

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

August 23, 1961

BULLETIN 1402

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

BULLETIN 1402

August 23, 1961

1. APPELLATE DECISIONS - FRIEDLAND v. NEWARK (CASE NO. 2).

Charles Friedland,	(Case #2))	
	Appellant,)	ON APPEAL
	v.)	CONCLUSIONS
Municipal Board of Alcoholic)	AND
Beverage Control of the City of)	ORDER
Newark,)	
	Respondent.)	

Samuel Rosenthal, Esq., Attorney for Appellant.
Vincent P. Torppey, Esq., by Richard Walsh, Esq.,
Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board which, by resolution dated February 15, 1961, unanimously denied appellant's application for renewal of his Plenary Retail Consumption License C-172, for the 1960-61 licensing year, for premises 293 Broadway and 71 Oriental Street, Newark.

"Upon the filing of the appeal, an order was entered by the Director on February 10, 1961 extending the term of appellant's 1959-60 license until further order herein. Rule 12 of State Regulation No. 15.

"In his petition of appeal, appellant alleges that the action of respondent Board was erroneous in that 'it has not set forth sufficient reasons for its refusal to renew the application in the minutes of the meeting, in violation of the ordinance of the City of Newark; the respondent failed to exercise sound discretion in refusing to renew the license; the denial of the application is unreasonable, unwarranted and capricious and the punishment imposed thereby is excessive and appellant has already been punished for the prior violations charged to him'.

"Respondent Board, in its answer, denies appellant's allegations and contends that 'the grounds upon which the issuing authority made its decision were based upon the factual testimony before the Board, from which it, in its sound discretion, concluded that the penalty imposed substantiated such action'.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15 and, when the matter came on for hearing, the transcript of the proceedings before respondent Board was received in evidence pursuant to Rule 8 of said Regulation.

"It appears from the records of the Division that on June 28, 1960 respondent Board denied appellant's application for renewal of his 1960-61 license for the aforesaid premises; that appellant appealed the Board's action and that the Director, having determined

that the Board had not complied with the provisions of Section 3.35 of the Revised Ordinances of Newark, entered an order on November 15, 1960 remanding the matter to respondent Board to schedule a hearing and to proceed in accordance with the provisions of the aforesaid Section of said Ordinances. See Friedland v. Newark, Bulletin 1371, Item 4.

"Complying with the Director's order, respondent Board scheduled a hearing for February 8, 1961 and the testimony adduced thereat is set forth in the transcript received in evidence on the appeal herein.

"It appears from the transcript that Robert Brown, Secretary of respondent Board, and Captain Lawrence Pluck, commanding the Second Police Precinct in which appellant's licensed premises are located, were called as witnesses for the issuing authority and that Edward A. Hester, social case worker, Henry J. Dillon and John Owens, electricians, were called as witnesses for the licensee. Charles Friedland testified on his own behalf.

"The testimony of Robert Brown shows that Charles Friedland entered a plea of non vult to charges dated February 8, 1960 alleging the sale of 'package goods' on Sundays, August 5, November 15, and December 6, 1959; that the licensee was adjudged guilty of the violations and that on March 16, 1960 his license was suspended for a period of seventy-five days.

"Captain Pluck testified that he disapproved Friedland's application for renewal of his license because the three violations of which he was convicted occurred during the previous licensing year. On cross-examination Captain Pluck testified that his investigation showed nothing derogatory about the licensed premises and that he would have approved the application for renewal if there had been only one conviction.

"Mr. Hester testified that he has frequented the licensed premises for a period of twenty years or more; that it is a respectable tavern; that for thirty years he has known the licensee, whose reputation as a law-abiding citizen is 'very good'. On cross-examination, he maintained that despite the violations of which the licensee was convicted, his opinion of him was the same and that, 'I still think that he is okay to run the tavern'.

"Mr. Dillon testified that he has visited the licensed premises once or twice a week for about twenty years; that he has known the licensee for forty years; that the licensee owns the building housing the licensed premises; that he also operates a drug store and conducts a butcher business and that about a year ago he became actively engaged in the tavern business. He testified further that the tavern 'has been run fine' and that Mr. Friedland has an 'excellent character'. On cross-examination he testified that notwithstanding the licensee's conviction of the violations, he still considers him a law-abiding citizen, 'I call him a real man' qualified to run the tavern.

"Mr. Owens testified that he has known Mr. Friedland for forty years; that he has been familiar with the tavern since 'prohibition times' when Mr. Friedland became the owner; that he knew Mr. Friedland operated a butcher shop next door; that the tavern was operated in a respectable manner; that he knew the licensee had been convicted of three Sunday violations and that he still considers him to be a law-abiding citizen.

"Mr. Friedland testified that he is 'going on to 74 years old'; that he owned the tavern since repeal; that he personally never operated the business until after his bartender died about a year or fifteen months ago; that about twelve years ago he sold the butcher store and about fifteen months ago he took over a drug store; that he was managing the tavern when the first violation occurred; that if he had been punished for that violation, the others wouldn't have occurred; that he thought 'they would let me get away with the second violation'; that a neighbor said somebody was sick and he sold him a pint of whiskey and an inspector was there; that he was not familiar with the rules and regulations about operating a tavern and that he now knows the rules and that no violations will occur again. On cross-examination, he was asked if he had made any effort to get out of the business and he replied, 'Yes, I will sell the business and the building. I will sell it. My children bother me not to stay there any more. Even my nephews holler at me to get out of there right away'.

"The chairman of the Board then inquired of the licensee's attorney if an attempt were being made to sell the establishment and was told, 'Yes, very actively'. The Board then reserved its decision and on February 15, 1961 its members unanimously voted to deny the renewal of appellant's license.

"No additional testimony was adduced at the hearing on appeal. In lieu thereof, appellant's attorney summarized the facts of the case and argued that appellant had but one prior conviction which embraced the three violations and that if such be considered a fact, the license should be renewed since appellant's application would then meet with the approval of Captain Pluck, upon whose recommendation respondent Board relied.

"Sound control of the liquor traffic requires that issuing authorities have ample right to deny a renewal to a licensee guilty of misconduct even though he has already suffered suspension for that misconduct (Haino v. Newark, Bulletin 352, Item 4; Lipman v. Newark, Bulletin 356, Item 6), and appellant's contention that the seventy-five day penalty imposed for the three violations constitutes one conviction has no merit. Each violation was committed on a different date. Re Club Rainbow Inc., Bulletin 1269, Item 4.

"I have carefully considered the facts and circumstances herein and the established principles applicable thereto, and while it is true that an issuing authority is not required to grant a renewal subject to a condition that the applicant transfer the license to another and qualified person (Nordco, Inc. v. Division of Alcoholic Beverage Control and Newark, 43 N.J. Super. 277), nevertheless, under all the facts in this case, I recommend that an order be entered reversing respondent's action but that the reversal be a modified one requiring respondent to renew appellant's license for the 1960-61 licensing year subject to the express condition that the license be transferred to another and qualified person within ninety days of the date of said order. See Florence Methodist Church et als. v. Florence and Christy, Bulletin 1095, Item 9; Bulletin 1106, Item 7; Bulletin 1111, Item 3; and New Town Tavern, Inc. v. Pennsauken, Bulletin 1098, Item 2."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15. However, there is one matter respecting appellant's conviction by the local board which should be clarified. Captain Pluck who testified that he would have recommended renewal of the license if there had been one conviction against the appellant rather than three (as he incorrectly assumed) was laboring under a misapprehension that

appellant had been convicted three time of liquor law violations during the 1959-60 licensing year, whereas, in fact, appellant had been convicted but once for three separate violations which occurred during that period.

In addition, I am satisfied from the following colloquy which ensued at the conclusion of the hearing before respondent between a member of the Board and appellant's attorney, that the Board might well have renewed the license in question subject to a condition that appellant dispose of the same, had the Board not doubted its legal right to impose such condition:

"Commissioner Clement: Let me ask you this question?

Mr. Rosenthal: Yes.

Commissioner Clement: You indicated a few minutes ago that there was some effort being made to get him out of this business if by any chance this Board did conclude that his license could be renewed with a stipulation as to a time limitation that he would be given to get out of the business?

Mr. Rosenthal: Yes.

Commissioner Clement: What would be your reaction to that?

Mr. Rosenthal: I would say that that would be all right if the time limitation wasn't too short. By that I mean that if you gave us just thirty days and that if we don't have a purchaser with in the thirty days, then that would be disastrous to us. And then that would put us in a poorer bargaining position.

Commissioner Cerefice: I don't think the law would permit us to renew this license with a time limitation. We either renew it or don't renew it. Counsel will bear me out on that.

Commissioner Clement: Then that clears it up in my mind."

The Director has heretofore asserted the right to impose such conditions upon the renewal or suspension of a license (See Bulletins supra). In similar cases pending before a local issuing authority, said authority has the same right, although, as set forth in the Nordco case, it is not required to renew subject to such conditions.

On my own motion, I called for oral argument at which time the attorney for the Municipal Board of Alcoholic Beverage Control of the City of Newark, Respondent, informed me that he was authorized to state that the local board had no objection to an approval of the Hearer's Report upon the condition stated. Under all the circumstances of this case, the Hearer's Report is approved and his recommendation adopted.

Accordingly, it is, on this 14th day of June 1961,

ORDERED that the action of respondent Board be and the same is hereby reversed but that the reversal be a modified one requiring respondent to renew appellant's license for the 1960-61 licensing year subject to the condition that the license or any renewal thereof be transferred to another and qualified person within ninety (90) days of the date of this Order.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - PILGRIM LIQUOR PLAZA, INC. v. VERONA.

Pilgrim Liquor Plaza, Inc.,)
Appellant,)
v.)
Mayor and Council of the)
Borough of Verona,)
Respondent.)

On Appeal

CONCLUSIONS AND ORDER

Newton H. Porter, Jr., Esq., Attorney for Appellant.
Fred G. Stickel, III, Esq., Attorney for Respondent.
Brass & Brass, Esqs., by Leonard Brass, Esq., Attorneys for Objectors.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby it denied an application filed by appellant to transfer a plenary retail consumption license from Thomas Cerra, Sr., to appellant and from premises 411 Bloomfield Avenue to premises being constructed at 265-331 Pompton Avenue, Verona. The distance between the two premises is approximately one and one-half miles.

"At its regular meeting held on December 20, 1960, the Council by unanimous vote of the five councilmen present at said meeting rejected the resolution to approve the application for the said transfer for the reasons as stated by Councilman McKinley:

'*** there's a tavern across the street, it serves the purpose in that area, and I don't feel a tavern should be situated in a shopping center where many children will be frequenting.'

"The petition of appeal alleges in paragraph 3 thereof that the respondent denied the application for the following reasons:

'That there was a tavern duly licensed across the street or in the immediate vicinity of the proposed new location which is situate in an adjoining Municipality.'

"The answer admits that the application for transfer was denied on December 20, 1960, but denies the remaining allegations in paragraph 3 of the petition. The answer sets up affirmative defenses which can be summarized as follows:

1. Respondent acted with discretion under the authority of Title 33 of the Revised Statutes of New Jersey in denying said application;
2. In the exercise of such authority and discretion, respondent acted reasonably and properly in light of the circumstances developed at the hearing of said application.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15 and, when the matter came on for hearing, a copy of the proceedings before respondent was received in evidence, and additional testimony was adduced by appellant pursuant to Rule 8 of said Regulation.

"At the hearing herein the appellant first called Fred Nussbaum (a real estate broker) who testified as to the physical lay-out of this proposed shopping center on which appellant intends to locate his operation as a holder of a retail consumption license. Mr. Nussbaum testified that there would be adequate parking facilities which will serve not only the licensee but the supermarket and the other stores of the center.

"Joel Blenden (president of the appellant corporation) then testified that he proposed to build a tavern with a bar geared to the consumption of alcoholic beverages on the premises rather than emphasizing the sale of package goods.

"Edgar D. Coffin (Chief of Police of Verona) was then called as a witness by appellant and he testified that there is another tavern directly across the street from the proposed location of appellant's tavern. The other tavern is located in Cedar Grove, but Pompton Avenue is the dividing line between Verona and Cedar Grove at this point so that, while the other tavern is in another municipality, it faces the location of the proposed tavern. The Chief, on cross-examination and when called as a witness by the respondent, testified that he made an investigation of this application for a transfer prior to the action of the respondent in accordance with Section 3H of the local ordinance concerning the sale of alcoholic beverages.

"In furtherance of the directive of that ordinance, the Chief reported to Councilman Walter McKinley (the Police Committee Chairman) that he had made such an investigation and that, in his opinion, a transfer of the license to the proposed location was undesirable because it would present a very difficult policing problem. He felt that there would be accidents in the parking lot because of excessive drinking on the part of tavern patrons; that the tavern hours, which are longer than the hours of the other retail stores, would necessitate closer supervision and greater police duty; that the fact that the tavern is set back 300 to 400 feet from the curb would present another difficult police problem, particularly during the night and on Sunday when the other stores were closed. He felt that, because of the location of the business, it takes on the appearance of an isolated entity at the far end of the Borough which presents a peculiar policing problem. The Chief further testified that in his opinion it would be undesirable for a 'C' license to be issued or transferred to a location where there was a supermarket in which women and children constitute the greater percentage of patrons and where there is intermingled parking in the parking lot. He further testified that in his opinion this area is sufficiently served by the existing tavern.

"Mayor Willard E. Dodd testified on behalf of respondent that there was considerable opposition from persons who reside in

the immediate vicinity of the proposed premises. He stated that in his opinion this area is adequately serviced by the existing tavern, and that the proposed location was not a proper place for the introduction of a tavern because it is located among 'a number of stores that were going to be patronized by a large number of women and children.' He emphasized that, while as Mayor, he did not have the power to vote except in the event of a tie, he would have voted against the transfer.

"Walter D. McKinley (councilman, who is also Chairman of the Police Committee) testified that he opposed the transfer for the reasons that the proposed location was set back too far from normal travel for adequate police supervision and protection; that the area of a shopping center should not have a tavern in it where there are going to be women and children, and that the area was already adequately serviced by an existing tavern. Other witnesses called by respondent expressed the sentiment of residents and other merchants in opposition to the proposed transfer generally for the reason that it would introduce this type of operation in one of the best residential sections of Verona; that it would be deleterious to the welfare of women and school children, and that it was both socially undesirable and not needed in an area already adequately serviced.

"A transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. If denied on a reasonable ground, 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; D'Alessandro v. Parsippany-Troy Hills, Bulletin 1333, Item 1. See also Biscamp v. Teaneck, 5 N.J. Super. 172 (App.Div. 1949).

"The number of licenses which should be permitted in any given section of a municipality is a matter to be determined in the sound discretion of the local issuing authority. In the instant case the issuing authority acted on the additional grounds that a difficult policing problem would arise and that it was socially undesirable in view of the large number of women and children who would be visiting that particular area. The Director's function on appeal is merely to determine whether reasonable cause exists for the issuing authority's opinion and, if so, to affirm its action irrespective of his personal views. Rafalowski v. Trenton, Bulletin 155, Item 8; Larijon, Inc. v. Atlantic City, Bulletin 1306, Item 1; Corff's Inc. v. Glen Rock, Bulletin 1300, Item 1.

"After reviewing the testimony and the exhibits herein, I find that there is sufficient evidence to support respondent's findings that the area to which appellant seeks to transfer the license is sufficiently serviced; that it would be socially undesirable, and that a difficult policing problem would be created. I further find that no evidence was adduced which would indicate that respondent's action was arbitrary, unreasonable, erroneous or improperly motivated, although none of these reasons was affirmatively suggested as a basis of appeal by appellant. I conclude, therefore, that the appellant has failed to bear the burden of proof in establishing that respondent's action was erroneous, and I recommend that an order be entered affirming respondent's action and dismissing the appeal."

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

Having carefully considered the evidence, exhibits and Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 15th day of June 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.

WILLIAM HOWE DAVIS
DIRECTOR

3. APPELLATE DECISIONS - KELLY ET ALS. v. NEW HANOVER AND MCGUIRE SHOPPING CENTER, INC.

Katherine E. Kelly, Marcel)
Nissim, and the South Jersey)
Retail Liquor Store Association,)
Appellants,)

ON APPEAL

O R D E R

v.)

Township Committee of the)
Township of New Hanover, and)
McGuire Shopping Center, Inc.,)
Respondents.)

Richman and Berry, Esqs., by Grover C. Richman, Jr., Esq.,
Attorneys for Appellants
Parker, McCay & Criscuolo, Esqs., by Robert W. Criscuolo, Esq.,
Attorneys for Respondent Township
Committee
Frank M. Lario, Esq., Attorney for Respondent McGuire Shopping
Center, Inc.

BY THE DIRECTOR:

This is an appeal from the action of the respondent Township Committee on December 28, 1960, whereby it granted applications for the issuance of C and D licenses to respondent McGuire Shopping Center, Inc. for premises to be located on the Wrightstown-Cookstown Road, New Hanover Township, Burlington County, subject to completion of buildings in accordance with plans and specifications filed with the applications.

The appeal herein was hear on May 3, 1961, and a continued hearing was scheduled to be held on May 22, 1961. At the continued hearing the attorney representing the respondent Township Committee introduced into evidence a statement to the said Township Committee, signed by the respondent McGuire Shopping Center, Inc., which notified the Township that said respondent does thereby surrender any right to have said licenses issued pursuant to said resolution; that at a special meeting convened by the said respondent Township Committee on May 19, 1961, it adopted a resolution withdrawing its previous authorization; that he represents counsel for respondent McGuire Shopping Center, Inc., who has authorized him to join in this application to have the appeal dismissed. No reason appearing to the contrary,

It is, on this 14th day of June 1961,

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

WILLIAM HOWE DAVIS
DIRECTOR.

- 4. DISCIPLINARY PROCEEDINGS - HOSTESSES - UNQUALIFIED EMPLOYEES - LICENSEE INVOLVED IN PRIOR VIOLATIONS BY ANOTHER LICENSEE - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Frank Sherry)
344 Bergen Blvd.)
Fairview, New Jersey,)

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-21, issued by the Mayor and Council of the Borough of Fairview.)

ORDER

Theodore Cohen, 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 (1) he permitted hostess activity on his licensed premises, in violation of Rule 22 of State Regulation No. 20, and (2) he knowingly employed unqualified persons thereon, in violation of Rule 4 of State Regulation No. 13.

On Friday, April 14, 1961, between 12:15 and 2:30 a.m., two ABC agents, while in defendant's licensed premises, observed male patrons purchase drinks for Marie (a vocalist) and Camielle (the barmaid). During this visit at about 1:30 a.m. Camielle, Marie and Gene (a male pianist) accepted drinks at the expense of the agents.

On Saturday, April 22, 1961, at about 10:20 p.m., the same agents returned to the premises and observed four female entertainers and the barmaid consuming numerous drinks of alcoholic beverages which were being paid for by a male patron. The following morning between 1:00 and 1:15 a.m. the agents also observed Camielle and one of the aforesaid entertainers accept drinks from other male patrons.

On Friday, April 28, 1961, at about 8:50 p.m., the agents made a third visit to the premises and observed one of the female entertainers accept a drink from two different patrons. Between 10:15 and 11:00 p.m., two of the female entertainers consumed drinks at the expense of the agents, following which the agents identified themselves to the two entertainers and the licensee who was present.

Upon questioning by the agents, the licensee admitted the girls accepted drinks from male patrons, but believed it was not a violation if the girls did not solicit the drinks. The rule clearly and specifically prohibits a licensee from permitting any female employee to accept any food or beverage, alcoholic or otherwise, at the expense of or as a gift from any customer or patron.

The investigation further discloses that two of the aforesaid entertainers (Lily and Eugene) were unqualified non-resident employees.

By way of mitigation counsel for the defendant has submitted a statement requesting that I deal leniently with the licensee. I have read his letter and the file in the case, and find no mitigating circumstances except that defendant may have had some reason to believe that Eugene (one of the entertainers) was a resident of New Jersey. I have also examined the files of three prior cases wherein similar and dissimilar violations are reported involving Walter Sherry (predecessor and brother of Frank Sherry) while Frank Sherry was employed as manager in the licensed premises. In the first of these three cases it appears that Frank Sherry was in the licensed premises when the violations took place. In the second one it does not appear that Frank Sherry was present when the violation took place, and in the third one it appears that he was present at the premises when the violation occurred.

Defendant has no prior adjudicated record. However, when referring to the aforesaid convictions more specifically, it appears that Frank Sherry (licensee herein) was the manager of the licensed premises in question when the license held by Walter Sherry was suspended by me effective June 23, 1958, for sixty days for obscene language, indecent entertainment, hostess activities and "hours" violations (Re Sherry, Bulletin 1236, Item 3); that during the investigation of said violations (on January 26, 1958), when the agents identified themselves and informed Frank and Walter Sherry of aforesaid violations, Frank did most of the talking and stated, among other things, that they permitted their female employees to accept drinks from patrons because they believed it was not a violation if the girls did not "hustle" the drinks. It further appears that, effective September 12, 1960, I suspended the same license for thirty days for an "hours" violation (Re Sherry, Bulletin 1358, Item 5); that at the time of said violation (Sunday, April 3, 1960 between 4 and 4:25 a.m.) Frank Sherry was in the licensed premises as its manager and that on June 28, 1960, during the pendency of said proceedings, Walter transferred the license to Frank.

The usual suspension by this Division for the violations charged herein is twenty-five days. Re The Holly Club, Inc., Bulletin 1232, Item 2. Under all the circumstances in this case, I shall suspend the defendant's license for forty days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 12th day of June 1961,

ORDERED that Plenary Retail Consumption License C-21, issued by the Mayor and Council of the Borough of Fairview to Frank Sherry, for premises 344 Bergen Blvd., Fairview, be and the same is hereby suspended for the balance of its term, effective 3:00 a.m., Tuesday, June 20, 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 3:00 a.m., Tuesday, July 25, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - GAMBLING - VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against John J. Smith, Inc. 304 Monmouth Street Jersey City 2, New Jersey, Holder of Plenary Retail Consumption License C-435, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS AND ORDER

Defendant-licensee, by John J. Smith, President Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On April 21, 28 and May 5, 1961, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the playing of pool games (on the first two above mentioned dates) and card games (on all said dates) for stakes of money; in violation of Rule 7 of State Regulation No. 20. "2. On Friday, May 5, 1961 at about 11:00 P.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a pint bottle of Calvert Reserve Blended Whiskey, at retail, in its original container for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverages in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38."

An ABC agent visited defendant's licensed premises on three successive Friday evenings -- April 21, April 28 and May 5, 1961.

On April 21 and April 28 the agent observed patrons playing games of pool for stakes of from one to five dollars a game and various patrons betting on said games. He also observed four men sitting at the front section of the bar playing cards for small sums of money, with cash on the bar in front of each person, and the bartender (subsequently identified as William Hine) participating in these card games.

On May 5, 1961, the agent observed four men sitting at the front section of the bar playing cards for money with cash on the bar in front of each of them, with dollar-bills and coins openly passed to the apparent winner of the game, and with no attempt made by anyone connected with the licensed premises to put a stop to this gambling. On this evening of May 5, at 10:50 p.m., the agent also was present when said bartender sold a quart bottle of beer to an unidentified person for off-premises consumption. At 11 p.m. the agent purchased from this bartender a pint bottle of Calvert Reserve Whiskey. The agent then left the premises, immediately returned with another ABC agent and they identified themselves to the bartender who had made the sale. The bartender verbally admitted the sale.

Defendant has no prior adjudicated record. I shall suspend its license on Charge 1 for fifteen days, the minimum penalty imposed for permitting on licensed premises gambling of the kind in question for substantial sums where an employee of the defendant participated in the game. Re Cioban, Bulletin 1336, Item 9. To this shall be added fifteen days which is the minimum suspension period for the violation set forth in Charge 2 (Re McHenry, Bulletin 1362, Item 3), making a total of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 14th day of June 1961,

ORDERED that plenary retail consumption license C-435, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to John J. Smith, Inc., for premises 304 Monmouth Street, Jersey City, be and the same is hereby suspended for the balance of its term, effective at 2 a.m. Monday, June 26, 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. Friday, July 21, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
Barkey's Bar & Grill, Inc.
420-422 Ocean Avenue
Jersey City 5, New Jersey
Holder of Plenary Retail Consumption License C-59, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS
AND
ORDER

Defendant-licensee, by Anthony Bartkewicz, President.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On April 29, May 3, 6 and 13, 1961, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in lotteries (a 'horse race pool' on the first mentioned date and 'numbers games' on the last three mentioned dates); in violation of Rule 7 of State Regulation No. 20.
- "2. On April 29, May 3, 6 and 13, 1961, you allowed, permitted and suffered tickets and participation rights in lotteries of kind and on dates as aforesaid, to be sold and offered for sale, in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

On Saturday, April 29, 1961, at about 4:00 p.m., Peter Halaska, a patron, sold chances on a horse race to be televised at 5:30 p.m., at one dollar each to two ABC agents and patrons at the licensed premises. The chances were drawn from a cardboard container in the possession of Anthony Bartkewicz (president of the corporate-licensee) behind the bar. At about 5:00 p.m. the agents observed Halaska pay the winner of a pool in a horse race which had been televised at 4:30 p.m. of that day.

On May 3, 1961 the agents returned to the premises and heard an unidentified patron and Joseph T. Hanley, the bartender, respectively, place "numbers" bets over the telephone, following which the bartender handed the receiver to one of the agents who similarly placed a fifty-cent "numbers" bet. Thereafter, the agent deposited the fifty cents with the bartender to cover his bet.

On May 6 and May 13, 1961, Halaska, in the presence of the bartender, accepted "numbers" bets from the agents and patrons in the licensed premises. On May 13th aforesaid, as prearranged, local police, accompanied by other ABC agents, came into the licensed premises and found a slip of paper bearing 141 "numbers" bets (including those played by the agents) and \$33 in cash (including three one-dollar bills which had been marked by the agents) in Halaska's possession.

Underneath the back bar the agents found a container in which there was a sheet of paper bearing the names of patrons and the horses they had drawn in a pool for a recent horse race.

Defendant has a prior adjudicated record. Effective May 21, 1956, the Director suspended the defendant's license for ten days for an "hours" violation. Re Barkey's Bar & Grill, Inc., Bulletin 1119, Item 8. The minimum suspension in cases of this kind when a licensee or employee is involved is twenty-five days. Re Gavenas, Bulletin 1374, Item 3. However, since the aforesaid prior dissimilar violation occurred within a five-year period from the effective date of the prior suspension (May 21, 1956 to April 29, 1961), an additional five-day penalty will be added, making a total suspension of thirty days. Re Vander Henne, Bulletin 1200, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 19th day of June 1961,

ORDERED that Plenary Retail Consumption License C-59, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Barkey's Bar & Grill, Inc., for premises 420-422 Ocean Avenue, Jersey City, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m., Monday, June 26, 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 2:00 a.m., Friday, July 21, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING SUSPENSION PREVIOUSLY IMPOSED.

In the Matter of Disciplinary Proceedings against
 Barkey's Bar and Grill, Inc.
 420-422 Ocean Avenue
 Jersey City 5, New Jersey,
 Holder of Plenary Retail Consumption License C-59, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

O R D E R

BY THE DIRECTOR:

An order having been entered on June 19, 1961, suspending defendant's license and any renewal thereof for twenty-five days effective at 2 a.m. Monday, June 26, 1961; and

Application having been made to me by Anthony Bartkewicz, president of defendant corporation, for postponement of said suspension because prior thereto defendant had made arrangement for twelve affairs to be held on the licensed premises between June 29, 1961, and July 30, 1961, and defendant's appointment book having been exhibited to me, from which I am satisfied that said affairs were previously scheduled and that numerous innocent persons would be inconvenienced by a denial of the requested postponement;

It is, on this 22nd day of June 1961,

ORDERED that the suspension of twenty-five days, instead of commencing at 2 a.m. June 26, 1961, shall, in lieu thereof, commence, as to any renewal of defendant's license, at 2 a.m. Monday, July 31, 1961, and terminate at 2 a.m. Friday, August 25, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALES ON ELECTION DAY - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 Livingston Tavern, Inc.
 t/a Livingston Tavern
 909 Livingston Avenue
 North Brunswick Township
 PO New Brunswick, New Jersey,
 Holder of Plenary Retail Consumption License C-12, issued by the Township Committee of North Brunswick Township.

CONCLUSIONS
 AND
 ORDER

 Defendant-licensee, by Gertrude Tamburino, President and Treasurer Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on Tuesday, April 18, 1961, while the polls were open for voting on Primary Election Day, it sold and permitted the consumption of alcoholic beverages on its licensed premises, in violation of Rule 2 of State Regulation No. 20.

Defendant has a prior adjudicated record. Effective January 7, 1956, its license was suspended by the local issuing authority for six days for sale in violation of Rule 1 of State Regulation No. 38. I have considered the letter submitted by the president of defendant corporation setting forth alleged mitigating circumstances. Despite the prior record, I shall, under the facts in this case, suspend defendant's license for fifteen days, the minimum period for this type of violation. Re Patron and Wetzel, Bulletin 1024, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 15th day of June 1961,

ORDERED that plenary retail consumption license C-12, issued by the Township Committee of North Brunswick Township to Livingston Tavern, Inc., t/a Livingston Tavern, for premises 909 Livingston Avenue, North Brunswick Township, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Tuesday, June 20, 1961, and terminating at 2 a.m. Friday, June 30, 1961.

WILLIAM HOWE DAVIS
 DIRECTOR

9. AUTOMATIC SUSPENSION - LICENSE PREVIOUSLY SUSPENDED BY LOCAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED.

Auto. Susp. #197-)
 In the Matter of a Petition)
 to Lift the Automatic Suspension)
 of Plenary Retail Distribution)
 License D-7, issued by the Mayor) On Petition
 and Council of the Borough of)
 East Paterson to) O R D E R

 Alexander Milan)
 423 Market Street)
 East Paterson, New Jersey.)
 -----)

Donato & Donato, Esqs., Attorneys for Petitioner

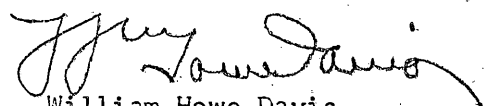
BY THE DIRECTOR:

It appears from the petition filed herein that on June 12, 1961, Alexander Milan, petitioner herein, was fined \$50 and costs in the Municipal Court of the Borough of East Paterson after he had been found guilty of a charge alleging that he sold alcoholic beverages to a minor, in violation of R.S. 33:1-77. Said conviction resulted in the automatic suspension of his license for the balance of its term. R.S. 33:1-31.1. The license has not been picked up because of the pendency of this proceeding.

It further appears from the petition and the records of this Division that the local issuing authority suspended petitioner's license for ten days, less five for the plea, after he pleaded non vult in disciplinary proceedings alleging sale to the same minor. Said suspension was effective from 7 a.m. May 1, 1961, to 10 p.m. May 5, 1961. The disciplinary proceedings were instituted by the local issuing authority on its own initiative and, the suspension imposed therein having been served, I shall grant the request to lift the automatic suspension.

Accordingly, it is, on this 16th day of June 1961,

ORDERED that the statutory automatic suspension of said license D-7 be and the same is hereby lifted, and said license is restored to full force and operation, effective immediately.


 William Howe Davis
 Director