from)
 RAYMOND D. WRIGHT, t/a WRIGHT'S)
 BEVERAGES, 7 Hutton Street, Jersey)
 City, to)

CONCLUSIONS

VIGOR BEVERAGES CO., INC.)
 174-178 Sanford Avenue)
 Kearny, N. J.)

Raymond D. Wright, Pro Se.

Jerome B. Litvak, Esq., appearing for Vigor Beverages Co., Inc.
 Samuel Moskowitz, Esq., appearing for Hudson-Bergen County Retail
 Liquor Stores Association.

Andrew A. Salvest, Esq., appearing for West Hudson-Bergen Liquor
 Dealers Association.

BY THE DIRECTOR:

On August 10, 1951, the Director issued to Raymond D. Wright State Beverage Distributor's License No. 13 (for the 1951-52 licensing year) for premises located at 529 Fifth Street, Union City. The licensee was advised by the letter transmitting the license that, since he held no Federal basic permit, he might not sell alcoholic beverages to retailers. On November 5, 1951, said license was transferred to 7 Hutton Street, Jersey City.

On May 27, 1952 application was made by Vigor Beverages Co., Inc. for transfer of said license from Raymond D. Wright to itself and from 7 Hutton Street, Jersey City to 174-178 Sanford Avenue, Kearny.

Objections to the transfer were filed and a hearing was held at this Division. No objection was raised to the character or qualifications of the proposed transferee. The only issue raised by the objectors was that of public need and necessity for such license at the proposed new location.

On behalf of the proposed transferee, testimony was presented to the effect that Vigor Beverages Co., Inc. has been engaged in the business of manufacturing and distributing non-alcoholic beverages for 31 years in Kearny (the last four years at the Sanford Avenue address) and that the company has 1,000 wholesale outlets and 500 retail or house customers in 18 municipalities in West Hudson, Essex and South Bergen Counties, plus some customers at the shore in Monmouth County. It was admitted that the company serves no retail customers in Kearny, where the company's plant is located; and it was explained that the company has instituted and adhered to this policy because in Kearny it has 70 wholesale customers, serving the retail trade there, with whom it did not want to compete for the "house trade". However, the witnesses for the applicant testified that retail customers in many of the other communities served by the company were constantly requesting delivery to their homes of beer as well as of non-alcoholic beverages. In addition, it was testified that numerous telephone calls have been received by the company at its office, requesting deliveries of beer. The applicant's witnesses also testified that the company is equipped to handle the additional business.

One witness (the holder of a plenary retail distribution license who is also President of the West Hudson-Bergen Liquor Dealers Association) testified for the objectors. As President of the association representing 32 liquor dealers, he testified that the association is opposed to the proposed transfer because, in the opinion of

its members, the area is adequately serviced by at least six or seven other State beverage distributor licensees.

Two resolutions of the Kearny Town Council were introduced in evidence. The first, adopted May 28, 1952, advised that the "Town of Kearny has no objection to the transfer of the license aforesaid and consent is hereby given...." The second, adopted June 11, 1952 after a hearing, reciting that the application for transfer was made without notice to licensees in Kearny and, further, that the Council had received from "local license holders" many objections to the transfer, rescinded the prior resolution and interposed (in the later resolution) an objection to the proposed transfer. However, the Town was not represented at the hearing.

The privileges of the State Beverage Distributor's License are state-wide, and the question of public necessity and convenience cannot be determined on the narrow basis of the single municipality in which the prospective licensee will have its principal office or warehouse. Moreover, the "objection" of the Town Council appears (from its own resolution) to be based on concern for local liquor licensees and is not directed to the important question of public necessity and convenience. In any event, municipal consent is not a statutory prerequisite to the issuance of a State license.

I find that the evidence discloses a sufficient public convenience and need to be served (by retail sales and deliveries of beer to private homes) in the area where Vigor Beverages Co., Inc. presently delivers its products to warrant the proposed transfer; and I conclude that the objections are without merit.

The license sought to be transferred has expired. Raymond D. Wright has obtained a renewal of his State Beverage Distributor's License for the 1952-53 licensing year for premises at 7 Hutton Street, Jersey City. Under these circumstances no order will be entered herein. However, in disposing of any future application by Vigor Beverages Co., Inc. to transfer the renewed license to itself and to premises at 174-178 Sanford Avenue, Kearny, New Jersey, involving the same issues, these conclusions and findings will apply. Cf. Gross v. Landis, Bulletin 386, Item 5.

DOMINIC A. CAVICCHIA

Director.

Dated: July 23, 1952.

10. DISQUALIFICATION - APPLICATION DENIED BECAUSE APPLICANT SHOWED SIGNS OF INTOXICATION AT TIME OF HEARING.

In the Matter of an Application)
to Remove Disqualification)
because of a Conviction, Pursuant)
to R. S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 990.
- - - - -)

BY THE DIRECTOR:

In June 1938 petitioner pleaded non vult in a county court to the crime of receiving stolen goods, as the result of which he was fined one hundred dollars. Since the crime of which he was convicted involves moral turpitude he became ineligible to hold a license or be connected in any business capacity with the alcoholic beverage industry in New Jersey. In addition to the above mentioned conviction petitioner pleaded guilty to the crime of attempted criminal assault in 1928, for which he was fined one hundred dollars. Since his conviction in 1938 he has not been convicted of any crime. However, at the hearing herein petitioner admitted that, on one occasion which he believed was more than five years ago, his mother had made a complaint against him for drunkenness as the result of which he was detained at police headquarters over night and released the following morning.

Petitioner produced three witnesses, a department store saleslady and two textile workers, one of whom has known him for more than six years last past, the other two for a much longer period. They testified that petitioner bears a good reputation in the community and that, as far as they knew, he has been law-abiding for at least five years last past.

Petitioner testified that he is forty-three years of age, is married and has one stepchild; that he lives in a building owned by his aging parents, who have a butcher shop and a tavern there, and that he has supported himself and his wife and stepchild by doing "chores" around his parents' house, by performing some services in connection with the butcher shop and by "barbering" in the same building. He admitted frequenting the tavern but denied performing any services there. He gave as his reason for seeking removal of his disqualification resulting from conviction of crime the fact that his parents are getting old and that his father desires to transfer his plenary retail consumption license to petitioner.

In order to grant the relief sought by petitioner I must find that he has been law-abiding for at least five years last past and that his association with the alcoholic beverage industry will not be harmful to the public interest. In this last connection, the hearer reports that when petitioner appeared at the hearing on his present petition he had a very strong odor of alcohol on his breath and his entire demeanor strongly suggested that he was feeling the effects of the consumption of a considerable quantity of alcoholic beverages. The three character witnesses were interrogated as to petitioner's reputation for sobriety. Although one stated that "as far as I know he doesn't drink when we are with him" and another testified that the petitioner had a reputation for being "sober", the third witness stated that he frequently sees petitioner sitting in front of the bar in his father's tavern as a customer and testified as follows:

"Q What would you say is his reputation for sobriety? For being sober not drunk. A Well, it is hard for me to judge. As far as I can see he is all right.

"Q In other words, do you see him intoxicated upon the licensed premises? A Very seldom."

Petitioner has not convinced me that his association with the alcoholic beverage industry will not be harmful to the public interest. Indeed, considering all of the facts and circumstances hereinabove related I am inclined to the view that it would be to the best interests of the public and the petitioner if the petitioner were not permitted to be associated with the alcoholic beverage industry. I must therefore dismiss the petition.

Accordingly, it is, on this 22nd day of July, 1952,

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

DOMINIC A. CAVICCHIA
Director.

11. STATE LICENSES - NEW APPLICATIONS FILED.

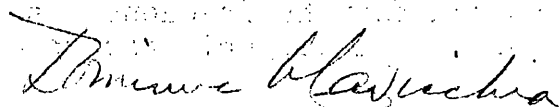
Manhattan Transit Co., Inc.
81 Wallingford Rd., Brighton, Mass.
Application filed July 25, 1952 for Transportation License.

Monte Carlo Wine Industries, Ltd.
347-349 Delavan Street, New Brunswick, N. J.
Application filed July 25, 1952 for Limited Distillery License.

Vigor Beverages Co., Inc.
174-178 Sanford Ave., Kearny, N. J.
Application filed July 30, 1952 for transfer of State Beverage Distributor's License SBD-13 from Raymond D. Wright, 7 Hutton Street, Jersey City, N. J.

Ferris & Rossborough, Inc.
1988 Route 25, Rahway, N. J.
Application filed August 4, 1952 for Transportation License.

Chivas Brothers Import Corporation
405 Lexington Avenue, New York 17, N. Y.
Application filed August 4, 1952 for transfer of Plenary Wholesale License W-57 from Chivas Brothers Import Corporation (new corp.)


Dominic A. Cavicchia
Director.