STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1383 April 5, 1961

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

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1. APPELLATE DECISIONS - ARPY INC. v. FAIRVIEW.

Arpy Inc., Appellant,	)	On Appeal
v.	)	CONCLUSIONS and ORDERS
Borough Council of the Borough of Fairview, Respondent.	)	

Bernard Dorfman, Esq., Attorney for Appellant.
Cosmo D. Palmisano, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent whereby on June 20, 1960 it suspended appellant's license for thirty-five days, effective July 15, 1960, after appellant was adjudged guilty on a charge alleging that on May 6, 1960, it sold and delivered alcoholic beverages at its premises to two minors, Richard --- and Walter ---, in violation of Rule 1 of State Regulation No. 20.

"Upon the filing of the appeal, an order was entered on July 13, 1960 staying respondent's order of suspension until further order of the Director. R.S. 33:1-31.

"In its petition of appeal, appellant alleges respondent's action was erroneous because (1) its decision was contrary to the weight of the evidence, (2) it was arbitrary and capricious, and (3) it was based on hearsay evidence and that the penalty imposed was excessive.

"Respondent, in its answer, denies appellant's allegations.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15.

"Respondent called as its witnesses George Ebel, Jr., Borough Clerk of Fairview; Angelo Rutch, a patrolman; three minors, Richard, Daniel and Sal. Appellant's witnesses were Phillip Prager, a minority stockholder and a clerk of the appellant, and Theresa Polon, a majority stockholder of the appellant.

"Mr. Ebel testified that he personally served a copy of the charge upon the appellant; that on June 20, 1960 he took the minutes of the hearing before the respondent in longhand and that he later prepared a summary of the same.

"Richard testified that he was 17 years of age; that on May 6, 1960, at about 8:00 p.m., he joined Walter, Daniel and two other minors; that they drove to the vicinity of appellant's licensed premises (located on Walker Street between Fourth and Fifth Streets); that Walter parked his car around the corner of the licensed premises on Fifth Street; that he and Walter entered the licensed premises; that he purchased a large six-pack of

Schaefer beer and Walter bought gin, vodka and soda from Phillip Prager, the clerk in charge; that in payment thereof Walter gave Mr. Prager seven or eight dollars; that at no time did anyone in the premises question them about their ages; that Prager placed their individual purchases in two separate bags; that he and Walter then left the premises with the alcoholic beverages, placed them in the trunk of the car and drove to Walter's house where they were later joined by Sal.

"Richard further testified that he is a high-school junior; that he was certain that it was appellant's licensed premises that he had entered because it is located in the immediate vicinity of St. John's Church; that he had consumed three cans of beer; that his companions drank the other alcoholic beverages; that at about 10:00 p.m. he and Walter placed the empty bottles in a paper bag and deposited them in an empty ash can in back of Weigand's tavern; that one of these bottles bore the label of Arpy Inc. Richard also testified that at about 12:00 midnight his father brought him to police headquarters where he met Sal, Daniel and Walter; that he was questioned by Lieutenant Covone; that he had identified Arpy Inc. to the lieutenant as the premises where the alcoholic beverages were obtained and that at about 12:30 a.m. the police had retrieved the empty bottles from the ash can.

"Daniel testified that he is a high-school senior; that on May 6, 1946, at about 7:30 p.m., he met Walter and two other minors in Walter's car; that they planned to purchase alcoholic beverages at appellant's licensed premises; that he and the other minors contributed money to Walter for purchase of the alcoholic beverages; that they drove to Fifth Street where Walter parked his car about 20 feet from the corner of Walker and Fifth Streets (75 yards from the licensed premises); that he walked with Walter and Richard (picked up on their way to Fifth Street) to aforesaid corner; that he observed Walter and Richard emptyhanded enter the licensed premises and emerge therefrom each in possession of a bag; that they returned to Walter's home where he observed that the bags contained beer, gin and vodka, and that later in the evening, while walking in the street, he and Walter were taken to police headquarters by a police officer.

"On cross-examination, Daniel substantially reiterated the pertinent parts of his direct examination and further testified that the next time he saw Walter and Richard after they had entered the licensed premises was when they were walking up the street with the alcoholic beverages.

"Officer Rutch testified that at about 10:15 p.m. on May 6th aforesaid, he brought Walter, Sal and Daniel to police headquarters; that Walter and Richard informed him and Lieutenant Covone that the alcoholic beverages in question were purchased at appellant's licensed premises and that they had deposited the empty bottles in an ash can behind Weigand's tavern on Park Avenue, and that he had retrieved the bottles.

"Sal testified that he is a high-school junior; that at about 7:30 p.m. on May 6, 1960 he gave Walter $2 to purchase liquor; that about 8:00 o'clock in the evening he joined aforementioned minors at Walter's house; that he observed some of the boys carrying packages from Walter's car into his house; that the packages contained gin, vodka and beer; that he had consumed some of the vodka; that about 10:05 p.m., while walking Daniel home, a police officer took him and Daniel to police headquarters.

"Phillip Prager denied making the alleged sales to Walter and Richard and denied they were in the licensed premises on May 6, 1960. Prager further testified that on May 6th aforesaid, he was on duty as a clerk in the licensed premises from about

6:45 p.m. to closing; that on May 6, 1960, at about 8:30 p.m., he had made an $8 sale of gin, vodka and beer to a tall man who wore a 'Van Dyke'; that he had sold alcoholic beverages to this person on previous occasions; that he had refused to sell alcoholic beverages to Walter on prior visits to the licensed premises because of his youthful appearance; that he did not know Walter by name and that he was not identified at the premises by either Walter or Richard as the person who sold them the alcoholic beverages.

"Theresa Polon testified that on numerous occasions she had refused to sell Walter alcoholic beverages because of his extremely youthful appearance and that she was not in the premises on the night of May 6th aforesaid.

"After considering all the evidence herein, the exhibits and oral arguments of both attorneys, I find that respondent's witnesses gave an accurate and truthful account of what transpired in this case and am unable to find any material inconsistencies or defects in their testimony and cannot conceive that they would conspire against the licensee. With respect to that part of the charge based on the sale to Richard, I conclude that the preponderance of the believable evidence presented establishes the guilt of the appellant.

"With respect to that part of the charge alleging that appellant sold alcoholic beverages to Walter, I am of the opinion that the respondent has failed to establish by competent evidence that Walter was a minor.

"With respect to appellant's contention that the penalty imposed by the respondent is excessive, it has always been the policy of this Division that a suspension imposed by the local issuing authority in disciplinary proceedings should not be disturbed unless it has been adequately shown on appeal to have been so manifestly excessive to warrant a reduction thereof. Robinson et al. v. Newark, Bulletin 54, Item 2. The penalty imposed herein, in my opinion, does not appear to be unreasonable or unduly excessive and there is no evidence of any improper motivation on the part of the respondent thereof. Branham v. Harrison, Bulletin 1331, Item 1.

"I recommend that an order be entered reversing the action of the respondent in finding the appellant guilty for selling alcoholic beverages to Walter and affirming their action in finding the appellant guilty for selling alcoholic beverages to Richard.

"I further recommend that an order be entered vacating the order entered on July 13, 1960 and fixing the effective dates of the thirty-five days suspension heretofore imposed by respondent. Cf. Branham v. Harrison, supra."

Pursuant to the provisions of Rule 14 of State Regulation No. 15, the attorney for appellant filed exceptions to the Hearer's Report and written argument thereto. Thereafter said attorney advised me in writing that his client desired to withdraw the exceptions and requested that the suspension be imposed as quickly as possible.

After carefully considering the evidence and exhibits herein, I shall approve the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 2nd day of March 1961,

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 thirty-five-day suspension heretofore imposed by respondent, and stayed during the pendency of this appeal, be restored and reinstated against the license now held by Arpy Inc., for premises 380 Walker Street, Fairview, to commence at 9 a.m. Monday, March 6, 1961, and to terminate at 9 a.m. Monday, April 10, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - FRONCZAK v. GLOUCESTER CITY.

Sophie A. Fronczak, t/a Red Mill,
Appellant,
v.
Common Council of the City of Gloucester City,
Respondent.

On Appeal

CONCLUSIONS and ORDER

David Novack, Esq., Attorney for Appellant.
William E. Hughes, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on November 3, 1960 it suspended appellant's license for a period of one hundred twenty days effective November 14, 1960, after considering a plea of non vult entered to a charge alleging that on August 28, 1960 appellant sold, served and delivered alcoholic beverages at her licensed premises to Harry ---, William ---, George W. ---, Albert ---, Edward ---, Charles ---, Frank ---, George ---, James --- and George ---, all persons under the age of twenty-one years, in violation of Rule 1 of State Regulation No. 20.

"Upon the filing of the appeal, an order was entered on November 10, 1960 staying respondent's order of suspension until further order of the Director. R. S. 33:1-31.

"Appellant, in her petition of appeal, alleges in substance that respondent's action was erroneous in that it was an abuse of its discretion and that the penalty imposed was excessive.

"Respondent, in its answer, contends that the penalty imposed is commensurable with the offense, in view of the number of minors involved.

"At the hearing held herein, the attorneys for both parties stipulated that the action of respondent was based upon the sale of alcoholic beverages to eight minors ranging in ages between 18 and 20 years; that the licensee has no prior adjudicated record; that licensee's barmaid testified before the local board that she had asked the minors for their I.D. cards; that she had not requested any of them to make a written representation of his age; that the minors denied they were requested to display any identification by the barmaid.

"Sophie A. Fronczak, testifying on her own behalf, stated that on June 10, 1960 she became the sole owner of the licensed premises (previously owned by her and her husband); that between November 1959 and June 10, 1960, she was unable to visit the licensed premises because of illness; that during said period of time the patronage of the licensed premises changed from an older to a younger crowd; that she had warned her barmaids not to sell alcoholic beverages to minors; that on the night in question the barmaid on duty was a part-time employee and that she had testified to the same effect as hereinabove before the respondent.

"It is conceded that because of the entry of the confessive plea, the question to be decided is whether, in view of the surrounding circumstances, the suspension imposed by respondent is excessive. The suspension imposed in a local disciplinary proceeding rests in the first instance within the sound discretion of the local issuing authority, and the power of the Director to reduce or modify it will be sparingly exercised and only with the greatest caution. Robinson et al. v. Newark, Bulletin 54, Item 2; Russo v. Lincoln Park, Bulletin 1177, Item 7; Harrison Wine and Liquor Company, Inc. v. Harrison, Bulletin 1296, Item 2.

"I have considered the evidence herein and the oral arguments of both attorneys and their briefs. However, in view of the aforesaid and nothwithstanding the severity of the suspension imposed, I find no basis for reversal or even modification on this appeal. The plea for modification should be made, if at all, to respondent, which may grant relief in the event that the members thereof determine that such action is advisable. Harrison Wine and Liquor Company, Inc. v. Harrison, supra.

"I recommend, therefore, that an order be entered affirming respondent's action and dismissing the appeal, and fixing the effective dates for the suspension imposed by respondent and stayed pending the entry of the order herein."

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

I have carefully considered the evidence and oral argument presented at the hearing of the appeal and the letters in lieu of briefs which were subsequently received from both attorneys and considered by the Hearer in the preparation of his report. I have also carefully considered the exceptions to the Hearer's Report and the written arguments thereto. Admittedly, alcoholic beverages were sold to eight of the ten minors mentioned in the charge and these minors, who were between eighteen and twenty years of age, were permitted to consume alcoholic beverages on the licensed premises. The penalty is severe but, because of the large number of minors involved, I conclude that appellant has not sustained the burden of proof in establishing that the action of respondent constituted an abuse of discretion. Hence I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein. I shall enter an order affirming respondent's action.

Accordingly, it is, on this 6th day of March 1961,

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 120-day suspension heretofore imposed by respondent, and stayed during the pendency of this appeal be

restored and reinstated against appellant's license, for premises 509 South Broadway, Gloucester City, to commence at 2 a.m. Tuesday, March 14, 1961, and to continue in effect until the expiration of said license at midnight June 30, 1961; and it is further

ORDERED that any renewal for the 1961-62 licensing year, or transfer of said license, shall be and remain under suspension until 2 a.m. Wednesday, July 12, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

3. APPELLATE DECISIONS - RENWICK'S v. PRINCETON AND KING'S COURT INCORPORATED.

Renwick's, a corporation of New Jersey, Appellant, v. Mayor and Council of the Borough of Princeton, and King's Court Incorporated, t/a King's Court, Respondents.	ON APPEAL CONCLUSIONS AND ORDER

Elmer M. Matthews, Esq. and William Miller, Esq., Attorneys for Appellant.
John F. McCarthy, Esq., by Peter T. Bacsik, Esq., Attorney for Respondent Mayor and Council.
Ernest S. Glickman, Esq., Attorney for Respondent King's Court, Incorporated.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Appellant appeals from the action of respondent Mayor and Council (hereinafter respondent issuing authority) on May 20, 1960 whereby they denied appellant's application for a plenary retail consumption license for premises 50 Nassau Street and approved an application filed by respondent King's Court Inc. for a plenary retail consumption license for premises 28-30 Witherspoon Street, Borough of Princeton.

"At the hearing held before respondent issuing authority, four of the six councilmen present voted to approve the application of respondent King's Court Inc. and one member voted in opposition thereto.

"The petition of appeal alleges that the action of respondent issuing authority should be reversed and that the license in question should be issued to the appellant for the following reasons:

> '(a) The municipal issuing authority failed to establish any objective standards for passing upon competitive applications for the one available license, and wrongfully invited additional applications before passing upon the application of the appellant which was lawfully pending before it.

(b) The municipal issuing authority failed to give due consideration to the prior claim of the appellant upon the basis of age of its establishment, the nature of its accommodations, the professional qualifications of its management, and the priority of its license application.

(c) The municipal issuing authority failed to give due consideration to the public need and necessity for the license to the appellant.

(d) The denial of appellant's application and the issuance of the license to respondent King's Court, Inc. represented an abuse of discretion by the municipal issuing authority, and the denial to appellant of due process and equal protection of the laws under the state and federal Constitutions.

(e) The municipal issuing authority failed to conduct a hearing or investigation into the representations by the respondent King's Court, Inc. and was improperly influenced and prejudiced against the appellant by written material admitted in the proceedings and placed on record.

(f) The municipal issuing authority failed to conduct a proper investigation into the condition of the premises, financial stability, qualifications of management and personnel of the respondent King's Court, Inc.

(g) The application of the respondent King's Court Inc. was granted in consideration of and with respect to premises not described in the application of that respondent as required by question 7 (a) of the standard application form.

(h) The application of the respondent King's Court Inc. and the action thereon by the respondent municipal issuing authority failed to comply in diverse other respects to the requirements of Title 33 of the Revised Statutes and the Regulations of the Director of Alcoholic Beverage Control issued pursuant thereto.'

"It might be advisable to refer to the events which occurred previous to the approval by respondent issuing authority of the application for a license for respondent King's Court Inc.

"Prior to June 3, 1959 in the Borough of Princeton, the full lawful quota of plenary retail consumption licenses was issued and outstanding. One of these licenses chargeable to the Borough was issued by the Director to Princeton Inn for premises situate partly within the boundaries of the Borough of Princeton and partly within the adjoining limits of the Township of Princeton. The issuing authorities of the said municipalities mutually agreed that the fee for said license was to be apportioned between them.

"Effective June 3, 1959, R.S. 33:1-16 was amended to provide, among other things, that:

'Whenever it shall appear that a building or premises to be licensed is located in more than 1 municipality, whether originally so constructed

> or whether resulting from enlargement or addition to the building or premises, it shall not be necessary to secure more than 1 license of the same class for the building or premises... For the purpose of any statute fixing limits on the number of licenses which may be issued in a municipality, any license issued in compliance with this section should be charged only to the municipality in whose name the same is issued.'

"On July 29, 1959 the appellant filed an application for a plenary retail consumption license and on August 6 and 13, 1959, published notice thereof in The Packet, a newspaper published and circulated in the Borough of Princeton. On August 19, 1959, the Borough Clerk acknowledged receipt of appellant's application and further added: 'Inasmuch as there is no vacant license in the Borough at the present time, I am returning the Renwick check in the amount of $400, and will keep the application on file should a vacancy exist after the Princeton Inn situation is resolved'.

"In response to inquiries whether by virtue of amendment to R.S. 33:1-16 the respondent issuing authority could consider an application for a plenary retail consumption license, the Division, by letter dated December 31, 1959, notified the Borough Clerk that, 'Since the application was granted by the State Director acting in lieu of the Township Committee of the Township of Princeton under R.S. 33:1-20, it would appear that the license is chargeable only to the Township of Princeton insofar as the State Limitation Law (R.S. 33:1-12.14) is concerned...'.

"Appellant readvertised on January 29 and February 5, 1960 in the Princeton Herald its notice of intention to apply for a plenary retail consumption license.

"On March 18, 1960, the respondent King's Court Inc. filed its application for a plenary retail consumption license and on March 31 and April 7, 1960 published notice thereof in The Packet, the newspaper aforementioned.

"On April 5, 1960, the seven applicants for the available license were notified to appear before the respondent issuing authority in the Borough Hall on April 21, 1960, at which time each would be given an opportunity to state the reasons why the license in question should be issued to said applicant.

"On May 20, 1960, the respondent issuing authority adopted a resolution approving the application of respondent King's Court Inc. for a plenary retail consumption license for premises 28-30 Witherspoon Street, Borough of Princeton. The stated reason for its action was:

> 'It is the considered judgment of the Mayor and Council of the Borough of Princeton that the successful applicant King's Court, Inc. among the seven applicants applying for the sole available plenary retail consumption license would most effectively carry out the best interests of the Borough of Princeton with due consideration for the public health, morals and safety.'

"Harold Ostroff (president of appellant corporate-licensee) testified that he has been in the restaurant business for approximately twenty-five years and that since 1951 he has been associated with appellant's establishment; that the restaurant is

located on the principal business street of the Borough and each day is opened at 6:45 a.m. and closed at midnight, during which time breakfasts, luncheons and suppers are served to hundreds of customers respectively; that Princeton University is located across the street from appellant's premises and that directly opposite to said premises, and at an estimated distance of 150 to 200 feet, is a dormitory known as Holder Hall and that quite a few churches are close to Renwick's.

"Robert F. Mooney, Borough Clerk, testified as to the mechanics of the filings of the seven applications for the license and the steps which were taken by the respondent issuing authority with reference thereto. He identified miscellaneous correspondence pertaining to the matter now under consideration between the time of the filing of the applications and the date of the action of the respondent issuing authority in approving the issuance of the license to respondent King's Court Inc.

"Mayor Raymond F. Male testified that although he was the chairman at the meetings when the matter of the issuance of the license was discussed, he did not vote because the vote by members of the Council had not resulted in a tie. Furthermore, Mayor Male stated: 'Council on this matter more than any other since I have been Mayor was confronted with one of those impossible situations where it needed the wisdom of a Solomon, your Honor, to decide what was the best thing to do for the community. I am convinced in my mind that Council deliberated fairly and impartially'. Moreover, the Mayor said that if the vote of the councilmen had resulted in a tie, he would have cast his vote in favor of the application filed by respondent King's Court Inc.

"Councilman Walker testified that he voted in favor of the application filed by respondent King's Court Inc. because he did not wish to see another liquor outlet on Nassau Street and because of 'the proximity of the two churches' to appellant's premises.

"Councilman Coyle testified that he favored appellant to receive the liquor license but in no wise questioned the motives of those who voted to approve the application of respondent King's Court Inc.

"Norman L. Aronson testified that he is president of King's Court Inc. to which the issuance of the liquor license had been approved by respondent issuing authority; that the establishment serves lunches from 11:30 a.m. to 2:30 p.m. and then closes until 5:30 p.m. when it serves dinners until 9:30 p.m., closing usually about midnight.

"Considerable testimony was taken during the hearing of the appeal and I have considered such testimony which appears to be pertinent to the issue to be resolved herein. It is apparent that the members of the respondent issuing authority in their consideration of the matter spend many hours weighing the evidence before the conclusion as to whom the license should be issued had been arrived at by them. It was finally decided that the Borough would be best served by the issuance of the liquor license to respondent King's Court Inc. The mere fact on the prior filing of the application for the license by appellant does not ipso facto entitle such applicant to preferential treatment. Curry v. Margate City, Bulletin 472, Item 7; Giberti v. Franklin Township, Bulletin 150, Item 3.

"It has been a long-established principle governing the Director's function on appeals of an issuing authority's opinion that there is need and necessity for a liquor outlet at a particular location in a municipality and was reasserted by the Director

in the case of Lykosh v. Perth Amboy et al., Bulletin 1295, Item 1, wherein he stated:

> 'The question whether or not there is a need or necessity for a liquor outlet at a particular location is within the sound discretion of the issuing authority. In cases of the kind now under consideration, the Director's function is to determine whether reasonable cause exists for the issuing authority's opinion and, if so, to affirm its action. Curry v. Margate City, Bulletin 460, Item 9; Mulcahy et als. v. Maplewood et al, Bulletin 658, Item 4; Krough's Restaurant, Inc. et als. v. Sparta et al, Bulletin 1258, Item 1.'

"The fact that the refusal to issue the license in question to the appellant may be contrary to its economic interests is not a sufficient reason for setting aside the issuance to respondent King's Court Inc. Knast et al. v. Camden et al., Bulletin 810, Item 2. After fully considering the evidence herein, I am satisfied that in all respects proper consideration was given by the members of the respondent issuing authority before action was taken in the matter. There is absolutely no evidence that any member of the said respondent issuing authority who voted in this matter was improperly motivated.

"The attorney for appellant in the memorandum submitted herein stresses the point that the respondent issuing authority abused its discretion by hearing 'the merits of competing applications in secret, under circumstances such that none of the applicants could hear the presentation of the others, and the public could hear none of them; and that it violated its duty under the statute and regulations in unreasonably delaying action on the Renwick's application which was lawfully pending for as much as ten months and certainly for at least four months'.

"Appellant, as well as the other applicants, appeared before the respondent issuing authority to give reasons why its application should be approved. There is no record that appellant objected to the procedure followed in the matter. Appellant obviously speculated on the ultimate decision of respondent issuing authority in the present appeal and, being unsuccessful, now complains that the methods used by the respondent issuing authority with respect to all the applicants were improper. I conclude that said objection is without merit. I have considered all of the reasons advanced by appellant in its petition of appeal and find that the procedure used in processing the various applications is not subject to criticism.

"I conclude that appellant has failed to sustain the burden of establishing that the action of the respondent issuing authority was arbitrary, unreasonable, an abuse of discretion, or that there was prejudice against appellant on the part of the members thereof. Rule 6 of State Regulation No. 15. I recommend, after careful examination of all of the evidence adduced herein and also of the memoranda of the respective attorneys submitted in this case, that the action of the respondent issuing authority in approving the issuance of the license to respondent King's Court Inc. for the premises in question be affirmed and that the appeal filed herein be dismissed."

Pursuant to the provisions of Rule 14 of State Regulation No. 15, written exceptions to the Hearer's Report and written argument in respect thereto were filed with me by the attorneys for appellant and written answering arguments were filed with me

by the attorneys for the respondents.

Having carefully considered the entire record, including the evidence, exhibits, briefs, Hearer's Report and exceptions and answering arguments pertaining thereto, I concur in the conclusions of the Hearer and adopt them as my conclusions herein. I shall enter an order in accordance with the recommendation.

Accordingly, it is, on this 7th day of March, 1961,

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

WILLIAM HOWE DAVIS
DIRECTOR

4. APPELLATE DECISIONS - MAGNUS v. RIVERDALE.

Robert F. Magnus, trading as R. F. Magnus, Appellant	On Appeal
v.	CONCLUSIONS AND ORDER
Mayor and Council of the Borough of Riverdale, Respondent.	

James F. McGovern, Jr., Esq., Attorney for Appellant
Mills & Doyle, Esqs., by John M. Mills, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Appellant is the owner of a tract of land located partly in the Borough of Riverdale and partly in the Township of Pequannock. It appears from the testimony that, pursuant to the provisions of R.S. 33:1-16, as amended by P.L. 1959, ch. 67, respondent on May 25, 1960, had transferred license C-4 previously held by appellant for the portion of the tract situated in Riverdale to the same premises and the adjoining portion of the tract situated in the Township of Pequannock.

"When appellant filed an application for renewal of said license for the 1960-61 year and described therein his entire tract as the premises to be licensed, respondent, by a resolution dated June 22, 1960, granted his application only as to that portion of the tract situated in Riverdale and denied renewal as to that portion of the tract situated in the Township of Pequannock. Appellant alleges, in substance, that said action was erroneous because (1) there had been no change in the status of the premises between May 25 and June 22, 1960; (2) public need would be served by the granting of the renewal in the form theretofore granted, and (3) the resolution denying renewal was adopted under a misapprehension of the law. Respondent denies said allegations.

"At the hearing herein appellant testified that his entire tract is operated as one enterprise and is known as

Pompton Dale Acres; that 15.96 acres of the tract are located in Riverdale and about 16 acres in Pequannock; that one building is located entirely in the Riverdale portion and that a lake, picnic grove, football field and two buildings (for one of which he has obtained a restaurant license) are located in the Pequannock portion of the tract. Appellant testified that he bought the property thirty years ago with the intention of using this entire piece of land for business use when he retired. I conclude from the evidence that the entire property is intended to be operated as a single unit, despite the fact that a private road crosses part of the property in Pequannock. Re Beisch, Bulletin 81, Item 10.

"On behalf of appellant, Kenneth Snowe (Mayor of Pequannock Township) testified that, in his opinion, the policing of that portion of the tract located in his township would present no insurmountable difficulty to the Pequannock Police Department.

"At the hearing herein Albert Scaletti (Mayor of Riverdale) testified that he did not vote on the resolution. Borough Councilmen Ressland, Horwath, Altemus, Cucci and Gregory testified that they voted in favor of the resolution limiting the licensed premises because of the reasons set forth in said resolution. There was some testimony concerning another resolution prepared by Margaret Doyle (Borough Clerk of Riverdale) and indicating that the members of Council might have misapprehended the meaning of R.S. 33:1-16, as amended, but it does not appear necessary to discuss the contents thereof because said resolution was not adopted. The resolution which was adopted on June 22, 1960, reads as follows:

> 'BE IT RESOLVED, by the Mayor and Council of the Borough of Riverdale, that in the matter of an application by Robert F. Magnus for a Plenary Retail Consumption License, that such a license be granted but limited in the location of premises to be licensed to Lots 2, 3, 5b and 6 in Block 32 in the Borough of Riverdale, New Jersey, and the application be amended to conform to this limitation.
>
> 'The 15.96 acres owned by Mr. Magnus in Riverdale provides ample area for the conduct of his business under a Riverdale license and this acreage should also be sufficient for expansion.
>
> 'We in no way want to give the impression that it is our intention to stifle business in Riverdale. On the contrary we are attempting to provide every opportunity to increase income in Riverdale. Should Mr. Magnus at some future time feel his grounds in Riverdale are not sufficient for the volume of his business, we invite him to reapply to the Council for extension of his license.
>
> 'Difficulties of adequately policing the area are insurmountable due to the large area contained by including property in Pequannock Township. The division of boundaries would also be difficult to determine. These problems are further compounded by the difference in legal hours of opening and closing.
>
> 'We also believe that since the premises in Pequannock Township contains an athletic field that the sale and serving of alcoholic beverages should not be permitted with the attendance and participation of minors at these athletic activities.

'As much as we want to encourange business in Riverdale, so do we want to protect our licenses.'

"There is no doubt that there was no change in the situation between May 25 and June 22, but that fact alone is not dispositive of the issues in the case if, in fact, there were valid reasons for restricting the extent of the licensed premises. However, the reasons set forth in the resolution do not appear sufficient to support respondent's action. If renewal were granted in accordance with the application filed, the alleged difficulties in policing, prohibiting sales to minors and enforcing legal hours in Pequannock Township would be problems for the Pequannock Police Department. The question of determining the boundary line between the two municipalities would not be solved but, perhaps, aggravated by restricting the license to the Riverdale section of the tract. The case entitled Mary Slee Catering Corp. v. Princeton, 31 N.J. Super. 57 (cited in respondent's brief) is not in point.

"After reviewing the evidence, exhibits and briefs filed by the attorneys for both parties, I conclude that the action taken by respondent was unreasonable under the circumstances of this case. It is recommended, therefore, that an order be entered reversing respondent's action and directing respondent to grant a renewal of the license in accordance with the terms of the application, as filed by the appellant."

Pursuant to the provisions of Rule 14 of State Regulation No. 15, the attorneys for respondent filed with me exceptions to the Hearer's Report and written argument thereto, and the attorney for appellant filed written answering argument.

The attorneys for respondent argue that, if respondent's action is reversed, an ultimate result could be that, in a subsequent year, appellant might apply for the license in Pequannock alone, which might result in a loss of business to Riverdale. I find no merit in this point or in the other points mentioned in said exceptions. After carefully considering the evidence, exhibits, briefs, exceptions to Hearer's Report and written arguments thereto, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 7th day of March 1961,

ORDERED that the action of respondent be and the same is hereby reversed, and respondent is directed to issue a renewal of the license in accordance with the terms of the application as filed by the appellant.

WILLIAM HOWE DAVIS
DIRECTOR

5. SEIZURE - FORFEITURE PROCEEDINGS - MOTOR VEHICLES ON PREMISES OF ILLICIT STILL - MOTOR VEHICLE ORDERED FORFEITED - CLAIM OF INNOCENT LIENOR AGAINST MOTOR VEHICLE RECOGNIZED.

In the Matter of the Seizure on November 4, 1960 of a quantity of alcohol, a still, appurtenant equipment and other personal property, a Chevrolet sedan and a Buick sedan seized on Stanley Myslinski's farm, located on Pine Island-Sussex Road, Owens, Vernon Township, in the County of Sussex and State of New Jersey.	)	Case No. 10,448 On Hearing CONCLUSIONS AND ORDER

Robert J. Celley, appearing for General Motors Acceptance Corporation.

I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey to determine whether a Chevrolet sedan and a Buick sedan described in a schedule attached hereto, marked Schedule "A", seized on November 4, 1960 at the Stanley Myslinski farm located on Pine Island-Sussex Road, Owens, Vernon Township, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66 an appearance was entered on behalf of General Motors Acceptance Corporation, which sought recognition of its alleged claim on the Buick sedan. No appearance was made on behalf of the registered owner of said motor vehicle and it was learned that she had not received her actual notice of the hearing. Therefore, a notice was sent to her to appear at a hearing before this Division on January 12, 1961. The said owners failed to appear at the adjourned date.

Reports of ABC agents and other documents in the file presented in evidence with the consent of the claimant disclose the following facts:

As a result of certain information received from the Sussex Station of the New Jersey State Police, ABC agents and State Troopers obtained a search warrant issued by the Magistrate of Vernon Township and proceeded to Myslinski's farm at the above stated address, which consists of approximately 200 acres, on which are located a tenant house and four large barns. Inside the tenant house the raiding party found a still in operation. The equipment was installed in the house from basement to roof with a maze of tubing, vats and columns. The ABC agents confiscated 10 - five-gallon cans of alcohol, as well as the other ingredients used in the manufacture of alcohol. At the time of their arrival at the house, the ABC agents observed a black-two-door Chevrolet sedan and a Buick sedan, which they seized.

A sample of the contents of a bottle was analyzed by the Division chemist and his report shows that it is alcohol and water fit for beverage purposes, in the absence of bichloride of mercury which was added, and has an alcoholic content by volume of 90 percent.

The still was not registered with the Director of the Division of Alcoholic Beverage Control and constitutes unlawful property subject to forfeiture.

The seized alcohol is illicit because of the absence of any tax stamps on any of the containers R.S. 33:1-1(i), R.S. 33:1-88. The still equipment, the ingredients used in the manufacture of the said illicit alcohol and all the personal property contained in said premises were seized and constitute unlawful property and are subject to forfeiture. R.S. 33:1-66(b), R.S. 33:1-66(c) and R.S. 33:1-66(d), R.S. 33:1-66.

General Motors Acceptance Corporation, a corporation, has presented in evidence a conditional sales contract dated April 11, 1960 signed by Violet Scheels, evidencing the conditional sale to her of the Buick sedan in question for the purchase price of $995.00 which contract the finance company holds by assignment. The district sales manager for the finance company office in Newburgh, New York testified that before extending credit to finance the purchase of the motor vehicle and accepting such contract, the finance company received information that Violet Scheels was 32 years of age, resided at a specific New York address for 14 months, was divorced, and was employed as a children's caretaker for about one year, with average weekly earnings of $35.00, and gave the names of several relatives as personal references. The finance company did not check the information nor did they clear the employment information with her employer. They did, however, contact their local credit bureau, requested that they make a credit check on Miss Scheels, and render an oral report. This was done. Basically they relied on the strength of the dealer in whom they had full confidence.

I am satisfied from the evidence presented that the finance company acted in good faith, and did not know or have any reason to suspect that Violet Scheels would be involved in the unlawful manufacture or transportation of alcoholic beverages for which the vehicle would be used. I shall therefore recognize the lien of the General Motors Acceptance Corporation, a corporation, upon the motor vehicle in question to the extent of the balance due, namely, $619.78. It appears that the appraised retail value of the Buick sedan does not exceed the amount of the lien claim and the costs of its seizure and storage. Such motor vehicle will therefore be returned to General Motors Acceptance Corporation upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 17th day of March, 1961, the General Motors Acceptance Corporation pays the costs incurred in the seizure and storage of the Buick sedan described in Schedule "A", such motor vehicle will be returned to it; and it is further

DETERMINED and ORDERED that the Chevrolet sedan, listed in the aforesaid Schedule "A" constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66 and shall be sold at public sale for the use of the State in accordance with State Regulation No. 29 or retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

Dated: March 7, 1961

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

1 - Chevrolet sedan, Serial No. 73727, N.J. Registration FGF497
1 - Buick sedan, Serial No. 117728661, New York Registration CO-6678

6. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE TO MINOR NOLLE PROSSED BECAUSE OF INABILITY TO SUBPOENA MINOR.

In the Matter of Disciplinary Proceedings against

Ann De Vries
t/a Harrison House
888 Main Avenue
Passaic, N. J.,

Holder of Plenary Retail Consumption License C-45, issued by the Board of Commissioners of the City of Passaic, and transferred during the pendency of these proceedings to

896 Main Avenue
Passaic, N. J.

CONCLUSIONS

AND

ORDER

Abraham Feltman, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On December 8, 1960, a charge was served on defendant alleging that on Friday night December 2, 1960, and early on the morning of December 3, 1960, she sold and permitted the sale of alcoholic beverages to a minor (age 18) and permitted the consumption of the alcoholic beverages by said minor on her licensed premises. On December 15 defendant entered a plea of not guilty to said charge.

The case was scheduled to be heard on January 3, 1961, at which time it was adjourned to January 23 and, on said date, further adjourned to February 20. Investigation discloses that the alleged minor is a resident of Pennsylvania and that she was temporarily in New Jersey when the alleged violation occurred. Despite numerous efforts, ABC agents have been unable to serve her in New Jersey with a subpoena to appear. At the hearing held on February 20, 1961, the attorney appearing for the Division moved to nolle pros the charge herein. Under the circumstances I shall grant the motion. Re Pine Hill Lodge, Inc., Bulletin 1315, Item 6.

Accordingly, it is, on this 9th day of March 1961,

ORDERED that the charge herein be and the same is nolle prossed.

William Howe Davis
Director