

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

January 17, 1961

BULLETIN 1373

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STATE OF NEW JERSEY
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January 17, 1961

BULLETIN 1373

1. APPELLATE DECISIONS - HANNIBALL ET ALS. v. SUSSEX ET ALS.

HERMAN L. HANNIBALL, SUSSEX INN, A NEW)
JERSEY CORPORATION, NORTH CENTRAL COUNTY)
LIQUOR STORES ASSOCIATION AND SUSSEX)
COUNTY TAVERN OWNERS ASSOCIATION,)
Appellants,) ON APPEAL
CONCLUSIONS
AND ORDER

v.

BOROUGH COUNCIL OF THE BOROUGH OF SUSSEX,)
AND J. & R. LIQUORS, INC., AND ANNA MAE)
HARRISON, T/A HARRISON TAVERN,)

Respondents.

James F. McGovern, Jr., Esq., and Samuel Moskowitz, Esq., Attorneys
for Appellants.
Mackerly & Friedman, Esqs., by William J. McGovern, Esq., Attorneys
for Respondent Council.
Emanuel A. Honig, Esq., Attorney for Respondent J. & R. Liquors, Inc.
Dolan and Dolan, Esqs., by Robert H. Lee, Esq., Attorneys for
Anna M. Harrison.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Borough Council on June 6, 1960 whereby it granted an application filed by respondent J. & R. Liquors, Inc. for a person-to-person and place-to-place transfer for the balance of the 1959-1960 licensing year of Anna Mae Harrison's plenary retail consumption license to itself, and from 15 Mill Street to premises on the southerly side of Route 565, Sussex, New Jersey, and from the Council's subsequent action on June 24, 1960 whereby it renewed such transferred license for the 1960-1961 licensing year, subject to the completion of a proposed building at the new address. At its meetings on June 6 and June 24, one member of the Council abstained from voting and the other members unanimously voted for the transfer and renewal.

"The resolution of the Council granting the transfers recites that objections to the transfers were filed on behalf of two licensees in the Borough and two liquor store trade associations; that the objections were that Anna Mae Harrison must be forced to appear as a witness; that the applicant is incapable of establishing any public need or necessity for the proposed transfers and that the convenience of the public at large will not be served by the transfers; that the applicant presented a lease for the proposed premises which provided for the construction by the landlord of a building 18 feet wide and 50 feet in depth with a parking area having a depth of 150 feet; that evidence was presented of the proposed physical arrangement of the new establishment, to include the display of packaged alcoholic beverages along the side walls and behind the bar and display of alcoholic beverages for consumption purposes behind the bar; that the bar will be 8 feet long and 3 feet wide and 35 inches high, and the cash register will be located on the bar with stools provided at the bar

but no chairs or tables and no display of packaged alcoholic beverages on the floor; that Anna Mae Harrison's attorney testified that she was a resident and maintained her legal domicile in the Borough; that in oral argument, counsel for the objectors urged that the license had been transferred on May 28, 1959 to the Mill Street address, and no actual business conducted thereunder to the present time and, hence, constituted license juggling; and that after the members of the Council personally inspected the new location, the Council made the following findings on June 6, 1960:

- (1) That the area to which the proposed transfer is requested is most adequate and highly suitable for the activities of applicant.
- (2) That the area to which the proposed transfer is sought is in the same territorial orbit as the present situs and will render at least equivalent service to those who are located and locate in this area it being approximately two city blocks away from the present site.
- (3) That the area to which the proposed transfer is sought is that area to which this municipality is desirous of attracting growth in the form of commercial and industrial development as well as the furtherance of a residential development scheme.
- (4) That the proposed situs is in essence a better location in this territorial development orbit than its existing situs and gives a more harmonious, more economical and more satisfactory spread of service to the residents of the Borough of Sussex than ever before, there being no other A.B.C. outlets in the immediate vicinity.
- (5) That no factual proof of bad faith or license juggling were submitted to this body by the objectors other than the bare statements of counsel for the objectors that same exist which of necessity must be disregarded for lack of proof.
- (6) That no bona fide proof was submitted to this body that present licensee is in violation of R.S. 33:1-25.
- (7) That there is no proof before this body by this applicant of an attempt by applicant to violate the letter and spirit of R.S. 33:1-12 or R.S. 33:1-12.23.'

and concluded:

'On the basis of all of the aforesaid, be it further resolved by the Mayor and Common Council of the Borough of Sussex that the application of J & R Liquors, Inc. for a person to person and place to place license transfer of Plenary Retail Consumption License C-3 now held by Anna Harrison, be granted subject to the express condition, that the premises as described in the plans prepared and submitted by the applicant and found acceptable as amended by the issuing authority shall first be completed.'

"The petition of appeal sets forth, in substance, that public convenience and necessity do not require the transfer or renewal;

that J. & R. Liquors, Inc. basically intends to utilize the license for what in effect will be a package liquor store under a retail consumption license; that no licensed premises actually existed for which a legal, subsisting license existed; that Anna Mae Harrison was a resident of Virginia and not legally entitled to the license; and that no evidence has been presented that the required investigation has been made by the Council.

"The basic attack on the transfers and renewal is that Anna Mae Harrison's license for the 1958-59 period was transferred to the Mill Street address over the objection of practically the same appellants (such transfer affirmed on appeal, Hanniball et al v. Sussex and Harrison, Bulletin 1333, Item 3), who then urged that if her original premises were no longer available for the license, she should move elsewhere than Mill Street in the municipality; that after such transfer and renewal for the 1959-60 period, Mrs. Harrison made no attempt to make the alterations to the Mill Street premises as originally proposed by her in order to commence operating the licensed business and, in fact, has not, to date, made such alterations or conducted any licensed business, although the prime consideration of the transfer to the Mill Street premises as stated by the Council was that thus there would be established a high-class restaurant in the community; and that despite this attitude of the Council, the license has been transferred to another area to be used for purposes other than a restaurant.

"Since the issue involved the transfer and renewal of an existing license with no increase in the number of licenses in the municipality, the only proper matter for consideration on this score is whether the site designated is a proper place for the location of the transferred license. Cf. Higgins v. Elizabeth, Bulletin 1081, Item 5.

"The license will not actually be issued, as hereinafter noted, unless and until the internal arrangement of the premises strictly complies with the requirements of the Alcoholic Beverage Law and Regulations covering the sale of packaged goods under a plenary retail consumption license which does not have a 'broad package privilege'.

"There is no evidence presented to contradict the testimony of Anna Mae Harrison at the appeal hearing that she is now and has been for a considerable length of time a resident of Sussex.

"The determinative issue, therefore, is whether the respondent Council reasonably exercised its discretion in foregoing the benefit of a restaurant to be conducted by Anna Mae Harrison and accepted, in place and stead thereof, the proposed establishment of J. & R. Liquors, Inc. in a newly erected building.

"The business area of the municipality consists of two blocks on Main Street and a section on Mill Street which runs parallel to Main Street. The four existing plenary retail consumption licenses were located in this area. The Mill Street location is on the edge of the business section and the Route 565 location is about two blocks therefrom, in the path of the extension of the business zone.

"When the license was originally transferred to 15 Mill Street, there was a large building there described as a barn-like structure but which was to be altered for restaurant purposes, which it was hoped would attract other business establishments to the area. Mrs. Harrison held her retail license for many years in a hotel or restaurant in a different location and testified that she continued to reside in the municipality after such premises were sold and had plans for the alteration of the Mill Street premises to accommodate her

transferred license but, due to objections, could not carry on. While the exact details were not explained, it is to be assumed that the members of the Council were aware of the particular facts which prevented Mrs. Harrison from commencing or completing alterations and engaging in the conduct of a restaurant at the premises.

"Faced with the fact that Mrs. Harrison did not intend to follow through with the establishment of a restaurant at Mill Street, for reasons satisfactory to them, it appeared that the transfer to a new building, with an increase of ratables in an area where there was room for expansion to the business zone, would be desirable. It is to be noted that at the time of the transfer herein, there was already located in the Mill Street building a laundromat and an imminent prospect of the location in the building of a dry-cleaning establishment and a drug store and the erection of a post office in the immediate vicinity and, thus, an increase in traffic conditions.

"At the hearing herein, Councilman Prout explained his reason for agreeing to the change of location in that the Mill Street area became a 'bee hive' so that parking facilities at the new location are much greater; that they would like to see an expansion of the business area and the only room for expansion is in the new location; that the need the license would fill at that location was of a different character than that which motivated the previous transfer; that there was a prospect of a new shopping area developing at the new location and, hence, new ratables would be created in the Borough and that as long as J. & R. Liquors, Inc. complied with the requirements of the Alcoholic Beverage Control as to the size of the bar, he had no objection.

"Councilman Beemer testified that he would have liked to have a good restaurant in the Borough, but 'I would much rather have seen a place where we could have eats and so on, but it didn't happen that way. But I am in accord with this -- definitely. It will increase our ratables and it has a bar.' *** 'If you must know, it's this: I don't want to see us lose ratables in the Borough of Sussex to be honest. I would much rather have seen the license that I voted on the first time. But if it couldn't be, rather than lose it, I would rather see this.'

"Councilman Margarum testified that he still has hopes of having a nice restaurant and that possibly J. & R. Liquors, Inc., might eventually expand for that purpose.

"Considering the evidence on the controlling issue of the appeal, that is, whether the Council exercised its reasonable discretion in granting the place-to-place transfer to the new location, I am of the opinion that such evidence establishes that the Council was justified in electing to have a licensed establishment of the proposed nature at the new premises for the reasons expressed by its members, when confronted with the fact that its original desire for a restaurant at the Mill Street address seemed unattainable. There is no evidence whatsoever that any of the members of the Council were improperly motivated. In my judgment, the appellants have failed to sustain the burden of establishing that respondent Council's action was erroneous. Hanniball et al v. Sussex and Harrison, supra. Normally, hence, affirmance of its action and dismissal of the appeal would ordinarily follow in due course.

"However, there are procedural defects in the application for transfer and for renewal which require correction. The location of the premises as appears in both applications is 'southerly side of Route 565'. Furthermore, the 'plans and specifications' filed with the application to transfer consist of a crude outline of the proposed floor plan. The outward appearance and nature of materials and con-

struction of such proposed building is not ascertainable from such sketch. The fact that details of the proposed manner of construction were incorporated in the lease for the premises, which was presented to the Council at its hearing, is not a factor since it was not previously available to any members of the public at large who might have had an interest in the matter.

"The publication of the application to renew the license fails to state that plans and specifications of the proposed building had been filed with such application and were available for inspection. Actually, no additional sketch was submitted. The resolution of renewal of the license adopted by the Council reads:

'Be it resolved that this board and mayor and common council incorporates herein all of its conclusions of law and fact previously set forth in resolution of June 6, 1960, whereby it approves the transfer of said license from person to person and place to place subject to erection of building.

'Be it further resolved that the said license be issued to J & R Liquors, Inc., only for the purpose of renewal.

'Be it further resolved that said license be renewed except that said renewed license shall not be issued except and until the conditions of the resolution dated June 6, 1960, here and before referred to are met.'

"The only proper procedure is to remand the matter to the Council to consider the original application for renewal if J. & R. Liquors, Inc. amends such application by inserting a proper description of the premises to be licensed (see Malinconica v. Matawan Township, Bulletin 1007, Item 2), files proper plans and specifications and readvertises notice of such application in proper form. Memorial Presbyterian Church v. Vineland et al., Bulletin 1346, Item 2.

"I, therefore, recommend that an order be entered directing that the matter be remanded to the respondent Council with instructions to act upon any such amended application for renewal in accordance with the opinion herein. Assuming that the Council will renew such license on condition that it will not actually be issued until the completion of the building at the new address, the Council is instructed to make certain that as part of such completion the interior arrangement of such premises conforms to the accepted indicia of a public barroom conducted under a plenary retail consumption license without the 'broad package privilege'.

"This subject is discussed at length in Monmouth County Retail Liquor Stores Association et als. v. Neptune City et al., Bulletin 1243, Item 2, and any attempt of any plenary retail consumption licensee holding such type of a license to erect a token or sham bar in a room devoted predominantly to the sale or display for sale of package goods which room, in effect, constitutes virtually an exclusive 'package or liquor store' will not be tolerated.

"As some guide to what is considered acceptable, the licensee must maintain a bona fide barroom with adequate bar facilities constituting an invitation to the public to be served and to consume drinks of alcoholic beverages therein. By this is meant that the size, shape, location, accessibility and equipment of the bar must be adequate to serve drinks at the bar to members of the public for consumption thereat. Token or sham bars not equipped in any such respect are not sufficient. Some specific acceptable aspects are that

the bar must be completely unobstructed by any objects; that it is equipped with facilities such as running water, sink, drinking glasses, ice and back bar for open stock of alcoholic beverages and additional drinking glasses; that the bar must be kept clear of packaged goods and displays and other impediments to the use of the bar in facilitating sale and dispensing by the drink and in any sign or signs hereafter erected, the word 'bar' must be given at least equal prominence in size and general appearance to the words 'liquors' or 'cold beer' or 'wines'. See Passaic County Retail Liquor Dealers Association v. Paterson and Bertelli's Liquor Store, Inc., Bulletin 1043, Item 3 (affirmed 37 N.J. Super. 187); Messinger v. Pompton Lakes and Bertelli's Liquor Store, Inc., Bulletin 1129, Item 3."

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15. Having carefully considered the facts and circumstances herein, I concur in the Hearer's findings and conclusions, and adopt his recommendations.

Accordingly, it is, on this 5th day of December 1960,

ORDERED that the matter be and the same is hereby remanded to respondent Borough Council of the Borough of Sussex to consider the merits of the present application for renewal for the 1960-61 licensing year filed by the licensee, if such application is amended by inserting a proper description of the premises to be licensed, and proper plans and specifications filed therewith, and proper notice of such application is published, in accordance with the opinion herein; and upon the further instruction that if the respondent grants such application for renewal, that such grant be conditioned upon completion of the building in accordance with the opinion herein setting forth the acceptable physical arrangement of the interior of the licensed premises.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - 32 CLUB, INC. v. NEWARK.

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| 32 CLUB, INC., TRADING AS LATIN QUARTER, |) | |
| Appellant, |) | |
| v. |) | ON APPEAL |
| |) | CONCLUSIONS |
| |) | AND ORDER |
| MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE |) | |
| CONTROL OF THE CITY OF NEWARK, |) | |
| Respondent. |) | |

Irving J. Zwillman, Esq., Attorney for Appellant.
Vincent P. Torppey, Esq., by James E. Abrams, 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 it suspended appellant's license for a period of twenty days, effective June 6, 1960, after finding appellant guilty on the following charges: (1) that at about 2:07 a.m. on February 12, 1960, it sold, served and delivered alcoholic beverages and permitted the consumption thereof in violation of Section 3.1(a) of an ordinance of the City of Newark, as revised December 5, 1956, and (2) that on February 12, aforesaid, during prohibited hours, it failed to have its licensed premises closed in violation of Section 3.1(b) of said ordinance.

"The ordinance referred to in aforesaid charged prohibits the conduct of business on weekdays between 2:00 a.m. and 7:00 a.m. and requires the entire licensed premises to be closed between aforesaid hours.

"Upon the filing of the appeal, an order was entered on June 7, 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 that respondent's action was erroneous because its decision was contrary to the weight of the evidence. Respondent, in its answer, denies that such is the fact.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, the transcript of the proceedings before the respondent Board was received in evidence, and additional and supplemental testimony was presented by appellant, in accordance with Rules 6 and 8 of said Regulation.

"At the hearing before respondent, Walter Asgirey, Jr. (a Newark police officer) testified that at about 2:06 a.m. on February 12, 1960 he and his partner, while on a tour of duty, drove past the licensed premises; that they looked through an unobstructed view of the same and observed three individuals therein; that they left their car and knocked on the front door of the premises in response to which the door was unlocked by Frank DeMarzo, the bartender; that after entering the premises, they made a time check with their precinct and learned that it was 2:07 a.m. Officer Asgirey further testified that he saw two patrons, William A. Vogel and Frank Quaranto, each in possession of a bottle of beer, standing at the bar; that he observed Quaranto consume the remaining portion of his drink and Vogel take a sip from his bottle and replace the same, partially full, on the bar. In addition, Asgirey testified that upon questioning, Quaranto refused to make any statement; that Vogel stated he was drinking a bottle of Schaefer beer.

"On cross-examination, Asgirey testified that it was 2:06 a.m. by his partner's watch when he observed the three men in the licensed premises; that about one minute elapsed from the time he and his partner parked their car, entered the premises, identified themselves to DeMarzo and called the precinct.

"William A. Vogel (under subpoena) on behalf of respondent, testified that he entered the licensed premises at 1:30 a.m. on the date in question; that he and Quaranto were there at 2:06 a.m. when the police officer made the telephone call to the precinct; that Quaranto had a bottle of beer on the bar; that he had a bottle of beer (partially full) which had been served to him between 1:30 and 1:40 a.m.; that at the time the police officers entered the premises, he picked up his bottle of beer, placed the same to his lips and that before he was able to consume any of the beverage, one of the police officers seized the same from his hands for evidence.

"On cross-examination, Vogel testified that at 1:40 a.m. the bartender locked the door of the licensed premises and drew the curtains; that neither he nor Quaranto had consumed any alcoholic beverages after 2:00 a.m. and that when asked by a Board member how he knew it was not after 2:00 a.m., answered, 'I thought it was only 2:00 o'clock until these gentlemen came to the door'.

"Frank DeMarzo, on behalf of appellant, denied that Vogel or Quaranto had been served or consumed alcoholic beverages on the licensed premises after 2:00 a.m. on February 12th aforesaid and further testified that on the date in question he was on duty as a

bartender at the licensed premises; that at about 1:30 a.m. on said date, Quaranto and Vogel, very good friends of his, entered the premises; that ten minutes later, in preparation of leaving the same, he locked the door, put on his overcoat and entered the telephone booth from which he emerged at 2:00 a.m. to admit the officers to the premises; that he informed the officers it was 2:00 o'clock and, simultaneously therewith, displayed his watch to them, following which one of the officers ran to the bar and seized the bottle of beer from Vogel. In addition DeMarzo testified that the officers had been in the licensed premises between five and seven minutes before they had informed him that a spot test check of the time disclosed it to be 2:07 a.m.

"On cross-examination, DeMarzo reiterated his direct testimony and further testified that at the time the officers entered the premises, one of the two bottles of beer on the bar was empty and the other partially full.

"At the hearing held herein, DeMarzo testified that at about 1:30 a.m. on February 12 aforesaid, two patrons entered the premises; that he served each of them a small bottle of beer (nip); that he did not know their names (Vogel and Quaranto) prior to hearing them before the local Board; that shortly after 1:40 a.m., he had his topcoat on and ready to leave the premises when he observed Barry (Quaranto) enter the telephone booth; that at 2:13 a.m. by the wall clock (which had been set ahead fifteen minutes), he alerted Barry to the lateness of the hour and requested him to leave the booth; that Barry emerged immediately and simultaneously therewith he heard a knock on the front door and admitted the two police officers; that the police questioned him for about two minutes and then proceeded to the bar to interrogate the two patrons; that one of the officers 'ran' to the telephone booth, returned in about one minute and announced it was 2:06 a.m.

"DeMarzo further testified that between seven to eight minutes elapsed from the time the officers entered the premises and one of them entered the telephone booth; that he observed the police car parked along the curb about sixty feet from the entrance to the licensed premises; that he did not serve any alcoholic beverages after 1:30 a.m. and none were consumed after 2:00 a.m.

"On cross-examination, DeMarzo repeated the pertinent parts of his direct testimony and further testified that when the police officer emerged from the telephone booth he announced it was 2:07 a.m.

"Arthur Ackerman, on behalf of appellant, testified that for the past four years he has been one of the stockholders of the corporate-licensee; that on February 11, 1960 he was relieved as bartender by DeMarzo; that prior thereto he had observed the wall clock to be fifteen minutes ahead and that he, personally, had advanced the clock by fifteen minutes to avoid an 'hours' violation.

"William A. Vogel was called as a witness by the appellant and testified that on February 12 aforesaid, at about 1:30 a.m., he and Barry (Quaranto) entered the licensed premises and were each served one small bottle of beer; that Barry had consumed the entire contents of his bottle prior to 2:00 a.m.; that his own bottle was partially full and that he did not consume any of it at 2:07 a.m. Vogel further testified that between 1:40 and 1:45 a.m., he observed DeMarzo dim the lights and lock the door of the licensed premises; that he had also observed DeMarzo summon Barry from the telephone booth and that DeMarzo was ready

to leave the premises when the police knocked on the front door; that he had not made any observation of the hour and that more than two minutes had elapsed from the time the two police officers had entered the premises and one of them entered the telephone booth.

"This case presents a conflict between the principal witnesses produced by the respondent and the witnesses called by appellant. It will be noted that at the hearing before the respondent DeMarzo testified that at 1:40 a.m., after making all preparations to leave the premises, he entered the telephone booth, from which he emerged at about 2:00 a.m. to answer a knock on the front door; that five to seven minutes elapsed between the time the two policemen entered the premises and one of them announced the time to be 2:07 a.m. and that the patrons, Vogel and Quaranto (referred to as Barry) were very good friends of his. At the hearing held herein DeMarzo testified that about 1:40 a.m., after he had put on his topcoat, he dimmed the lights and locked the front door of the premises; that Barry entered the telephone booth; that at 2:13 a.m. by the wall clock (1:58 a.m.) he requested Barry to leave the same; that between seven and eight minutes elapsed from the time the police officers entered the premises and one of them entered the telephone booth; that he did not know the names of Barry and Vogel until he heard them at the hearing before the local Board. These inconsistent statements, in my opinion, weaken the testimony of DeMarzo. In addition, it is difficult for me to believe Vogel's testimony that at the time the officers entered the premises he placed his bottle of beer to his lips and replaced the bottle on the bar without consuming any of its contents.

"With further reference to the second charge, the police officer testified that, on the date in question, at 2:06 a.m., he looked through an unobstructed view of the licensed premises; that he observed three individuals therein and later learned that two of them (Vogel and Quaranto) were patrons. Section 3.1(b) of the city ordinance reads as follows:

'During hours when sales of alcoholic beverages are prohibited the entire licensed premises shall also be closed, but this closing of premises requirement shall not apply to drugstores, restaurants, hotels, clubs or to other establishments where the principal business is other than the sale of alcoholic beverages.'

"As used in the ordinance, 'closed' means that all members of the public must be excluded (see Re Casarico, Bulletin 268, Item 1, and Re Heisel, Bulletin 318, Item 12). In Re Zenda, Bulletin 271, Item 5, the then Commissioner ruled that proof of the charge of 'keeping open' (which is the same as 'not being closed') requires only proof that the licensee continues to entertain the public. See also Town House, Inc. v. Montclair, Bulletin 792, Item 3, as to what constitutes keeping the licensed premises closed during prohibited hours.

"I have carefully considered the evidence adduced herein, together with the brief filed on behalf of the appellant, and I find that the testimony of the police officer reflects what actually occurred on the date alleged and at the time testified to by him, and I conclude that the preponderance of the believable evidence presented establishes the guilt of the appellant. I recommend, therefore, that an order be entered affirming respondent's action, vacating the order entered on June 7, 1960 and fixing the effective dates of the twenty-day suspension heretofore imposed by respondent."

Written exceptions to the Hearer's Report and written argument in substantiation thereof were filed with me by appellant's attorney, pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the record herein, including the transcript of proceedings before respondent Board, the testimony taken at and brief filed subsequent to the hearing of the appeal, the Hearer's Report and exceptions and written argument thereto, I concur in the findings and conclusions of the Hearer and shall adopt his recommendation.

Accordingly, it is, on this 20th day of December 1960,

ORDERED that the order entered by me on June 7, 1960, be vacated at 2 a.m. Tuesday, January 3, 1961, and that the twenty-day suspension heretofore imposed by respondent be and the same is hereby reimposed against appellant's license to commence at 2 a.m. Tuesday, January 3, 1961, and to terminate at 2 a.m. Monday, January 23, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES FROM OTHER THAN NEW JERSEY MANUFACTURER OR WHOLESALER - PRIOR RECORD OF LICENSED CORPORATION IN WHICH DEFENDANTS HAD MAJORITY INTEREST - LICENSE SUSPENDED FOR 80 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Vincent B. Sabbia and Nicholas Sabbia
t/a Sabbia Food Center
36-40 Dales Avenue
Jersey City, N. J.,

CONCLUSIONS

AND

Holders of Plenary Retail Distribution License D-78, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

ORDER

Rocco Wm. Lo Piano, Esq., Attorney for Defendant-licensees.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge that they purchased alcoholic beverages from a person not the holder of a New Jersey manufacturer's or wholesaler's license, in violation of Rule 15 of State Regulation No. 20.

Reports of the ABC agents and other documents in the file disclose that on July 26, 1960, Vincent B. Sabbia (one of the partners of the defendant-licensee) purchased from a former employee of a licensed brewery 264 assorted cases of beer and ale at about half the wholesale price of the same. The investigation further discloses that this employee had stolen the alcoholic beverages from his employer; that at the time of aforesaid sale he had informed Mr. Sabbia of the illicit character of the merchandise and that he was paid for the same in cash.

Defendants have no prior adjudicated record. However, it appears that since February 12, 1957, the above licensees have been principal stockholders and officers of corporate licensee Vike Inn Inc., 418 Jackson Avenue, Jersey City, and that effective November

5, 1958, the license of Vike Inn, Inc. was suspended by the Director of this Division for twenty days for an "hours" violation and for failure to have a copy of its current license application on the licensed premises. Re Bulletin 1253, Item 5. Under the circumstances, this violation will be considered in fixing the penalty herein. Re Pawlowski, Bulletin 1245, Item 2. In view of the large amount of alcoholic beverages involved in the charge herein, I shall suspend defendants' license for seventy-five days (cf. Re Preston, Bulletin 752, Item 9), to which will be added five days because of the prior dissimilar violation which occurred within a five-year period (Re De France, Bulletin 1354, Item 5), making a total suspension of eighty days. Five days will be remitted for the plea entered herein, leaving a net suspension of seventy-five days.

Accordingly, it is, on this 20th day of December 1960,

ORDERED that plenary retail distribution license D-78, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Vincent B. Sabbia and Nicholas Sabbia, t/a Sabbia Food Center, for premises 36-40 Dales Avenue, Jersey City, be and the same is hereby suspended for seventy-five (75) days, commencing at 9 a.m. Thursday, January 5, 1961, and terminating at 9 a.m. Tuesday, March 21, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

4. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES - MOTOR VEHICLE RETURNED TO INNOCENT OWNER.

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| In the Matter of the Seizure |) | |
| on September 10, 1960 of a |) | Case No. 10,391 |
| quantity of alcoholic beverages |) | |
| and a Packard sedan at or near |) | ON HEARING |
| the intersection of Park Avenue |) | |
| and Ellis Avenue, in the Borough |) | CONCLUSIONS AND ORDER |
| of Lawnside, County of Camden, |) | |
| and State of New Jersey. |) | |

Everett Jones, Esq., Attorney for Roy Littlejohn.
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 six one-gallon jugs of alcohol and a Packard sedan, described in a schedule attached hereto, seized on September 10, 1960 at or near the intersection of Park Avenue, and Ellis Avenue, Lawnside, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing, pursuant to R.S. 33:1-66, Roy Littlejohn, the registered owner of the Packard sedan, who sought its return, entered an appearance. Forfeiture of the alcohol was not opposed.

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

ABC agents halted the Packard sedan on the above date and

location upon information that illicit alcoholic beverages were being transported therein. The agents ascertained that the car was being operated by Samuel Kelley, and that there were six one-gallon jugs of alcohol on the floor in the rear of the car. None of the jugs had affixed thereto a stamp indicating the payment of tax on alcoholic beverages. Thereupon the agents seized the car and alcohol.

A sample of the contents of one of the jugs was analyzed by the Division chemist who reports that it is alcohol and water, fit for beverage purposes, with an alcoholic content by volume of 36.9 percent.

The seized alcohol is illicit because of the absence of a tax stamp on any of the jugs. R.S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol and the motor vehicle in which it was transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Roy Littlejohn testified that he resides in Lawnside, and loaned the car to Kelley on the morning of September 10th. He relates that Kelley came to him, and stated that a constable was at his door and had given Kelley a limited time to pay a bill, and if he failed to do so, Kelley would be arrested; and that he expected Kelley to return the car within a half hour; that he has been acquainted with Kelley for a few months, but not intimately although their wives are on a more friendly relationship. Further, that he paid \$100.00 for the car, is employed as a laborer, and does not use the car for transportation to his work, and that he did not know that Kelley was ever involved in any violation of the Alcoholic Beverage Law, and previously had never loaned Kelley any car.

Samuel Kelley testified that on the morning in question the South Jersey Adjustment Company sent a constable to collect a debt from him; and the constable told him that if he went to the office before it closed, and made a payment, the constable would not take any further action; that he borrowed the money, and met Littlejohn, and told him of his trouble and asked to borrow the car, paid the bill, and on his way home met an acquaintance who asked him to deliver the alcohol to another person. The fingerprint records of Samuel Kelley do not disclose any previous arrest or conviction for violating any liquor laws, although there is some record that he was arrested in 1959 with other persons by Federal ATU agents, so far as appears without being convicted of any violation of the liquor laws.

I am satisfied from the evidence presented that Roy Littlejohn acted in good faith and did not know, or have any reason to suspect, that his car would be used by Samuel Kelley for the transportation of illicit alcoholic beverages. Hence, the car will be returned to him upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 15th day of December, Roy Littlejohn pays the costs of the seizure and storage of his Packard sedan, more fully described in Schedule "A" attached hereto, it will be returned to him; and it is further

DETERMINED and ORDERED that the alcoholic beverages, as listed in Schedule "A", constitute unlawful property and that the same be and hereby are forfeited, in accordance with the provisions of R.S. 33:1-66, and that they be 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: December 5, 1960

WILLIAM HOWE DAVIS
DIRECTOR

(See next page for Schedule)

SCHEDULE "A"

- 6 - one-gallon glass jugs of alcohol
- 1 - Packard sedan, Serial No. 2652-5030, New Jersey Registration FDG-750.

5. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES FROM OTHER THAN NEW JERSEY MANUFACTURER OR WHOLESALER - PRIOR RECORD - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.

| | | |
|---|---|-------------|
| In the Matter of Disciplinary Proceedings against |) | |
| |) | |
| Vike-Inn Inc. |) | CONCLUSIONS |
| 418 Jackson Avenue |) | |
| Jersey City, N. J, |) | AND |
| |) | |
| Holder of Plenary Retail Consumption License C-261, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. |) | ORDER |
| |) | |
| ----- | | |

Rocco Wm. Lo Piano, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge that it purchased an alcoholic beverage from a person not the holder of a New Jersey manufacturer's or wholesaler's license, in violation of Rule 15 of State Regulation No. 20.

Reports of ABC agents and other documents in the file disclose that on July 26, 1960, Vincent B. Sabbia (a partner with Nicholas Sabbia of licensed premises located at 36-40 Dales Avenue, Jersey City) purchased 264 stolen cases of Ballantine beer and ale including four cases of 7-ounce bottles of India Pale Ale (for details see Item 3, Bulletin 1373). The investigation of this case further discloses that on August 17, 1960, two ABC agents purchased at the subject licensed premises one of the aforesaid 7-ounce bottles of ale and that ever since December 12, 1957, Vincent B. Sabbia and Nicholas Sabbia have also been the principal officers and stockholders of the corporate licensee herein.

The defendant has a prior adjudicated record. Effective November 5, 1958, its license was suspended by the Director of this Division for twenty days for (a) an "hours" violation and (b) failure to have a copy of its license application on premises. Bulletin 1253, Item 5. I shall suspend the defendant's license for sixty days (Re Preston, Bulletin 752, Item 9), to which will be added five days because of the prior dissimilar violation which occurred within a five-year period (Re De France, Bulletin 1354, Item 5), making a total suspension of sixty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of sixty days.

Accordingly, it is, on this 20th day of December 1960,

ORDERED that plenary retail consumption license C-261, issued by the Municipal Board of Alcoholic Beverage Control of

City of Jersey City to Vike-Inn Inc., for premises 418 Jackson Avenue, Jersey City, be and the same is hereby suspended for sixty (60) days, commencing at 2 a.m. Thursday, January 5, 1961, and terminating at 2 a.m. Monday, March 6, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES FROM OTHER THAN NEW JERSEY MANUFACTURER OR WHOLESALER - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

John Kicey
t/a Steve's Tavern
330 St. Pauls Avenue
Jersey City, N. J.,

Holder of Plenary Retail Consumption License C-243, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS

AND

ORDER

Archie Elkins, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge that he purchased alcoholic beverages from a person not the holder of a New Jersey manufacturer's or wholesaler's license, in violation of Rule 15 of State Regulation No. 20.

Reports of ABC agents and other documents in the file disclose that on August 8, 1960, John Kicey (licensee) purchased ten cases of beer from a former employee of a licensed brewery at less than half the wholesale price of the same. The investigation further discloses that this employee had stolen the alcoholic beverages from his employer; that at the time of said sale he had informed Mr. Kicey he had some extra cases of beer on his truck; that he would sell them at \$3 per case (wholesale price is \$7 per case); that he sold Mr. Kicey ten cases of this beer for \$30 and that he was paid for same in cash in a backroom.

It is apparent from the facts in this case that Mr. Kicey knew or should have known that the alcoholic beverages were stolen.

Defendant has no prior adjudicated record. I shall suspend defendant's license for sixty days. Re Preston, Bulletin 752, Item 9. Five days will be remitted for the plea entered herein, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 20th day of December 1960,

ORDERED that plenary retail consumption license C-243, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to John Kicey, t/a Steve's Tavern, for premises 330 St. Pauls Avenue, Jersey City, be and the same is hereby suspended for fifty-five (55) days, commencing at 2 a.m. Wednesday, January 4, 1961, and terminating at 2 a.m. Tuesday, February 28, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

7.

ACTIVITY REPORT FOR DECEMBER 1960

| | | |
|--|---------------|--------|
| ARRESTS: | | |
| Total number of persons arrested | - - - - - | 15 |
| Licensees and employees | - - - - - 4 | |
| Bootleggers | - - - - - 11 | |
| SEIZURES: | | |
| Motor vehicles - cars | - - - - - | 2 |
| - trucks | - - - - - | 1 |
| Distilled alcoholic beverages - gallons | - - - - - | 66.77 |
| Wine - gallons | - - - - - | 6.37 |
| Brewed malt alcoholic beverages - gallons | - - - - - | 7.50 |
| RETAIL LICENSEES: | | |
| Premises inspected | - - - - - | 523 |
| Premises where alcoholic beverages were gauged | - - - - - | 616 |
| Bottles gauged | - - - - - | 10,220 |
| Premises where violations were found | - - - - - | 51 |
| Violations found | - - - - - | 66 |
| Unqualified employees | - - - - - 18 | |
| Prohibited signs | - - - - - 14 | |
| Application copy not available | - - - - - 9 | |
| Reg. #38 sign not posted | - - - - - 5 | |
| Disposal permit necessary | - - - - - 3 | |
| Other mercantile business | - - - - - 1 | |
| Other violations | - - - - - 16 | |
| STATE LICENSEES: | | |
| Premises inspected | - - - - - | 17 |
| License applications investigated | - - - - - | 10 |
| COMPLAINTS: | | |
| Complaints assigned for investigation | - - - - - | 297 |
| Investigations completed | - - - - - | 298 |
| Investigations pending | - - - - - | 145 |
| LABORATORY: | | |
| Analyses made | - - - - - | 187 |
| Refills from licensed premises - bottles | - - - - - | 20 |
| Bottles from unlicensed premises | - - - - - | 41 |
| IDENTIFICATION: | | |
| Criminal fingerprint identifications made | - - - - - | 7 |
| Persons fingerprinted for non-criminal purposes | - - - - - | 152 |
| Identification contacts made with other enforcement agencies | - - - - - | 108 |
| Motor vehicle identifications via N. J. State Police teletype | - - - - - | 7 |
| DISCIPLINARY PROCEEDINGS: | | |
| Cases transmitted to municipalities | - - - - - | 7 |
| Violations involved | - - - - - | 8 |
| Sale during prohibited hours | - - - - - 3 | |
| Sale to minors | - - - - - 3 | |
| Permitting brawl on premises | - - - - - 1 | |
| Failure to close premises during prohibited hours | - - - - - 1 | |
| Cases instituted at Division | - - - - - | 14 |
| Violations involved | - - - - - | 22 |
| Sale during prohibited hours | - - - - - 5 | |
| Sale to minors | - - - - - 4 | |
| Possessing liquor not truly labeled | - - - - - 3 | |
| Failure to close premises during prohibited hours | - - - - - 2 | |
| Conducting business as a nuisance | - - - - - 2 | |
| Cases brought by municipalities on own initiative and reported to Division | - - - - - | 8 |
| Violations involved | - - - - - | 10 |
| Sale to minors | - - - - - 3 | |
| Sale during prohibited hours | - - - - - 3 | |
| Permitting bookmaking on premises | - - - - - 1 | |
| Unqualified employees | - - - - - 1 | |
| Failure to close premises during prohibited hours | - - - - - 1 | |
| Failure to afford view into premises during prohibited hours | - - - - - 1 | |
| Permitting lottery activity (numbers) | - - - - - 2 | |
| Sale during license suspension | - - - - - 1 | |
| Hindering investigation | - - - - - 1 | |
| Possessing indecent matter | - - - - - 1 | |
| Sale to intoxicated person | - - - - - 1 | |
| HEARINGS HELD AT DIVISION: | | |
| Total number of hearings held | - - - - - | 26 |
| Appeals | - - - - - 7 | |
| Disciplinary proceedings | - - - - - 14 | |
| Eligibility | - - - - - 1 | |
| Seizures | - - - - - 3 | |
| Tax revocations | - - - - - 1 | |
| STATE LICENSES AND PERMITS ISSUED: | | |
| Total number issued | - - - - - | 1,142 |
| Licenses | - - - - - 5 | |
| Solicitors' permits | - - - - - 36 | |
| Employment | - - - - - 141 | |
| Disposal | - - - - - 58 | |
| Social affair | - - - - - 474 | |
| Wine permits | - - - - - 75 | |
| Miscellaneous permits -c- | - - - - - 166 | |
| Transit insignia | - - - - - 180 | |
| Transit certificates | - - - - - 7 | |
| OFFICE OF AMUSEMENT GAMES CONTROL: | | |
| Enforcement files established | - - - - - 14 | |

Dated: January 5, 1961

WILLIAM HOWE DAVIS
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
 LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
 Proceedings against

Catherine Aston
 t/a K & A Concessions
 63 Union Boulevard
 Wallington, New Jersey,

Holder of Plenary Retail Consumption
 License C-6, issued by the Mayor and
 Council of the Borough of Wallington.

CONCLUSIONS

AND

ORDER

Defendant-licensee, Pro se

William F. Wood, Esq., Appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

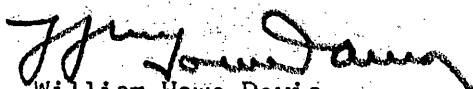
Defendant pleaded non vult to a charge alleging that she possessed on her licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On November 1, 1960, an ABC agent tested defendant's open stock of liquor and seized two bottles for further tests by the Division chemist. Subsequent analysis by the chemist disclosed that the contents of the seized bottles, when compared with the contents of genuine bottles of the same brand, varied substantially in solids and color.

Defendant has no prior adjudicated record. I shall suspend defendant's license for fifteen days, the minimum penalty imposed in cases involving two bottles. Re Mlinchik, Bulletin 1346, Item 11. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 29th day of December 1960,

ORDERED that plenary retail consumption license C-6, issued by the Mayor and Council of the Borough of Wallington to Catherine Aston, t/a K & A Concessions, for premises 63 Union Boulevard, Wallington, be and the same is hereby suspended for ten (10) days, commencing at 3 a.m. Monday, January 9, 1961, and terminating at 3 a.m. Thursday, January 19, 1961.


 William Howe Davis
 Director