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

BULLETIN 1103 MARCH 21, 1956.

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ITEM

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

BULLETIN 1103 MARCH 21, 1956.

1. APPELLATE DECISIONS - CHICKEN BARN, INC. v. TOTOWA.

CHICKEN BARN, INC.,
Appellant,
-vs-
MAYOR AND COUNCIL OF THE BOROUGH OF TOTOWA,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Arnold M. Smith and Howard I. Schlesinger, Esqs., Attorneys for Appellant.
Boyle & Boyle, Esqs., by Robert Boyle III, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of the respondent Mayor and Council in denying appellant's request for permission to enlarge on its licensed premises facilities for display of alcoholic beverages in original containers to be sold for off-premises consumption.

After the Petition of Appeal and the Answer thereto had been filed by the appellant and the respondent, respectively, a stipulation, dated October 24, 1955, signed by the respective attorneys representing the parties to this appeal, was received at this Division. The stipulation containing an agreed statement of facts and restricting the issue to be decided herein, reads as follows:

FACTS

1. The appellant is the bona fide holder of a certain plenary retail consumption license heretofore issued to it by the respondent for its premises at N. J. Route 46 and Riverview Drive, Totowa, New Jersey for the period ending June 30, 1956.

2. On July 29, 1955, appellant filed with respondent an application for the transfer of its aforesaid license from place to place to expire on June 30, 1956 at its aforesaid premises and deposited therewith the appropriate fee.

3. The said application of the appellant was in proper order and the same had been properly advertised as required.

4. On September 20, 1955, respondent denied and disapproved that portion of said application which related to the bar and the areas designated for the sale and display for sale of alcoholic beverages in original containers for off the premises consumption and a copy of the resolution adopted by the respondent on September 20, 1955 pertaining thereto has been annexed to the Petition of Appeal in this cause.

5. On September 27, 1955, the respondent adopted a resolution, a true copy of which is annexed hereto and made a part hereof and by virtue of which said resolution the respondent approved the herein mentioned application of the appellant only as to the enlargement and expansion of the restaurant facilities and on condition that the bar and package display section remain as the same existed on July 1, 1955.

6. The appellant and its predecessors have operated a restaurant and bar for approximately the past 20 years or more at the same hereinabove mentioned premises.

ISSUE

1. Does the place to place transfer application of the appellant in this matter, together with its companion plans and lay-out, as the same relate to the bar and the areas designated for the sale and display for sale of alcoholic beverages in original containers for off the premises consumption, comply with the requirements of N. J. S. 33:1-12.23 (Chapter 98, P. L. 1948) and State Regulations No. 32 so that this application of the appellant should have been granted and approved by the respondent.

It is to be noted that Paragraph 4 of the facts of the aforementioned stipulation refers only to a denial by respondent, by resolution dated September 20, 1955, of that part of the application relating "to the bar and the areas designated for the sale and display for sale of alcoholic beverages in original containers for off the premises consumption," whereas the fact is that the resolution adopted at the time denied the application for the place-to-place transfer to include, as well, the new addition to the licensed premises. The stipulation, however, contains a reference to a subsequent resolution, adopted by the respondent on September 27, 1955, which modified the original ruling by the respondent by approving that part of appellant's application for the enlargement and expansion of the licensed premises for sale of alcoholic beverages in connection with its restaurant business "on condition that the bar and package display section, as in existence on July 1, 1955, remain as is."

The evidence adduced in the instant case discloses that prior to the filing by appellant of the application in question the room wherein an 18-foot bar was erected was separated on one side from the part of the licensed premises used for restaurant purposes; that behind the bar and parallel thereto was a back bar above which were built sundry shelves used for display of alcoholic beverages in original containers; that one end of the bar and food counter were separated by a passageway; and that behind the food counter and in a direct line with the back bar had been installed more shelves for the purpose of display of alcoholic beverages in original containers.

The proposed changes requested by the appellant were set forth in plans submitted at the time of the hearing before the respondent and at the instant hearing and testimony explaining said changes was given by one of the officers of appellant-corporation to the effect that shelves 27 feet in length, 2 feet deep, with an over-all height of 8 feet were to be erected at right angles to the bar after leaving space for a passageway; that in front of the aforementioned shelving and parallel to it is to be erected a counter 18 feet in length which will also contain a shelf for display of alcoholic beverages; that at

right angles to the 27-foot shelves, along the exterior wall for a distance of 14 feet, parallel to and opposite the bar, is to be a refrigerator for beer and also shelves for the display of alcoholic beverages.

I am called upon to determine whether or not the proposed layout to enlarge the display section for alcoholic beverages in original containers pursuant to the plans filed by appellant comes within the purview of the definition of a "public barroom" as intended by R. S. 33:1-12.23. The latter provides, in part, as follows:

> "* * * such barroom being a room containing a public bar, counter or similar piece of equipment designed for and used to facilitate the sale and dispensing of alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises * * * *"

In Coral Lounge and Cocktail Bar, Inc. v. Hock, 5 N. J. Super. 163, Judge Colie stated "it seems clear to us that a barroom means that portion included within the four walls of the room in which the bar is located." Judge Schettino said in Passaic County Retail Liquor Dealers' Association v. Board of Alcoholic Beverage Control for the City of Paterson, et als., 37 N. J. Super. 187, "True, each application must be considered in the light of the plans and other specific facts presented."

The evidence presented in the matter now under consideration indicates that the bar now on the licensed premises remains the same as originally constructed; that there are no walls erected to separate the barroom from other sections of the licensed premises; that the display shelves are in the immediate vicinity of the bar and merely enlarge the area wherein the "packaged goods" are displayed. The 18-foot bar now on the licensed premises and to remain unchanged could not properly be described as a "nominal bar." Although the corner of the licensed premises wherein the bar and shelving are situated can be seen as one enters the premises, that does not in itself violate the statute pertaining to "broad package" privileges. Each entrance to the building is through a doorway located above the ground level and only reached by ascending a flight of stairs. The barroom part of the premises is unobstructed with the possible exception of the 27-foot structure containing the shelves aforementioned.

I conclude that upon an examination of the proposed changes, it is apparent that they are in conformity with the plans filed herein and are not contrary to the statute in question. The sale and display of alcoholic beverages are to be in the immediate area of the part of the licensed premises which can rightfully be termed the barroom. Under the arrangement contemplated in the instant case, I am satisfied that there is no violation of the statute and regulations applicable thereto. No evidence appearing to the contrary, I am assuming that the plans and specifications comply with the requisite building and plumbing codes of the respondent municipality.

I shall, therefore, reverse the action of the respondent and order that the condition imposed herein with reference to continuing the bar and package display section as in existence on July 1, 1955 be deleted.

Accordingly, it is, on this 14th day of February, 1956,

ORDERED that the action of respondent in imposing the condition set forth above upon appellant's license be and the

the same is hereby reversed and the said condition be and the same is hereby declared to be void and of no effect.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - WHALAN v. MOUNT OLIVE TOWNSHIP AND THOMPSON.

JOHN WHALAN, )
Appellant, )
-vs- ) ON APPEAL
) CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MOUNT OLIVE, and SYDNEY A. THOMPSON, trading as SYD THOMPSON'S FOOD MARKET, )
Respondents. )

Albert G. Silverman, Esq., Attorney for Appellant.
Shuback and Orr, Esqs., by Edwin W. Orr, Jr., Esq., Attorneys for Respondent Township Committee of the Township of Mount Olive.
Schenck, Price, Smith & King, Esqs., by Clifford W. Starrett, Esq., Attorneys for Respondent Sydney A. Thompson.

BY THE DIRECTOR:

This is an appeal from the action of respondent Township Committee whereby it granted a person-to-person transfer of a plenary retail distribution license from Joan C. Dakis to respondent Sydney A. Thompson and a place-to-place transfer from premises located at Shore Road and Mount Olive Road, Mount Olive Township, to premises located on Route #46, Mount Olive Township. The license year expires June 30, 1956.

A prior application by respondent Thompson for transfer to him of a license for the same premises was denied by the then Township Committee of the Township of Mount Olive and an appeal therefrom was dismissed. Thompson v. Mount Olive Township, Bulletin 986, Item 1. One member of the former Township Committee is a member of the respondent three-man Committee herein and he voted to deny the transfer in question.

Appellant, who is a plenary retail distribution licensee in Mount Olive Township, alleges in substance that the action of respondent Committee was erroneous in that (1) the application for transfer was not in proper form, untimely filed without the required fee and that it lacked the transferor's consent; (2) there was improper notice to all parties concerned with the application and an improper hearing thereon; (3) the matter is res judicata and (4) the section to which the license is sought to be moved is more than adequately served by licensees within the area. Respondents deny appellant's contentions.

At the hearing which was held de novo, pursuant to Rule 6 of State Regulations No. 15, the Assistant to the Township Clerk testified respecting the population of the Township, the number of licenses in operation therein and described the processing of the application in question. The minutes of the Committee meeting on said application were read into the record and the application, consent thereto, checks representing

the fee paid, Notice of Publication and six letters of protest which had been filed with the Clerk including one from appellant and two from other licensees were introduced into evidence. A licensed engineer testified respecting the various licensed premises in the community and a map was admitted in evidence to show the location of all the licensed premises and the type of license held by each licensee. The appellant, a real estate broker, a plenary retail consumption licensee and a truck driver testified that in their opinions there was no need for an additional "package store" in the area to which the license in question was transferred.

Two members of the three-man respondent Committee testified in substance that their determination was based upon the fact that there was no other retail distribution license in the immediate area to which the license was transferred; that the area provides ample parking facilities and obviates traffic congestion; that it is zoned for business; and that public need and convenience will be more adequately served.

I have carefully considered the testimony herein, the exhibits submitted in evidence, the minutes of the Committee read into the record, the arguments of counsel for the respective parties who appeared before me and the briefs submitted by them and I find respecting appellant's allegations in the order hereinabove enumerated that:

1. The application, consent to transfer and fee were filed prior to September 8, 1955, the date when the Notice of Transfer was first published and that there was a substantial compliance with the rules and regulations of the Division. Staiker et al. v. Roxbury et al., Bulletin 804, Item 3, and cases therein cited.

2. There is no evidence to show that proper notice was not given. Appellant admits that he received notice and the Clerk testified that she notified others by telephone. In any event, appellant and objectors have had full opportunity to be heard at the hearing on appeal de novo. Mellas et al. v. West Orange et al., Bulletin 1047, Item 2, and cases cited therein.

3. The decision in the former appeal, Thompson v. Mount Olive Township, supra, is not binding upon respondent Committee as presently constituted. The general rule of law is that no governing body may tie the hands of its successors in matters involving the exercise of discretion. Northend Tavern, Inc. v. Northvale, Bulletin 493, Item 5. Each application is a separate one and must be decided in the sound discretion of the local issuing authority as constituted at the time the application is considered. Tolen v. Kearny et al., Bulletin 880, Item 1.

4. The number of licenses which should be permitted in any given section of a municipality is a need to be determined in the sound discretion of the local issuing authority. My function on appeal is not to substitute my personal opinion for that of the local issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of my own personal opinion. Hudson Bergen County Retail Liquor Stores Association v. North Bergen et al., Bulletin 997, Item 2. This is particularly true where the proposed

location is in an area devoted to business. The mere fact that other licensed premises also serve the same area is not the controlling factor. Guarino v. Newark et al., Bulletin 1069, Item 2.

In an appeal to the Director, the burden of proof to establish that the action of respondent Committee was erroneous rests with appellant. Rule 6 of State Regulations No. 15.

Considering all the circumstances herein, I conclude that appellant has failed to sustain the burden of proof in showing that respondent Committee departed substantially from the Rules and Regulations of the Division and that it failed to establish that the action of said Committee was arbitrary or constituted an abuse of its discretionary power. I shall affirm the action of the respondent Township Committee.

Accordingly, it is, on this 15th day of February, 1956,

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.

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - TAFRO v. NEWARK (ORDER DISMISSING APPEAL).

ALEXANDER J. TAFRO, t/a AL'S CRESCENT LOUNGE,
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent.

ON APPEAL
O R D E R

Peter M. Adubato, Esq., Attorney for Appellant.
Vincent P. Torppey, Esq., Attorney for Respondent.
Louis H. Frankel, Esq., Attorney for Objector.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it denied appellant's application to transfer his plenary retail consumption license C-223 from 61 Main Street to 460 Frelinghuysen Avenue, Newark.

Prior to the hearing herein the attorney for appellant advised me, in writing, that his client desires permission to withdraw the appeal. No reason appearing to the contrary,

It is, on this 15th day of February, 1956,

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

WILLIAM HOWE DAVIS
Director.

4. APPELLATE DECISIONS - WALLY'S, INC. v. PARSIPPANY-TROY HILLS TOWNSHIP.

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| WALLY'S, INC., trading as "WALLY'S", Appellant, -vs- TOWNSHIP COMMITTEE OF THE TOWNSHIP OF PARSIPPANY-TROY HILLS, Respondent. | ) | ON APPEAL CONCLUSIONS AND ORDER |

Sidney Simandl, Esq., Attorney for Appellant.
Mills, Jeffers & Mountain, Esqs., by Benjamin Franklin, 3rd, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action whereby it suspended appellant's plenary retail consumption license for a period of sixty days, effective November 4, 1955, upon a finding of guilt in disciplinary proceedings on a charge alleging that on June 12, 1955, it sold, served and delivered an alcoholic beverage to a minor and permitted the consumption of such beverage, by said minor, in and upon its licensed premises, in violation of Rule 1 of State Regulations No. 20.

Upon the filing of the appeal herein, an Order was entered on November 3, 1955, staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31.

The parties hereto submitted in evidence the transcript of the proceedings before the local issuing authority pursuant to Rule 8 of State Regulations No. 15, and presented additional evidence at the hearing herein.

The Petition of Appeal alleges, in substance, that the action of respondent was erroneous in that the evidence presented to it upon which it based its finding of guilt was vague, indefinite, uncorroborated, unbelievable, unreliable and contradictory and did not establish a prima facie case against appellant; that the verdict of guilt was contrary to the weight of the evidence and in disregard of the evidence presented by the appellant; and that the suspension was excessive and unreasonable.

The respondent in its Answer alleges that it found appellant guilty of the charge after a full hearing lasting a considerable length of time, and based upon the factual testimony presented before it; that in imposing suspension for sixty days, it considered that the minor was sixteen years of age (at the time of the violation) and likewise considered the previous record of the licensee and its predecessor in title Wallace F. Bentley who is presently majority stockholder of the licensee.

The records of this Division show that the license was suspended, effective April 7, 1952, for five days, for sale of alcoholic beverages to a minor and was suspended on three previous occasions, two for sales to minors, over a more remote period dating back from September 1944.

At the hearing before respondent Committee, William --- (also known as Andrew J. ---), born October 25, 1938, testified that he was at defendant's licensed premises on June 12, 1955 between the hours of 11:00 p.m. and 2:30 a.m. on the following morning; was asked whether he was twenty-one and replied in the affirmative but did not display any identification and nevertheless was served and consumed between eight and twelve bottles of beer, some being served by Wally (Wallace F. Bentley, president of the corporate-licensee) and some by a bartender; that there were some cowboy singers entertaining; that when he left the tavern, he was under the influence of liquor, entered a parked car, and drove in circles around a gas station opposite the tavern until he struck a passerby and ended in a ditch. The boy's story concerning the automobile was confirmed by a local police officer who testified that he took the boy into custody immediately after the accident, and that from the boy's condition and breath, he could tell that the boy had been drinking.

At the hearing on appeal, William gave a more detailed account of the incident as follows: He met Thomas ---, also a minor, at about 7 or 8 o'clock in the evening in Morristown where William resides, apparently apart from his parents. They drove around in Thomas' car and did not have anything to drink up to that time. They were at a square dance a few miles from defendant's premises, left the dance between 11:00 p.m. and 12:00 a.m. and drove to defendant's licensed premises. They took seats at the bar and ordered beer from Wally. Wally would not serve beer because of William's age and served soda instead. William removed his jacket, had a few sodas and then the two minors left. They were on their way home and had gone a few miles when William remembered that he had left his jacket at the tavern. The two minors returned to the tavern, William picked up his jacket and went around to another side of the bar. He placed his hand around an empty beer bottle which was on the bar, handed it to the bartender and asked for another beer assuming that the bartender would think that he had already served him the beer. The bartender served William with a bottle of beer and more thereafter. William had taken a seat at a table and when he went to the bar for another bottle of beer, Wally happened to be there. William placed the empty bottle in front of Wally, held a glass in his hand and asked for another beer. Wally served him with beer then and on various occasions thereafter. William stated that it was dark and perhaps Wally did not recognize his face. William and his companion remained in the tavern for an hour or two, dancing with some girls. He knew he was served with Miller beer and thought he also was served with Schlitz beer.

The aforementioned police officer testified at the hearing on appeal that William was actually drunk and told him that he was drunk at the police station after the accident.

Appellant vigorously and vehemently contends that William's testimony should be rejected in toto because the contradictions, inconsistencies and falsifications therein render him unworthy of belief.

The specific items are that William told the officer immediately at the scene of the accident that he had not obtained beer at Wally's but at his father's home, repeated that statement from time to time, including two weeks later before a judge in the then pending criminal proceedings against him. Moments later, when his father stated that he

did not have any beer at home, William started to cry and told the judge for the first time that his original story was not true and that he actually obtained the beer at defendant's tavern.

Another item is that William told the officer that his minor companion drank beer at the tavern whereas William testified at both hearings that his companion only had soda. Lastly, that there was no Schlitz beer available at defendant's tavern.

William presented what appears to be a logical explanation for his failure, in the first instance, to identify Wally's as the place where he had been served beer. He was on probation for a motor vehicle violation at the time and conceived the idea that he would receive more severe punishment if he admitted that he had been drinking beer in a tavern while on probation. Finally, realizing that he was to be sent to a reformatory in any event, he decided to tell the truth.

This falsification normally would not cast a serious reflection on his veracity since he testified under oath definitively as to the primary facts -- that he actually purchased and was served beer at defendant's licensed premises, gave specific details bearing the earmarks of truth and was drunk when he emerged from the tavern. The background of his accusation is the converse of that presented in Re Simmons, Bulletin 1072, Item 6. In that case, the minor may have been impelled to make an unjust accusation to escape other criminal charges. In the instant case, the minor concealed the accusation in the hope that he would be dealt with more leniently. His tender years may, in part, have been responsible for his mistaken notion that concealment would be helpful. His faulty recollection as to what his companion had to drink, and that Schlitz as well as Miller beer was served may reasonably be attributed to his condition while at the tavern and the lapse of time between his presence therein and the hearings in question.

The appellant further urges that, in any event, the testimony presented on its behalf overwhelmingly demonstrates that William in fact did not secure alcoholic beverages at its tavern on the date in question.

The police officer testified that William originally told him that he stole the beer from his father's home but that on June 30, he obtained a statement from William wherein he stated that his minor companion drank beer at the tavern; that William had eight or ten bottles of beer, first served by the bartender; that Wally did not serve him, but he left his jacket, went back for it and the bartender served him and then Wally served him.

Peter Joseph Lynch, a patron, testified that he entered the tavern with a minor companion at about 2:10 a.m. on the date in question; that he did not see William or his companion enter but saw them when they were each served with a coke; that he was not paying much attention to anyone therein; that William looked a little hazy and Lynch had a feeling that he had been drinking; that he saw William at the scene of the accident yelling and screaming but that he does not know whether William was drunk; that Lynch could not tell because he was drinking himself.

Lynch's minor companion testified that he does not know when William and his companion came in or left or whether they had anything to drink; that he did not have anything to drink and did not pay much attention to what was going on. In his opinion, William smelled like he was drinking.

William's companion, called as a witness by appellant at the appeal hearing, testified that he entered the tavern with William at about 2:00 a.m. and remained there for about fifteen minutes; that he had two cokes and did not see William have any beer; that William looked a little hazy as if he had had a few beers and his head was a little bit wobbly when he left the tavern; that he met William about 8:00 p.m. in Morristown and that they drove around without having anything at all to drink until they arrived at Wally's; that he did not particularly notice William's activities while at the tavern and that William was screaming and yelling at the scene of the accident. From this account, it would appear that Wally's tavern was the only place where William could have been served any beer.

The bartender on duty at the time testified that the first time he saw William was when, a little after 2:00 a.m., he ordered two bottles of coke at the bar; that they serve Miller beer but not Schlitz; that there were about forty people in the premises that evening and that they were pretty busy; that he would not recognize any of the persons there including William if he saw them again because, normally, he is the day bartender and does not know the night trade; that he remembers William solely because he ordered two cokes at the bar; further, that he only remembers Lynch and his companion because he saw them previously. He does not remember William's condition one way or another, did not see him leave and did not go out to investigate the accident.

On cross-examination the bartender did not remember anyone else to whom he served coke or other soda that night and said that William first asked for a drink; that he told him that he was not old enough and served him with coke; that he did not see William arrive and served him with a coke while William was seated at a table.

A significant highlight of his veracity is his testimony that he served Lynch's minor companion with two bottles of beer, a statement which he repeated two or three times and then, when he realized that a minor was involved, floundered around, alternatingly answering yes and no to the question whether he served beer to that minor.

Wallace F. Beneley testified that there were about forty or fifty patrons present when he first observed William and his companion after 2:00 a.m.; that they came into the dining room, he asked them for credentials and when they had none, only served them coke in the dining room and that they remained for about half an hour. He did not know when they came into the tavern. He cannot recall specifically who was present at the tavern and does not remember Lynch or his companion. He said that he probably turned down other minors -- he must have; that there were so many there, they give him a hard time but he doesn't remember what they look like. Asked how he remembers William, he answered because he is so young and that he came to his recollection when he thought about the accident and in the same breath admitted that he did not know about that incident until recently. He then said that he remembered William because he didn't

show any credentials. He turned down other minors but is almost positive that the coke incident relates to William. He did not know whether William was drunk.

It is extremely doubtful that with such a large number of patrons there, including some minors, that Bentley and the bartender unerringly and definitely remember that each served William with nothing but cokes. It is more probable that they have no recollection whatsoever of the matter.

The regular night bartender, allegedly discharged the night in question, testified. Even if his statement is accepted, although it is of doubtful veracity, that he remained at the tavern after his discharge following a heated argument, from 11:15 p.m. until 2:15 a.m., merely to talk to customers and did not see either William or his companion, it would merely evidence what he observed although it appears clear that William and his companion actually were there.

Appeals to the Director from the action of the local issuing authority are heard de novo and the burden of establishing that the action of such issuing authority was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulations No. 15; Skripko v. Raritan Township, Bulletin 1081, Item 1, and cases cited therein.

I have given careful consideration to the entire record, including the briefs of counsel and their oral argument before me, and without attempting to compare or evaluate in detail the points of agreement and conflict in the testimony presented on behalf of appellant and respondent, and notwithstanding the admitted falsification of prior statements by the minor, I am satisfied that his sworn testimony at the disciplinary hearings represents a true version of what actually occurred and that respondent's finding that the minor purchased and consumed a substantial amount of beer on defendant's premises is supported by a fair preponderance of the believable evidence. The appellant, therefore, has not established that respondent's finding of guilt is erroneous and should be reversed. The action of respondent is affirmed.

Concerning appellant's assertion that the penalty imposed by respondent is excessive, the power of the Director to reduce a penalty on appeal should be exercised only in those cases where the penalty imposed is manifestly unreasonable and clearly excessive. Skripko v. Raritan Township, supra. In view of the age of the minor, and the previous record of the licensee, albeit a considerable period of time has elapsed since the majority of such offenses were committed, it does not clearly appear that a reduction of penalty is warranted in this case.

Accordingly, it is, on this 2nd day of March, 1956,

ORDERED that the appeal herein be and the same is hereby dismissed; it is further

ORDERED that the sixty (60) day suspension of appellant's Plenary Retail Consumption License C-6, for premises at Parsippany Boulevard, Township of Parsippany-Troy Hills, imposed by respondent, be and the same is hereby restored and reimposed against appellant for the same premises, to commence at 3:00 a.m. March 12, 1956, and to terminate at 3:00 a.m. May 11, 1956.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - ALLOWING PREMISES TO BE CONDUCTED AS A NUISANCE - UNQUALIFIED EMPLOYEES - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

FLORENCE TABATNECK
T/a THREE O'CLOCK CLUB
176 Paterson Street
Paterson 1, N. J.,

Holder of Plenary Retail Consumption License C-135, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS AND ORDER

Spitz & La Cava, Esqs., by Joseph A. La Cava, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On November 30 and December 9, 1955, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you permitted unescorted females frequenting your licensed premises to solicit male patrons to purchase numerous drinks of alcoholic beverages for consumption by them and by others and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20.

"2. On November 30, December 2, 9 and 21, 1955, you knowingly employed and had connected with you in a business capacity Peter Tabatneck, a person who had been convicted of crime involving moral turpitude, viz., on or about April 6, 1937 and again on or about January 3, 1939 of the crime of operating an illicit still; such employment by you being in violation of Rule 1 of State Regulations No. 13."

The file herein discloses that ABC agents visited defendant's licensed premises on November 30 and on December 2, 9 and 21, 1955. On the November 30th and December 9th visits, the agents observed divers unescorted females in the establishment who solicited drinks from and at the expense of the agents and other male patrons and that the drinks were served them by the bartender on duty on said occasions. Peter Tabatneck worked on the premises on the dates just referred to and, in addition thereto, also acted as bartender on December 2 and 21, 1955.

It appears that on April 6, 1937 and on January 3, 1939, Peter Tabatneck was convicted in the United States District Court for the District of New Jersey of operating an illicit still with intent to defraud the Federal Government of revenue. My Conclusions and Order dated May 6, 1955 expressed the opinion that the aforementioned crimes of which Peter Tabatneck was convicted involve the element of moral turpitude and the petition filed by him for removal of his disqualification was denied. He was notified of my ruling on May 20, 1955. The defendant was then advised that the services of Peter Tabatneck could not be utilized on the licensed premises and was warned

that if she permitted him to work thereon disciplinary proceedings would be instituted against her and that the prior warning might be considered as an aggravating circumstance in determining the proper penalty to be imposed. Regardless of the said warning and of the pledge given by defendant's attorney in her behalf (not the attorney appearing for defendant in this matter) the defendant knowingly permitted Peter Tabatneck to work on the licensed premises.

Although defendant has no prior adjudicated record, on October 18, 1955 I reluctantly dismissed a charge against her but warned that any future conduct of a similar nature on the licensed premises would indicate that she is permitting her establishment to be used as a haven for "bar flies" rather than a place where male and female patrons maintain normal social contacts usually to be found in a well-conducted tavern. Re Tabatneck, Bulletin 1087, Item 8. Now I find that a female known as Iris, whose activities were responsible to a large degree for the previous charge being brought, figures prominently in one of the charges now under consideration. It is apparent, therefore, that the defendant-licensee still persists in flagrantly defying the Rules and Regulations which this Division has prescribed in the interest of the public. If this condition continues to exist I will have no alternative in the future other than to take drastic action in the matter.

Under the circumstances appearing in this case, I shall suspend defendant's license for a period of 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 27th day of February, 1956,

ORDERED that Plenary Retail Consumption License C-135, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Florence Tabatneck, t/a Three O'Clock Club, 176 Paterson Street, Paterson, be and the same is hereby suspended for a period of thirty-five (35) days, commencing at 3:00 a.m. March 5, 1956, and terminating at 3:00 a.m. April 9, 1956.

WILLIAM HOWE DAVIS
Director.

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

In the Matter of Disciplinary Proceedings against

MURPHY'S HOTEL, INC.
T/a MURPHY'S
17-31 Shore Acre Avenue
Middletown Township
PO E. Keansburg, N. J.,

Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Middletown.

CONCLUSIONS AND ORDER

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George R. Blaney, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on December 31, 1955, January 1 and 8, 1956, it sold, served and delivered alcoholic beverages to minors and allowed, permitted and suffered the consumption thereof by said minors, in and upon its licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on January 8, 1956, a local police officer entered defendant's licensed premises and observed two 20-year-old minors consuming beer. Both minors stated that they were in defendant's premises on New Year's Eve, December 31, 1955 and that they were served beer on said occasion. They could not identify the waitress who served them on the first occasion but identified Frank Werner as the bartender who served them with a pitcher of beer on January 8th.

Defendant has no prior adjudicated record. I shall suspend its license for the minimum period of ten days for sale to two 20-year-old minors. Re Brookside Lodge, Inc., Bulletin 1078, Item 13. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 20th day of February, 1956,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Middletown to Murphy's Hotel, Inc., t/a Murphy's, for premises 17-31 Shore Acre Avenue, Middletown Township, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. February 27, 1956, and terminating at 2:00 a.m. March 3, 1956.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - AGGRAVATED SALES TO MINORS - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JEAN CIROALO
T/a SEA SIDE HOTEL
36 Fifth Street
Highlands, N. J.,

Holder of Plenary Retail Consumption License C-29, issued by the Borough Council of the Borough of Highlands.

CONCLUSIONS AND ORDER

George A. Gray, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that (1) on December 5, 1955, she sold, served and delivered alcoholic beverages to a minor, in violation of Rule 1 of State Regulations No. 20, and (2) on December 21, 1955, she failed to facilitate and hindered and delayed an investigation being made by agents of this Division at her licensed premises, in violation of R. S. 33:1-35.

On December 5, 1955, John --- (aged 19 years) and a male companion entered the defendant's bar where the minor was served a glass of beer by the bartender (husband of the defendant). The minor also purchased twenty-four cans of beer which he and his companion carried to their automobile in which three females were awaiting their return. After consuming some of the beer they were involved in an accident, as a result of which the minor's male companion, who was driving, was killed and the others were injured.

On December 21, 1955, agents of this Division accompanied the minor to the defendant's premises for the purpose of investigating the violation and for identification of the premises and the bartender who made the sale and service to the minor. The defendant, her bartender and her legal representative were present. After the agents had explained the purpose of their visit, the defendant's attorney stated that he would not permit the defendant or her bartender to answer any questions. When referred to the provisions of R. S. 33:1-35, which, among other things, require licensees and their employees to "exhibit to the *** agents all of the matters and things which the director *** is hereby authorized *** to investigate *** and to facilitate, as far as may be in their power so to do, in any such investigation *** and they shall not in any way hinder or delay or cause the hindrance or delay of same, in any manner whatsoever", the attorney permitted the licensee to produce her license certificate and copy of her license application, but directed her and her bartender not to give any further information. Accordingly, the defendant refused to produce a list of her employees and the bartender would not state his name or address and neither of them would answer any other questions relating to the violation. Upon being informed by the agents that the failure

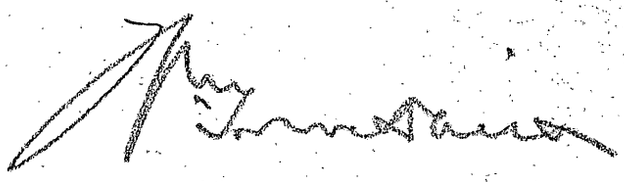
to cooperate would be reported to the agency, the attorney told the agents to mention his name and to be certain to report that he had advised "his client not to answer any of our [the agents'] questions pertaining to this investigation."

The defendant has no prior record. As to Charge 1, since this violation occurred before my announcement concerning increased penalties (see Bulletin 1095, Item 1), the ten-day norm, theretofore applicable in unaggravated cases concerning a nineteen-year-old minor, will be followed. In view, however, of the quantity of alcoholic beverages involved and the resultant effect, the penalty will be fixed at twenty days (cf. Re DiThomas, Bulletin 1069, Item 6).

Attorney for defendant appeared before me on oral argument in mitigation of penalty as to Charge 2 and assumed entire responsibility for the refusal of defendant to cooperate with the agents in the course of their investigation. He explained that criminal proceedings were then pending against defendant arising out of the sale to a minor and feared that any information given by his client might jeopardize defense in the criminal action. I recognize the right of an attorney to advise his client as to her rights, but fail to see how most of the information requested would have any materiality in a criminal proceeding. However, as the licensee's conduct was influenced and to a great extent controlled by the instructions of her attorney, I shall impose a penalty of ten days on Charge 2 instead of the usual twenty days (Re Kramer, Bulletin 1067, Item 1), making a total of thirty days, less five days' remission for the plea, or a net penalty of twenty-five days.

Accordingly, it is, on this 20th day of February, 1956,

ORDERED that Plenary Retail Consumption License C-29, issued by the Borough Council of the Borough of Highlands to Jean Ciroalo, t/a Sea Side Hotel, for premises 36 Fifth Street, Highlands, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. February 27, 1956, and terminating at 2:00 a.m. March 23, 1956.



William Howe Davis
Director.