

26 Rose Avenue,  
Madison,  
Morris County, New Jersey

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

BULLETIN 1018

JUNE 10, 1954.

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

BULLETIN 1018

JUNE 10, 1954.

1. APPELLATE DECISIONS - BAKER v. NEWARK ET AL.

CHARLES H. BAKER, t/a BAKER )  
PIANO CO., ET AL., )

Appellants, )

-vs- )

ON APPEAL  
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY OF )  
NEWARK and JOSEPH ROSS and JAMES )  
PROCACCINI, as partners, and )  
JOSEPH ROSS, individually, )

Respondents. )

-----  
Sidney Simandl, Esq., Attorney for Appellants, Abe Kalfus, Blue Diamond, Inc., Newark Tavern Association, and Al & Jack's Bar and Grill.

Louis H. Hollander, Esq., Attorney for Appellant, Cinderella Club Inc.

Frank Metro, Esq., by Richard F. Burnett, Esq., Attorney for Appellants, Larry Mainiero and David Ogno, t/a San Remo Restaurant.

Egner & Beatty, Esqs., by Lloyd G. Beatty, Esq., Attorneys for Appellant, Charles H. Baker, t/a Baker Piano Company.

Horace S. Bellfatto, Esq., by George B. Astley, Esq., Attorney for Respondent Board of Alcoholic Beverage Control of the City of Newark.

Saul C. Schutzman, Esq., Attorney for Respondents, Joseph Ross and James Procaccini, t/a The Grotto, and Joseph Ross, individually.

BY THE DIRECTOR:

This is an appeal from respondent's action, on December 15, 1953, whereby it granted the transfer of a plenary retail consumption license from 190 Eighth Avenue to 221 Washington Street.

In its resolution granting the transfer, the Board stated that James Procaccini, who had been a partner of respondent Ross at the Eighth Avenue premises, had withdrawn from the partnership; that 221 Washington Street to which the transfer was sought is within 750 feet of existing licensed premises of like character; that the Board had been asked to waive the 750 feet rule by reason of the so-called "hardship rule"; and then summarized the principal points of objection as follows:

"1- The applicant had no possession of either the present licensed premises at 190 Eighth Avenue or the proposed licensed premises at 221 Washington Street & 68-74 Bank Street.

"2- That the applicant is not a licensee.

"3- That there was no taking of the applicant's present licensed premises to entitle him to benefit under the 'Hardship Rule'.

"4- That there are sufficient licenses within seven hundred and fifty (750) feet of the new proposed premises.

"5- That if the transfer be granted, it will aggravate traffic conditions on Washington Street.

"6- The present licensee has a record of a violation.

"7- That the licensee is a front for persons unknown.

"8- The licensee has not complied with the rules and regulations of the Director of Alcoholic Beverage Control."

The Board then disposed of the objections as follows:

"WHEREAS, the Board, at the conclusion of the hearing on the application, considered all the facts and circumstances surrounding the case as well as the evidence offered and the several objections interposed as above set forth, and as to these objections the Board's findings are briefly set forth as follows:

"As to points 1, 5, 7 and 8, the Board considered the same either without merit or the fact that sufficient proof was not submitted at the hearing whereby these questions become sufficient in law or fact so as to affect the discretion of the Board in its action upon the transfer.

"As to point 2, the proof submitted shows the applicant to be one of two partners holding the license in question and by virtue of this application to the Board in his own name designates the dissolution of the partnership and is acquiring the partner's interest, thus making him an individual license holder. Even before such notification under the application, the applicant, as a partner, had an equitable interest in the license and had a right, under the circumstances, to preserve such interest as well as the right as a partner to make application in interest to the partnership.

"As to point 3, the Newark Housing Authority had designated and determined to acquire and develop a specified area of the City of Newark for a slum clearance project and designated that all property in said area was to be acquired for that purpose, and it had proceeded to demolish certain premises in the area to meet the over-all plan. The licensed premises at 190 Eighth Avenue was in this area, and this Board is of the opinion that the above facts constitute a taking within the hardship rule of the City ordinance in order to justify this Board to apply the same to the application in question, and that it was not necessary to wait until the particular property was purchased or condemned before the applicant could claim benefit under the rule, otherwise, the area around the licensed premises could all be demolished and thereby the licensee prevented from doing business by reason of such condition, this we feel was not the intent or the purpose of the ordinance.

"As to the 4th point, this question like other general questions involving the issuing or approval of a license, or a transfer of a license, and determining how many retail liquor places will be permitted in any given area is confined, in the first instance, to the sound and bona fide discretion of the issuing authority. The transfer of a liquor place is not a right inherent in the licensee but is rather, a privilege, which the issuing authority may grant or deny in the exercise of a reasonable discretion. In arriving at this discretion, the Board has taken into consideration the several questions and reasons raised by the objectors. It also realizes that by reason of the hardship ordinance there must be considered in the exercise of such discretion the conditions and purpose of the making of such ordinance. If one is compelled by the authority to move and the ordinance desires to lift the seven hundred and fifty (750) feet rule

to meet this particular case, the Board will have to use equity with its discretion in making its determination, for it is the feeling of the Board that the intent of the ordinance was not to limit the transfer to some neighborhood in the out-skirts of the city where no business existed. This Board is bound by the provision of the ordinance, insofar as the seven hundred and fifty (750) feet rule is concerned, and so long as the proposed transfer does not have a detrimental effect upon the entire neighborhood as such, then we feel the Board has power to exercise its discretion and that the injury to some certain person or persons in the neighborhood cannot constitute an abuse of that discretion.

"As to the 6th point raised in the objections, the Board is fully cognizant of the violation and the penalty imposed in the matter. Nevertheless, the statutes and the rules and regulations governing alcoholic beverage enforcement and control does not deny the licensee the right of transfer by reason of any past violation, if that be so, then the Board should refuse the transfer even though his premises was demolished by the authorities."

"If the licensee is entitled to the license, he is then entitled to the rights and benefits running to a licensee by virtue of the statutes and rules and regulations."

The resolution then ordered that, in consideration of all the laws, facts and circumstances surrounding the case, the transfer be granted.

At the original hearing on this appeal, held January 28, 1954, the transcript of the testimony and the exhibits produced at the hearing before respondent Board were introduced in evidence. In addition, a stipulation and further testimony and exhibits were introduced. Following the submission of memoranda and oral argument before the Director on April 15, 1954, a supplemental hearing was held on April 23, 1954 at which a lease and testimony, with respect thereto, were received together with an amendment (adopted March 31, 1954) to the aforementioned Section (3.29) of the Newark Alcoholic Beverage ordinance.

Respondent Ross and his then partner Procaccini held a 1953-54 plenary retail consumption license for 190 Eighth Avenue, being tenants under a lease which has several years to run. A City Housing Authority project has been adopted (and is apparently proceeding) which includes such premises although, at the time of the first hearing on this appeal, the licensed premises had not yet been acquired for that purpose. The only action taken to that end, as late as January 28, 1954, was by the appraisers who inspected the premises. The licensees surrendered possession of the licensed premises to a political club and were relieved of any further liability for rent, effective January 1, 1954.

On October 13, 1953, Ross filed this application for transfer, person-to-person and place-to-place, to 221 Washington Street and 68-74 Bank Street, approximately 3/4 of a mile from the former location. His partner Procaccini had agreed to withdraw from the partnership and the terms of payment had been agreed upon. Ross described the building as "Brick and Frame - alterations to be made" and described the proposed uses as "Tavern, cocktail lounge and restaurant." Blueprints had been filed with respondent Board. The application further stated that the premises are leased from Daniel Tozzi. However, it appears from the record that, until January 1, 1954, Tozzi had only a contract to purchase the Washington Street and Bank Street property conditioned upon the grant of this license transfer and that Tozzi and Ross had only a verbal agreement that there would be made available to Ross the first floor and storage facilities in the basement. No rent

or other terms had been agreed upon but it was understood that the rent would depend on building costs.

At the original hearing on this appeal, evidence was adduced tending to show that a corporation, 221 Washington Holding Corp., of which Tozzi is a 1/3 stockholder, now owns the building and that plans, specifications and estimates of building costs were expected momentarily, while the situation with respect to the agreement between Ross and Tozzi remained unchanged.

At the supplemental hearing respondent Ross introduced in evidence a lease, from 221 Washington Holding Corp. to Ross, for the first floor and part of the basement at that address for a term of ten years to commence "upon the completion of said building and when the same is in a habitable condition" at a yearly rental of \$6,000.00, payable monthly in advance at the rate of \$500.00 a month.

At the hearing below, Ross and Tozzi both testified that Tozzi had no interest in the licensed business and that Ross had no interest in the building. Ross testified that he alone was interested in the license and that he proposed to conduct a restaurant and cocktail lounge with a service bar at the Washington Street premises. At the hearing on the appeal Ross and Tozzi gave substantially the same testimony as they had given below.

Ross also testified that he selected 221 Washington Street as a good location and that, in his discussions with Tozzi, a ceiling of \$450.00 had been set as the rent per month, but that he had agreed to the higher rental (\$500.00 a month) when he signed the lease. He did not deny the proximity of other licensed premises.

Tozzi testified that the amount of the rent was to be determined after expenses had been ascertained and denied that there was any ceiling fixed for such rent. He further testified that the amount had been estimated at approximately \$400.00 or more a month.

Appellants' counsel vigorously questioned Ross and Tozzi with respect to any possible interest Ross might have in the building at 221 Washington Street and with respect to a possible interest which Tozzi or others might have in the licensed business. Appellants contended that they had been "hampered" at the hearing below and that they were not afforded a full opportunity to examine into these matters. I find no evidence to support this contention. Furthermore, they were given great latitude on this appeal. After considering all of the evidence in this case I find that it fails to support the appellants' claim that a "front" existed or exists.

On behalf of appellants, Mr. Baker, one of the appellants, and a licensee who is President of the local and state Tavern Owners' Associations (one of whose licensed premises is within 1,000 feet of 221 Washington Street) appeared and testified. Mr. Baker testified that the piano company with which he is connected has conducted its business at 225 Washington Street for many years; that the headquarters for the municipal salvage corps is next door; that such fact affects the traffic which is one-way and very heavy; that, because of the location of licensed premises in the area, certain undesirable conditions exist in the neighborhood and that he feared that, if the transfer were granted it would be harmful to his license.

It was stipulated that the two objectors who are licensees and whose premises are close to 221 Washington Street would testify that, during the six months preceding the hearing, their weekly receipts had "fluctuated substantially downward" and that this is so despite the fact that they have conducted their businesses as theretofore.

The president of the Tavern Owners' Association testified that there is no necessity for an additional license in the neighborhood of 221 Washington Street and that the transfer would impose a hardship on the licensees already in the area. He further testified that, although a restaurant, as such, would not be objectionable to the other licensees in the area, the fact that Ross plans to conduct a restaurant in connection with his licensed business does not make it any less objectionable to those licensees. On cross-examination he admitted that he had a considerable investment in two licensed premises in the downtown area and expressed it as his opinion that the investments of licensees in the downtown area should be preserved. However, he also testified that licensees in other parts of the city should also be protected.

The secretary of respondent Board, called by appellants as a witness at the hearing below, testified that there were seventeen plenary retail consumption licenses in the general area surrounding 221 Washington Street; that there were twelve such licenses within 750 feet thereof; and that two are restaurants and some of the others serve food.

I have carefully considered the reasons for granting the transfer set forth by the Board in its resolution and order. I have also considered the memoranda and arguments submitted by counsel for all of the parties. I agree with the Board's disposition of the "points of objection" numbered 2, 3, 5, 6, 7 and 8. I find no merit in appellants' contention to the contrary on these points. With particular reference to point 6 dealing with the licensee's previous record, the determination as to whether or not to renew or transfer a license after the licensee has been found guilty of a violation is within the sound discretion of the issuing authority. Watson et al. v. Camden et al., Bulletin 1010, Item 1. Under the facts in this case I cannot find that such discretion was abused in this regard.

Point (1), relating to whether or not Ross had possession or right to possession of premises sufficient to justify the Board's action and point (4), relating to the public necessity and convenience for a license at 221 Washington Street, require further discussion herein. So also do two other matters raised on this appeal, namely, the question of the applicability of the March 31, 1954 amendment to Section 3.29 of the ordinance and the question of whether or not the Board was properly constituted when it granted the transfer here complained of.

Since the last question might well dispose of this entire proceeding I shall deal with it first. It was stipulated, at the hearing on this appeal that, when the application for transfer was filed (October 13, 1953) respondent Board consisted of three members; that one of the members (Mr. Braff) became physically incapacitated on October 9, 1953 and died November 17, 1953; that after several adjournments, the hearing upon this application for transfer was held on December 8, 1953; that the surviving members (Chairman D'Alessio and Mr. Reuther) sat at the hearing and adopted the resolution which is the subject of this appeal and that the present third member (Mr. Lerner) did not take office until after such resolution was adopted.

Thus, before the application was filed, the Board had been legally constituted. It did not cease to be legally constituted either because one member was inactive (through illness or any other cause) or because there was a vacancy (through death or any other cause). A majority remained and a majority acted; both remaining members voting to grant the transfer. No irregularity or defect appears. On the contrary, the action was legal and sufficient. Knast et al. v. Camden et al., Bulletin 810, Item 2. Cf. Manno v. Clifton, 14 N. J. Super. 100 (App. Div. 1951). See also Sandfort v. Atlantic City, 134 N.J.L. 311 (Sup. Ct. 1946). The cases cited on behalf of appellants have no applicability to the facts in this case.

As to point (1), while there may be some question as to whether Ross had the requisite right to possession to any premises when the Board granted, unconditionally, the application for transfer to 221 Washington Street, it now appears that Ross has a lease with the owner of the property at such proposed new location which gives him such right to possession. In this posture of the case I must consider the situation as it exists now. Socony-Vacuum Oil Co., Inc. v. Mt. Holly Twp., 135 N.J.L. 112 (Sup. Ct. 1947); Franklin Stores v. Elizabeth, Bulletin 61, Item 1; Kitchman v. Mount Laurel, Bulletin 752, Item 10; Watson et al. v. Camden et al., supra. The defect, if any, has been cured. Cf. Watson et al. v. Camden et al., supra.

As to point (4), appellants contend that there has been no showing that public necessity and convenience would be served by this transfer. Admittedly 221 Washington Street is in the principal downtown business section; 190 Eighth Avenue is not. The distance between premises Section (3.29) of the ordinance, as it existed when the transfer was applied for and granted, restricted place-to-place transfers to premises not more than 750 feet from the premises from which the license was sought to be transferred, but contained an unlimited exception in favor of licensees whose premises have been taken for any municipal, county, state or federal project. The Board, acting under that section, considered this a "hardship case", taking the position that the determination of whether or not the transfer is to be granted and the number of licenses to be permitted in any given area is confided, in the first instance, to the sound and bona fide discretion of the issuing authority, and explained in some detail (as hereinabove set forth) the matters and things which were considered in arriving at its decision.

It has long been held that the number of licenses which should be permitted in any particular area and the determination as to whether or not a license will be transferred to a particular location are matters within the sound discretion of the issuing authority and that my function on appeal is not to substitute my opinion for that of the issuing authority but rather to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of my personal views. Rafalowski v. Trenton, Bulletin 155, Item 8; Northend Tavern Inc. v. Northvale, Bulletin 493, Item 5; Hudson-Bergen County Retail Liquor Stores Association v. North Bergen, Bulletin 997, Item 2; Watson et al. v. Camden et al., supra. "This is particularly so where the proposed location is in an area devoted to business, and the mere fact that other licensed premises also serve the same area is not necessarily dispositive. Hudson-Bergen &c. Association v. Rutherford et al., Bulletin 931, Item 3; Trinity Methodist Church of Rahway v. Rahway et al., Bulletin 972, Item 3." Hudson-Bergen County Retail Liquor Stores Association v. North Bergen et al., supra.

Under the facts and circumstances of this case, including the fact that the proposed new location is in the principal business district of the city and the further fact that the licensee intends to conduct a restaurant as well as a tavern and cocktail lounge, I cannot find that the Board's determination on this point was an abuse of its discretion, warranting reversal of its action.

There remains to be considered the question of whether or not the March 31, 1954 amendment to Section 3.29 of the ordinance is applicable to this case.

The ordinance, as it existed when the application for transfer was filed and granted, permitted the transfer to any place in the city. The March 31, 1954, amendment limited the exception (theretofore unlimited) in favor of licensees whose premises were being taken for a public project by adding a proviso. The exception, with proviso, now reads as follows:

"Notwithstanding the above mentioned seven hundred and fifty foot limitation affecting the transfer of any retail plenary consumption or distribution licenses, the local issuing authority, at their discretion, may allow transfer of such licenses free of such seven hundred and fifty foot limitation herein fixed in the event of any licensee's premises being taken for any municipal, county, state or federal project, provided, nevertheless, the new location to which the license is to be transferred under this exception shall not be located within a distance of five hundred feet of a then existing location licensed to do business under a like license as the one being transferred. Said five hundred foot distance shall be measured in the same manner as herein provided for the measuring of the seven hundred and fifty foot distance."

It is clear that there are other plenary retail consumption licenses within 500 feet of 221 Washington Street and that, therefore, if the March 31, 1954 amendment is applicable, this transfer would be prohibited.

Appellants contend that the amendment is applicable to this case, citing Socony-Vacuum Oil Co. v. Mt. Holly, supra and Bock Tavern, Inc. v. Newark, supra. I cannot agree. It is axiomatic that an ordinance is prospective only unless it clearly appears that it is intended to be retroactive. 62 C.J.S. p. 857 Sec. 433 (c). See also C.J.S. 48 P. 325, Sec. 192. No such intent appears here. Furthermore, to give the amendment retroactive effect would be to void a transfer, valid when granted, ex post facto. Such a construction is not only unwarranted, it is unreasonable and unsound. This situation involving, as it does, a more restrictive amendment of the ordinance after a grant of a transfer must be distinguished from the situation which would be presented if such an amendment were to be enacted after a denial of a transfer (cf. Socony-Vacuum Oil Co. v. Mt. Holly, supra) and is to be further distinguished from that found in Bock Tavern, Inc. v. Newark, supra, where the amendment of the ordinance was less restrictive than theretofore. A license or permit once lawfully granted cannot be withdrawn arbitrarily. See 138 ALR 505 and 40 ALR 928. Even in the case of a denial of a permit, a later prohibitory ordinance will not always be given retrospective effect and, on occasion, such ordinances have been set aside as arbitrary and capricious. Vine v. Zabriskie, 122 N.J.L. 4 (Sup. Ct. 1939); Ridgefield Terrace Realty Co. v. Ridgefield, 136 N.J.L. 313 (Sup. Ct. 1947); Kerrigan Development Co. v. Newark, 2 N. J. Super. 592 (Super. Ct. Law Div. 1949). Similarly, a prohibitory ordinance adopted after delay in acting upon an application for a permit was set aside. Brown v. Terhune, 125 N.J.L. 618 (Sup. Ct. 1941), appeal dismissed 127 N.J.L. 554 (E. & A. 1941).

The burden of establishing that respondent's action was erroneous and should be reversed rests with appellant. Rule 6 of State Regulations No. 15. After considering, most carefully, all of the evidence and all of the facts and circumstances in this case, I find that appellants have failed to sustain that burden.

Accordingly, it is, on this 19th day of May, 1954,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control be and the same is hereby affirmed, and the appeal herein, be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
Director.

2. DISCIPLINARY PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES WITHOUT BONA FIDE INVOICES OR MANIFESTS - STORING ALCOHOLIC BEVERAGES AT PREMISES OTHER THAN LICENSED PREMISES - PRIOR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

SOLICITOR'S PERMIT - ENGAGING IN CONDUCT PROHIBITED TO EMPLOYER - PRIOR RECORD - PERMIT SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA - EFFECTIVE AFTER EXPIRATION OF LICENSEE'S SUSPENSION.

In the Matter of Disciplinary Proceedings against )

COLONIAL MINERAL WATERS, INC. )  
375 Second Street )  
Jersey City 2, N. J., )

Holder of State Beverage Distributor's License SBD-220, issued by the Director of the Division of Alcoholic Beverage Control, )

CONCLUSIONS AND ORDER

and )

JOSEPH BIVIANO )  
237 Monticello Avenue )  
Jersey City 4, N. J., )

Holder of Solicitor's Permit #1593, issued by the Director of the Division of Alcoholic Beverage Control. )

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Colonial Mineral Waters, Inc., Defendant-licensee, by Luke Casulli, President.

Joseph Biviano, Defendant-permittee, Pro Se.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant-licensee, Colonial Mineral Waters, Inc., pleaded guilty to the following charges:

"1. On April 14, 1954 and on divers other days between November 1, 1951 and April 14, 1954, you transported alcoholic beverages in a vehicle without the driver thereof having in his possession bona fide, authentic and accurate delivery slips, invoices, manifests, waybills or similar documents stating the bona fide name and address of the purchaser or consignee and the brand name or size of the container and quantity of each item of alcoholic beverages being delivered and transported; in violation of Rule 3 of State Regulations No. 17.

"2. On the occasions aforesaid you stored alcoholic beverages at premises other than your licensed premises, warehouse or salesroom or a licensed public warehouse or other premises pursuant to special permit, in that you stored such beverages in a motor vehicle parked on the public street in the vicinity of 237 Monticello Avenue, Jersey City, N. J.; in violation of Rule 25 of State Regulations No. 20."

Defendant-permittee, Joseph Biviano, pleaded guilty to the following charges:

"1. On April 14, 1954 and on divers other days between November 1, 1951 and April 14, 1954, you as holder of a solicitor's permit authorizing your employment by Colonial Mineral Waters, Inc., holder of a New Jersey State Beverage Distributor's license, engaged in conduct prohibited to your employer by Rule 3 of State Regulations No. 17; in that you transported alcoholic beverages in a vehicle without having

in your possession bona fide, authentic and accurate delivery slips, invoices, manifests, waybills or similar documents stating the bona fide name and address of the purchaser or consignee and the brand name or size of the container and quantity of each item of alcoholic beverages being delivered and transported; in violation of Rule 12 of State Regulations No. 14.

"2. On April 14, 1954 and on divers other days between November 1, 1951 and April 14, 1954, you as holder of a solicitor's permit authorizing your employment by Colonial Mineral Waters, Inc., holder of a New Jersey State Beverage Distributor's license, engaged in conduct prohibited to your employer by Rule 25 of State Regulations No. 20; in that you stored alcoholic beverages at premises other than the licensed premises, warehouse or salesroom of your employer or at a licensed public warehouse or other premises pursuant to special permit, viz., in a motor vehicle parked on the public street in the vicinity of 237 Monticello Avenue, Jersey City, N. J.; in violation of Rule 12 of State Regulations No. 14."

The files herein disclose that on April 14, 1954, an ABC agent observed Joseph Biviano making a delivery of one case of beer to a consumer from a truck which he owns and leases to Colonial Mineral Waters, Inc. The truck bore a transportation insignia. After the delivery was made, the agent questioned Biviano who admitted that he did not have a route card showing the name of his customer or any other required information concerning said delivery. He admitted that he had made deliveries to the same customer for the past six months; that he has not kept his route cards up to date, and that he has not made any entries on them since December 1953. Further investigation disclosed that there were twenty-five cases of assorted beer on the truck and that Biviano did not have a load list on the truck or on his person. Biviano further admitted that he picks up beer at the premises of his employer on Mondays and Fridays and keeps the unsold cases in his truck which he parks overnight on a public street.

Luke Casulli, President of Colonial, gave to the ABC agent a statement in which he said that Biviano has been employed by his company since Repeal; that Biviano is furnished with a copy of the load list when he picks up cases of beer on Mondays and Fridays but that he does not know if Biviano keeps the route cards up to date. In said statement Luke Casulli further admitted that his company did not have a route card referring to the person to whom delivery was made on April 14, 1954.

The above facts disclose a flagrant violation of the provisions of Rule 3 of State Regulations No. 17 and raise an inference that Biviano has been operating an independent business of his own while presumably acting as an employee of a licensee.

Both defendants have prior records. Effective September 17, 1951, the license then held by Colonial Mineral Waters, Inc. was suspended by the Director for fifteen days after it had pleaded non vult to similar and other charges (see Bulletin 916, Item 13). Effective October 2, 1951, the solicitor's permit then held by Joseph Biviano was suspended by the Director after he had pleaded non vult to charges that he aided and abetted Colonial in the aforesaid violations (see Bulletin 916, Item 10).

Under all the circumstances, I shall suspend the license held by Colonial Mineral Waters, Inc., for a period of forty days. Five days will be remitted for the plea, leaving a net suspension of thirty-five days.

Under all the circumstances, I shall suspend the permit held by Joseph Biviano for a period of sixty days. Five days will be remitted for the plea, leaving a net suspension of fifty-five days, effective after the expiration of the aforesaid suspension (Re Fay's, Bulletin 1014, Item 7).

Accordingly, it is, on this 17th day of May, 1954,

ORDERED, that State Beverage Distributor's License SBD-220, issued by the Director of the Division of Alcoholic Beverage Control to Colonial Mineral Waters, Inc., for premises 375 Second Street, Jersey City, N. J., be and the same is hereby suspended for thirty-five days, commencing at 7:00 a.m. May 27, 1954, and terminating at the expiration of the license at midnight, June 30, 1954; and it is further

ORDERED that, if any solicitor's permit be issued by the Director of the Division of Alcoholic Beverage Control to Joseph Biviano, 237 Monticello Avenue, Jersey City, N. J., for the 1954-55 licensing year, said permit shall be under suspension until 7:00 a.m. August 25, 1954.

WILLIAM HOWE DAVIS  
Director.

3. DISCIPLINARY PROCEEDINGS - FALSE ANSWERS IN APPLICATION FOR LICENSE - AIDING AND ABETTING NON-LICENSEE TO EXERCISE RIGHTS AND PRIVILEGES OF A LICENSE - ILLEGAL SITUATION CORRECTED - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against JARV'S INC. T/a JARV'S 387 Paterson Avenue East Rutherford, N. J., Holder of Plenary Retail Consumption License C-16, issued by the Mayor and Council of the Borough of East Rutherford.

CONCLUSIONS AND ORDER

Joseph P. Winberry, Esq., Attorney for Defendant-licensee. William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging that (1) its current license application falsely denied that anyone other than the stockholders named therein had an interest in the stock held by said stockholders, whereas Loris F. Jarvis, Jr., was the real and beneficial owner of all the stock, in violation of R. S. 33:1-25; (2) its current license application falsely denied that anyone other than the applicant had an interest in the license or in the business to be conducted under said license, in violation of R.S. 33:1-25 and (3) it knowingly aided and abetted said Loris F. Jarvis, Jr., to exercise, contrary to R. S. 33:1-26, the rights and privileges of its license, in violation of R. S. 33:1-52.

The file herein discloses that defendant was duly incorporated on December 11, 1950. Loris F. Jarvis, Jr., who at the time held the license in question and owned the business conducted thereunder, subscribed for eight of the ten shares of defendant's capital stock. Dolores Jarvis, wife of Loris F. Jarvis, Jr., subscribed for one share, as also did one Clara K. Bivona. On December 13, 1950, Loris F. Jarvis, Jr. was arrested and charged with bookmaking (R. S. 2:135-3). Prior to the arrest Loris F. Jarvis, Jr. had been negotiating for a loan for the business. After the arrest he resigned as an

officer and director of the corporation and assigned his eight shares of stock to his wife. She then became president of defendant corporation and holder of nine shares of stock. Joseph Wasco, who held one share of defendant's stock (apparently the one share originally held by Clara K. Bivona), was elected secretary of the corporation. Both Dolores Jarvis and Joseph Wasco stated in writing that they had no financial interest in the license or the business conducted thereunder.

Clearly the corporation is a "front" for Loris F. Jarvis, Jr. The arrangement whereby he assigned the eight shares of stock to his wife was decided upon after Loris F. Jarvis, Jr. was arrested and charged with a crime. He subsequently pleaded guilty to the charge of bookmaking and, as a result thereof, was fined \$1,000.00 and sentenced to State Prison for one to one-and-a-half years. The prison sentence was suspended and he was placed on probation for a period of five years. I have examined the facts which constituted the bookmaking activities to which Loris F. Jarvis, Jr. pleaded guilty and am of the opinion that the crime of bookmaking under the circumstances appearing in this case did not involve the element of moral turpitude. Therefore, Loris F. Jarvis, Jr. is not ineligible because of said conviction to be associated with the alcoholic beverage industry.

It has come to my attention that Dolores Jarvis, wife of Loris F. Jarvis, Jr., has transferred five shares of the stock of defendant corporation to her husband. She contends that she is the owner of the four other shares which are in her name. I am satisfied that the prior unlawful situation appears to have been corrected. Nevertheless, the nature of the violation heretofore committed warrants a suspension of the license.

Defendant has a prior adjudicated record. Effective December 7, 1953, its license was suspended by the local issuing authority for three days for an "hours" violation. Also, while the license was in the individual name of Loris F. Jarvis, Jr., it was suspended for fifteen days, effective January 31, 1951, as a result of his plea of non vult to a charge of allowing, permitting and suffering bookmaking and gambling in his licensed premises. Re Jarvis, Bulletin 897, Item 9.

When, as here, an undisclosed owner of an interest in the license or the business conducted thereunder fails to set forth in the application for a liquor license that he was ever convicted of a crime, although the said crime may be a non-disqualifying one, the minimum suspension of the license is thirty days (Re Stagg, Bulletin 846, Item 5). Under the circumstances in the instant case, and taking into consideration the past record, I shall suspend defendant's license for a period of thirty-five days.

Accordingly, it is, on this 14th day of May, 1954,

ORDERED that Plenary Retail Consumption License C-16, issued by the Mayor and Council of the Borough of East Rutherford to Jarv's Inc., t/a Jarv's, for premises 387 Paterson Avenue, East Rutherford, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m. May 20, 1954, and terminating at 2:00 a.m. June 24, 1954.

WILLIAM HOWE DAVIS  
Director.

4.

ACTIVITY REPORT FOR MAY 1954

<b>ARRESTS:</b>		
Total number of persons arrested - - - - -		26
Licensees and employees - - - - -	8	
Bootleggers - - - - -	18	
<b>SEIZURES:</b>		
Motor vehicles - cars - - - - -		7
Stillis - 50 gallons or under - - - - -		4
Mash gallons - - - - -		1,450.00
Distilled alcoholic beverages - gallons - - - - -		148.54
Wine - gallons - - - - -		11.28
Brewed malt alcoholic beverages - gallons - - - - -		12.94
<b>RETAIL LICENSEES:</b>		
Premises inspected - - - - -		1,105
Premises where alcoholic beverages were gauged - - - - -		803
Bottles gauged - - - - -		14,825
Premises where violations were found - - - - -		104
Violations found - - - - -		189
Type of violations found:		
Unqualified employees - - - - -	109	
Reg. #38 sign not posted - - - - -	12	
Other mercantile business - - - - -	8	
Prohibited signs - - - - -	1	
Improper beer taps - - - - -	1	
Disposal permit necessary - - - - -	1	
Other violations - - - - -	57	
<b>STATE LICENSEES:</b>		
Premises inspected - - - - -		13
License applications investigated - - - - -		10
<b>COMPLAINTS:</b>		
Complaints assigned for investigation - - - - -		442
Investigations completed - - - - -		410
Investigations pending - - - - -		171
<b>LABORATORY:</b>		
Analyses made - - - - -		140
Refills from licensed premises - bottles - - - - -		2
Bottles from unlicensed premises - - - - -		28
<b>IDENTIFICATION BUREAU:</b>		
Criminal fingerprint identifications made - - - - -		29
Persons fingerprinted for non-criminal purposes - - - - -		200
Identification contacts made with other enforcement agencies - - - - -		175
Motor vehicle identifications via N. J. State Police teletype - - - - -		2
<b>DISCIPLINARY PROCEEDINGS:</b>		
Cases transmitted to municipalities - - - - -		17
Violations involved:		
Sale during prohibited hours - - - - -	8	
Sale to minors - - - - -	6	
Permitting hostesses on premises - - - - -	3	
Permitting bookmaking on premises - - - - -	1	
Sale to non-members by club - - - - -	1	
Permitting females to tend bar (local reg.) - - - - -	1	
Cases instituted at Division - - - - -		11
Violations involved:		
Sale to minors - - - - -	2	
Permitting bookmaking on premises - - - - -	2	
Permitting immoral activity on premises - - - - -	1	
Possessing illicit liquor - - - - -	1	
Sale outside scope of license - - - - -	1	
Permitting females at bar (local reg.) - - - - -	1	
Mis-labeled beer taps - - - - -	1	
Sale during prohibited hours - - - - -	1	
Cases brought by municipalities on own initiative and reported to Division - - - - -		10
Violations involved:		
Sale to minors - - - - -	5	
Permitting immoral activity on premises - - - - -	1	
Sale to intoxicated person - - - - -	1	
Employees working while intoxicated - - - - -	1	
<b>HEARINGS HELD AT DIVISION:</b>		
Total number of hearings held - - - - -		49
Appeals - - - - -	5	
Disciplinary proceedings - - - - -	20	
Eligibility - - - - -	12	
Seizures - - - - -	9	
Tax revocations - - - - -	3	
<b>PERMITS ISSUED:</b>		
Total number of permits issued - - - - -		909
Employment - - - - -	240	
Social affairs - - - - -	358	
Solicitors - - - - -	50	
Special wine - - - - -	1	
Disposal of alcoholic beverages - - - - -	77	
Miscellaneous - - - - -	183	

WILLIAM HOWE DAVIS  
Director.

Dated: June 1, 1954.

- 5. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION - AIDING AND ABETTING NON-LICENSEES TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO FILE APPLICATION TO LIFT AFTER EXPIRATION OF 20 DAYS, IF ILLEGAL SITUATION CORRECTED.

In the Matter of Disciplinary Proceedings against  
 THE BROAD STREET CORPORATION, INC.  
 760-762 Broad Street  
 Newark 2, N. J.,  
 Holder of Plenary Retail Consumption License C-796, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.  
 -----)

CONCLUSIONS AND ORDER

Saul C. Schutzman, Esq., Attorney for Defendant-licensee.  
 William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. In your application dated May 11, 1953, filed with the Municipal Board of Alcoholic Beverage Control of Newark, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 23, which asks: 'Has any corporation, partnership, association or individual other than the stockholders hereinbefore set forth any beneficial interest, directly or indirectly, in the stock held by said stockholders?', whereas in truth and fact Admiral Trading Corporation and Hawthorne Management, New York finance companies (not mentioned in the application as stockholders or as beneficially interested in the stock held by your stockholders) had such interest in that they were the real and beneficial owners of all of your stock; said false statement being in violation of R.S. 33:1-25.

"2. From on or about June 19, 1951 until the present time, you knowingly aided and abetted Admiral Trading Corporation and Hawthorne Management to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; thereby yourself violating R. S. 33:1-52."

The file herein discloses that a license for the premises in question was held during the 1950-51 licensing year by Hickory Grill, Inc., which was then heavily indebted to Admiral Trading Corporation (hereafter called Admiral) and Hawthorne Management (hereafter called Hawthorne), both of which conduct business in New York City. After a Petition in Bankruptcy had been filed against Hickory Grill, Inc., its assets were sold, in May 1951, to Admiral and Hawthorne by the Receiver in Bankruptcy of Hickory Grill, Inc., and thereafter sold by Admiral and Hawthorne to defendant corporation. Defendant, which had been incorporated in New Jersey on April 11, 1951, thereafter applied to the Municipal Board of Alcoholic Beverage Control of the City of Newark for a transfer of the license formerly held by Hickory Grill, Inc. and the Receiver in Bankruptcy consented to said transfer. The application was granted by the local Board on June 19, 1951, and the license has been renewed annually since that time in the name of defendant corporation.

In its application for transfer and in its application for renewal for 1951-52, defendant listed its officers, directors and stockholders as follows:

Joseph Liebowitz, President, Director, holder of 90 shares	9%
Alfred Rudick, Vice President, Director, holder of 90 shares	9%
Jack Linn, Treasurer, Director, holder of 730 shares	73%
Leonard Goldner, Secretary, Director, holder of 90 shares	9%

In its applications for renewal in each year thereafter, defendant listed its officers, directors and stockholders as follows:

Joseph Liebowitz, President, Director, holder of 90 shares	9%
Harry Feingold, Treasurer, Director, holder of 90 shares	9%
Bernard Linn, Vice President, Director	
Anita Brooks, Secretary, Director, holder of 90 shares	9%
Jack Linn --- ---, holder of 730 shares	73%

It further appears that Jack Linn resides in New Jersey but that his brother, Bernard Linn (who resides in New York) is President of Admiral. Apparently, Joseph Liebowitz (who resides in New York) has an interest in Admiral and Harry Feingold and Anita Brooks (both of whom reside in New York) have interests in Hawthorne. None of the aforesaid parties made any financial investment in defendant corporation, and Jack Linn states that he "acquired this stock after a discussion with my brother Bernard Linn." It seems apparent that 73% of the stock of defendant corporation was placed in the name of Jack Linn solely because he is the only one of those mentioned above who is qualified to hold more than ten percentum (10%) of the stock of a corporation holding a retail license, and that all stock of defendant corporation is, in fact, beneficially owned by Admiral or Hawthorne or non-residents interested in either Admiral or Hawthorne.

In attempted mitigation it is alleged that the interested parties acted in good faith and in reliance upon the advice of a lawyer (other than the lawyer who represents defendant herein). Nevertheless, the answer referred to in charge 1 was false, and defendant is, in fact, a "front" for Admiral and Hawthorne or non-resident individuals who are not qualified to hold a retail license in New Jersey.

Since the unlawful situation continues to exist, I have no alternative except to suspend the license for the balance of its term. In the event that such illegal situation is corrected, application may be made to me by defendant or by a transferee of the license for the lifting of such suspension, but in no event will an order be entered prior to the expiration of twenty days (the minimum period of suspension in "front" cases) from the effective date hereof.

Accordingly, it is, on this 11th day of May, 1954,

ORDERED that Plenary Retail Consumption License C-796, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to The Broad Street Corporation, Inc., for premises 760-762 Broad Street, Newark, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. May 18, 1954; and it is further

ORDERED that, in the event a correction of the illegal situation is effected, leave will be given to make application to me for the lifting of said suspension, as aforesaid.

WILLIAM HOWE DAVIS  
Director.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

EAST DOVER FIELD CLUB INC. )  
10 West Blackwell Street )  
Dover (Morris County), N. J., )

CONCLUSIONS AND ORDER

Holder of Club License CB-1, issued by the Board of Aldermen of the Town of Dover (Morris County). )  
-----)

Defendant-licensee, by Michael A. DeLorenzo, Treasurer. William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it possessed on its licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe the contents thereof, in violation of Rule 27 of State Regulations No. 20.

The file herein discloses that on April 22, 1954, an ABC agent examined eight opened bottles of alcoholic beverages on defendant's licensed premises and seized one 4/5 quart bottle of "Canadian Club Blended Canadian Whiskey" when his field test indicated a variance between the description on the label and the contents of the bottle. Subsequent analysis by the Division chemist disclosed that the contents of the seized bottle were not genuine as labeled.

Defendant's treasurer, who was then in charge of the premises, verbally denied any knowledge of any tampering with the contents of the bottle. Nevertheless, a licensee is responsible for all "refills" found upon the licensed premises.

Defendant has no prior adjudicated record. I shall suspend its license for fifteen days (the minimum penalty imposed in such cases). Five days will be remitted for the plea, leaving a net suspension of ten days. Re Dellerson, Bulletin 962, Item 6.

Accordingly, it is, on this 14th day of May, 1954,

ORDERED that Club License CB-1, issued by the Board of Aldermen of the Town of Dover (Morris County) to East Dover Field Club Inc., for premises 10 West Blackwell Street, Dover (Morris County), be and the same is hereby suspended for ten (10) days, commencing at 1:00 a.m. May 18, 1954, and terminating at 1:00 a.m. May 28, 1954:

WILLIAM HOWE DAVIS  
Director.

## 7. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary Proceedings against )

THE BROAD STREET CORPORATION, INC. )  
760-762 Broad Street )  
Newark 2, N. J., )

ON PETITION  
AMENDED ORDER

Holder of Plenary Retail Consumption License C-796, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )

-----  
William Harris, Esq., Attorney for Petitioner. )

BY THE DIRECTOR:

On May 11, 1954, I suspended defendant's license for the balance of its term, effective at 2:00 a.m. May 18, 1954, after defendant had pleaded non vult to charges alleging that it had falsely answered a question in an application, and that it aided and abetted non-licen-sees to exercise the privileges of its license.

Defendant has filed a verified petition herein alleging that it has been making various efforts to sell its business and that said efforts have been hindered because an action was then pending in the Superior Court between defendant and its landlord. It is further represented that the proceedings in the Superior Court were dismissed by order dated May 14, 1954. Defendant further alleges that it is of the belief that, if the effective date of the suspension is extended for a period of three weeks, a sale of the business conducted under the license may be effected. Sufficient cause appearing for granting the requested relief,

It is, on this 17th day of May, 1954,

ORDERED that the Order heretofore entered herein be and the same is hereby amended to read as follows:

"ORDERED that Plenary Retail Consumption License C-796, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to The Broad Street Corporation, Inc., for premises 760-762 Broad Street, Newark, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 8, 1954; and it is further

"ORDERED that, in the event a correction of the illegal situation is effected, leave will be given to make application to me for the lifting of said suspension, as aforesaid."

WILLIAM HOWE DAVIS  
Director.

## 8. STATE LICENSES - NEW APPLICATIONS FILED.

Suffern Tri-County Distributors Inc.  
Railroad Avenue, Wharton, N. J.

Application filed June 2, 1954 for Limited Wholesale License.

Michael A. Kertes, "Daisy May"  
N. J. State Yacht Basin, Forked River, N. J.

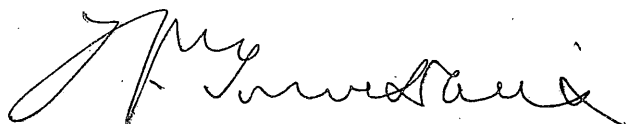
Application filed June 3, 1954 for Plenary Retail Transit License.

Labatt Importers, Inc.

9 & 10 Elk Market Terminal, Buffalo, N. Y.

Application filed June 7, 1954 for Limited Wholesale License.

New Jersey State Library



William Howe Davis  
Director