

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

Mr. Ambrose

BULLETIN 1408

September 18, 1961

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - CLUB ZANZIBAR CORP. v. PATERSON.
2. APPELLATE DECISIONS - ST. LUKE'S METHODIST CHURCH v. LONG BRANCH AND PALLONE.
3. APPELLATE DECISIONS - SHOP-RITE OF STIRLING, INC. v. TOWNSHIP OF PASSAIC.
4. DISCIPLINARY PROCEEDINGS (Hoboken) - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - HOSTESSES - EMPLOYING FEMALE BARTENDER IN VIOLATION OF LOCAL REGULATION - CONDUCTING BUSINESS AS A NUISANCE - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.
5. ACTIVITY REPORT FOR JULY 1961.
6. DISCIPLINARY PROCEEDINGS (Jersey City) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

New Jersey State Library

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

BULLETIN 1408

September 18, 1961

1. APPELLATE DECISIONS - CLUB ZANZIBAR CORP. v. PATERSON.

Club Zanzibar Corp., trading as)	
Club Zanzibar,)	
	)	ON APPEAL
Appellant,)	
	)	CONCLUSIONS
v.)	
	)	AND
Board of Alcoholic Beverage Control)	
for the City of Paterson,	)	ORDER
)	
Respondent.)	

Martin Verp, Esq., Attorney for Appellant.
Theodore D. Rosenberg, Esq., by William J. Rosenberg, Esq.,
Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on January 23, 1961, it suspended appellant's license for fifteen days, effective at 3:00 a.m., February 6, 1961, after finding it guilty of a charge alleging that the corporate-licensee permitted the sale of alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20 and N.J.S.A. 33:1-77. Appellant's premises are located at 139½ W. Broadway, Paterson.

"Upon the filing of this appeal, an order was entered, on February 6, 1961, staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31.

"From the evidence herein, it appears that the appellant was served with a notice charging it with having permitted the sale of alcoholic beverages to Richard ---, a minor, on July 4, 1960. After a hearing duly held, the respondent, on January 23, 1961, adopted a resolution finding the appellant guilty, and providing that its license be suspended for a period of fifteen days.

"In its petition of appeal, appellant alleges that respondent's action was erroneous, improper, and contrary to the weight of the evidence. Respondent, in its answer, denies appellant's allegation, asserts that the 'action of the Respondent Board in finding the appellant guilty was based upon all evidence presented and was both fair and reasonable and not contrary to the weight of said evidence'.

"The appeal was heard de novo on March 2, 1961, and the respondent produced the same witnesses as were produced by it at the hearing before the local Board. In addition thereto, there was introduced into evidence a certified copy of the minutes of the meeting of January 23, 1961, when the action was taken which formed the basis of this appeal.

"At the hearing herein, Richard --- testified that he is 19 years of age; that on July 4, 1960 he had attended a party of a

large number of friends, and it was decided that he should purchase beer; that accompanied by four other minors (whom he identified as Carl, Richie, Fred and John, but denied knowing their last names), he drove to the vicinity of the licensed premises and parked his car about fifty or seventy-five feet from the said premises. While the others remained in the car, he entered the premises about 8:00 p.m. that evening and purchased fourteen quarts of Schlitz beer. He further testified that a man, later identified as Walter Reed, who was the only bartender working at that time, informed him that he had only four quart bottles and gave him nine additional quart containers of this beer, for which he paid a total of \$6.50. Reed did not ask him how old he was, nor did he require that he show any identification or evidence of his age. He stated that there were somewhere between fifteen or twenty patrons in the bar and that, with the exception of himself, there were only colored persons in the premises at that time. Later that evening he was arrested by the Passaic County Park Police and after questioning, accompanied Detective Philip Perrone of the Paterson Police Department on July 5 at 10:40 a.m. to the said licensed premises, where he identified the said Reed as the bartender who sold him these alcoholic beverages on the previous night. He was thereafter returned to the Police Headquarters where he executed a statement in the presence of Reed.

"Detective Philip A. Perrone, produced by the respondent, testified that he visited the said licensed premises with Richard --- on July 7 and not July 5, 1960, at which time Richard --- identified Reed as the bartender who had allegedly sold him alcoholic beverages. He further testified that Reed denied the sale and thereafter, in the Detective Bureau at the Paterson Police Department, admitted that it was 'possible' that he sold the alcoholic beverages. Reed, however, refused to execute a written statement to that effect.

"On behalf of the appellant, Bernard Brown, the president of the corporate-licensee, testified that on July 4, 1960 he, Walter Reed and Julius Dukes were tending bar in the licensed premises; that he opened the tavern at 7:30 a.m. and was relieved at 3:00 p.m. by one Julius Dukes; that he returned to the premises between 7:20 and 7:30 p.m. and did not leave the premises until 3:00 a.m. the following morning. He further states he never saw Richard --- in the premises that night or at any other time; that he would have recognized him, because it is very unusual for a white patron to be served therein. He states that the tavern was extremely busy that night and there were between forty and fifty persons, with three bartenders on duty, including himself. He further stated that there were no white persons served on that day or evening, and that no containers of beer were sold during that evening. He further asserted that he checked his tape for that evening, and there was no sale involving the sum of \$6.50 on July 4, 1960.

"Bert Levine testified that he is an insurance agent who services the corporate-licensee; that he had occasion to telephone Brown on July 4, 1960 between 7:30 and 7:40 p.m. regarding a check which he was supposed to pick up on that day; and therefore was certain that Brown was in the licensed premises at that hour.

"Alice McMillan testified that she is a frequent patron of the corporate-licensee; that she entered these premises at about 6:45 o'clock on this evening and remained there until 9:30 p.m.; that she sat on the first bar stool near the entrance; that she saw Reed, Brown and Dukes bartending at that time; that there were about fifty patrons being served, a number of whom were standing; there were no white patrons; that she did not see Richard --- in the premises during that entire time and that, in fact, there were only colored patrons being served.

"Earl Smith testified, in substance, that he entered these premises between 7:45 and 7:50 and remained there until 9:30 or 10:00 p.m. on that night; that there was a crowd of over sixty persons, all of whom were colored; that he did not see Richard --- in the bar that evening; that if Richard were there, he would have noticed him; that there were three bartenders on duty that evening.

"Mario Dorsey testified that he arrived at these premises between 6:30 and 6:40 p.m. and remained there until 9:30 p.m. on that evening; that Dukes and Reed were on duty as bartenders when he first arrived and Brown came on duty at between 7:00 and 7:15; that there were between sixty and sixty-five patrons being served at that time, none of whom were white persons; that he did not see Richard that evening, although had this minor entered the premises, he would have seen him because he had an unobstructed view of all patrons.

"Walter C. Talley testified that he entered the premises between 7:00 and 7:30 p.m. on the evening in question; that he remained there until 8:30 when he left for a while, and thereafter returned to the premises; that he saw Brown on duty between 7:30 and 8:30 p.m.; that he was sitting on a bar stool near the side door entrance; that there were about seventy patrons being served at that time, and there were no white persons present during the entire evening; and that his view was unobstructed and he would have seen Richard --- had he entered the premises, or been served.

"Julius C. Dukes, testifying on behalf of the appellant, stated that he is employed by licensee as a part-time bartender; that he arrived at the premises at 2:45 p.m. and remained there until 9:00 p.m. on the evening in question; that Brown and Reed worked as bartenders with him; that at about 8:00 p.m. there were approximately seventy patrons; that there were no white persons served on these premises during the entire day; that Richard --- did not enter these premises nor were any alcoholic beverages sold to him on this evening or at any other time.

"Walter Reed, who was identified as the bartender by Richard ---, testified that he was on duty on July 4 from 6:00 p.m. to 3:00 a.m. the following morning; that he never left the bar; that he did not sell alcoholic beverages to Richard and never saw Richard --- at any time on that evening. He further denies that this tavern ever sold Schlitz beer and certainly did not sell Schlitz beer on July 4. He admitted that he was questioned by Detective Perrone regarding his alleged sale of alcoholic beverages to Richard --- and denies that he said that it was 'possible' that he served Richard ---. He contended that he said it was 'impossible' (that he served this minor) and he stated that the reason he refused to sign a written statement was that he was informed that he would only be permitted to sign a confessional statement.

"After reviewing the evidence herein, I find that the uncorroborated testimony of the minor, Richard ---, is weakened by his own contradictory statements made at this hearing and at the hearing held before the respondent Board. He states that he bought fourteen quarts of beer for which he paid \$6.50. There is testimony by Mr. Brown that the containers of beer cost 45 cents per quart and the bottles cost 50 cents per quart. Whether he bought fourteen quarts or thirteen quarts of beer, the amount would not equal \$6.50. In addition, he states that he was certain that the beer he purchased was Schlitz beer, although two witnesses on behalf of appellant denied that the licensed premises ever stocked or sold Schlitz beer. He further insisted that the confrontation took place on July 5 which is in direct conflict with respondent's own witness, Detective Perrone, who fixed the date as July 7.

"I was not particularly impressed with the responses of this witness, especially when he was asked about the friends who accompanied him. He stated that he had met them for the first time at the party, did not know their last names, and did not appear to know, before this hearing, the address of these licensed premises. On the other hand, I am persuaded that the testimony of the appellant's witnesses is forthright and credible. None of the four minors who allegedly accompanied Richard to the vicinity of the licensed premises was produced at the hearing below or the hearing herein.

"The issue in these cases is not determined merely by the number of witnesses testifying in support of or in contradiction of the corporate-licensee, but by the greater weight and sufficiency of the evidence. 20 Amer. Juris. Section 1190. The preponderance of the evidence has no reference to the relative number of witnesses testifying for the opposing parties. The preponderance of the evidence may be established by a single witness as against a greater number of witnesses who testified to the contrary. Wallace v. Wallace, 85 Mont. 492, 279 Pacific 374, 66 A.L.R. 587. However, many witnesses who are equally intelligent and have equal opportunity for knowledge of the facts for which they testify are less likely to be mistaken than the few. Willcox v. Hines, 100 Tenn. 524, 45 S. W. 781, 66 Am. St. Rep. 761. Kestner v. Kline, 4 Atl. 781, 41 N.J.Eq. 422; Katzenbach v. Holt, 43 N.J. Eq. 536, 12 Atl. 383. The preponderance or weight of the believable testimony is the criterion in determining the weight of the evidence, not the number of witnesses produced at the trial. Gorzynski v. Public Service Interstate Transportation Co., 68 Atl. 2nd 631, 5 N.J. Super. 491.

"In disciplinary proceedings a preponderance of the evidence is necessary to support and justify a finding of guilt; and in fairness doubtful questions of fact must be resolved in a defendant's favor. Re Keansburg Steamboat Co., Bulletin 1287, Item 2. There was no corroboration of the sale, and a serious question arises whether, in view of the respondent's conflicting testimony as to dates, the sale actually took place, on the alleged date. The testimony of appellant's witnesses stands in a more convincing posture. Re Chizun, Bulletin 1274, Item 7. Weighing the uncorroborated testimony of the minor against the testimony given on behalf of appellant, I conclude that the finding of guilt is not supported by a fair preponderance of the credible evidence. It is therefore recommended that an order be entered reversing the action of respondent. Chase v. Washington Township, Bulletin 1272, Item 4; Re Herb's Place, Inc., Bulletin 1299, Item 9."

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

I have given careful consideration to said memorandum, together with all the evidence submitted herein.

The respondent has relied upon the uncorroborated testimony of the minor in support of the charges and, for reasons which have not been explained, has failed to produce the other four minors. The only reason which has been suggested, from the testimony, for failing to produce these minors at this proceeding is that it would be embarrassing to have them appear. However, it is well known that any minor appearing as a witness in a disciplinary proceeding before this Division, is referred to in all Hearer's Reports and final Conclusions and Order by his given name, and his surname is never mentioned.

I know that the respondent must have been aware of this procedure. Had any of the other minors appeared and supported the testimony of Richard ---, it may well have produced a different result. But as the record now stands, it does not meet that preponderance of the evidence necessary to support and justify a finding of guilt. To be in doubt is to be resolved. I resolve that doubt in favor of the appellant. See Case No. 185, Bulletin 217, Item 4. Re Keansburg Steamboat Company, Bulletin 1287, Item 2.

I have carefully examined the arguments of the attorney for the respondent herein and, after due consideration thereof, and of the entire record, am constrained to adopt the conclusions of the Hearer as my conclusions in this case, and I shall enter an Order reversing the action of respondent.

Accordingly, it is, on this 18th day of July, 1961,

ORDERED that the action of the respondent be and the same is hereby reversed.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - ST. LUKE'S METHODIST CHURCH v. LONG BRANCH AND PALLONE.

St. Luke's Methodist Church of
Long Branch, New Jersey,

Appellant,

v.

Board of Commissioners of the
City of Long Branch, and John J.
Pallone, t/a F. & J. Liquors,

Respondents.

On Appeal

CONCLUSIONS AND ORDER

Edward C. Stokes, Esq., Attorney for Appellant
Julius J. Golden, Esq., Attorney for Respondent Board of
Commissioners
John C. Giordano, Jr., Esq., Attorney for Respondent John J.
Pallone

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board of Commissioners on February 7, 1961, whereby it granted the transfer of a plenary retail consumption license from Price Inc., 255 Port Au Peck Ave., to respondent John J. Pallone, trading as F. & J. Liquors, for premises to be constructed at 518 Broadway, Long Branch, subject to completion of said premises in accordance with plans and specifications filed with the application.

"The petition of appeal alleges that said action was erroneous for various reasons which may be summarized as follows:

- (a) the proposed premises are within 200 feet of the property of appellant and in close proximity to a school;

- (b) Frank Pallone, who is a brother of John J. Pallone and a member of the Long Branch Police Department, has an interest in the proposed licensed business;
- (c) although no objectors appeared at the meeting of respondent Board on February 7, this was due to the fact that the general public was unable, because of severe snowstorms, to obtain copies of the newspaper in which the Notice of Intention was published;
- (d) the use of the license will be that of a 'package store' and 'not as a plenary retail consumption license.'

"The testimony given herein discloses the following facts as to (a): The proposed premises at 518 Broadway are located on the southerly side of Broadway and a public school is located on the same side of Broadway and to the west of said premises. Measuring along the street line (in accordance with the rule established in Aldarelli v. Asbury Park, Bulletin 186, Item 12), the distance between the nearest entrance to the proposed premises and the nearest entrance to the school is 316 feet.

"St. Luke's Church is located on the opposite (or northerly) side of Broadway. The church grounds are located at the corner of Broadway and Washington Street. The church building is set back on the property. The main entrance to the church is located at the southwest corner of the church building and there is also a side entrance (frequently used) on the easterly side of said building. There are two walks -- one leading from Broadway and Washington Street to the main entrance, and the other, easterly thereof, leading to the side entrance. The proper method of measuring the distance between the nearest entrance to the church and the nearest entrance to the proposed licensed premises is set forth in Presbyterian Church of Livingston v. Division of Alcoholic Beverage Control et al., 53 N.J. Super. 271 (App.Div. 1958), wherein the Court said:

'*** For many years, as conceded at the oral argument, the Director has given R.S. 33:1-76 a practical construction, i.e., that the measurement should be, not between the actual entrances, but between points on the sidewalk intersecting any walk which a person would use in entering the properties in question. The Director has stated that this method of measuring the distance from an applicant's premises to a church or school is from the "nearest entrance" to the "nearest entrance," and that this formula has been relied upon in prior decisions. That method was used by the Director in this case and all the parties are in accord with it. Where the language of a statutory provision fairly admits of several interpretations, the contemporaneous and long-continued usage and practice under it require the construction thus put upon it to be accepted as the proper one.'

Measuring in accordance with the Aldarelli case and the case just cited, I find that the distance between the nearest entrance to the proposed premises and the point on the sidewalk intersecting the walk to the main entrance to the church is 278.50 feet. This distance appears on the map introduced into evidence herein which shows that the distance along the southerly side of Broadway from the nearest entrance to the proposed premises to a point where an admitted crosswalk at Washington Street intersects the southerly line of Broadway is 227.80 feet and the distance across said crosswalk to the point on the sidewalk intersecting the walk to the main entrance to the church is 50.70 feet. I have disregarded two other measurements on said map, one of which sets forth a measurement made across Broadway at a point where there is no crosswalk

and the other of which shows a distance of 168 feet in a diagonal line between the proposed premises and the church building. As Commissioner Burnett said in Aldarelli v. Asbury Park, supra:

'In providing that the measurement be made in the normal way that a pedestrian would properly walk, the statute contemplates a reasonable, sensible solution. A pedestrian walking properly would not go cross-lots or through backyards or in an airline or trespass on private property. Nor would he be a jaywalker and cross streets on the diagonal. His walking would be confined to the public thoroughfare, and he would cross streets at the cross-walks.'

"See also Essex County Retail Liquor Stores Assn. v. Bloomfield et al., Bulletin 1403, Item 1. Hence I find that the proposed premises are not within 200 feet of a church or school, in violation of R.S. 33:1-76.

"As to (b): The testimony herein of respondent John J. Pallone and his brother Frank J. Pallone discloses that they are joint owners of F. & J. Motors which presently operates a used-car business at 518 Broadway, on a plot of ground also owned jointly by them; that they intend to discontinue said business and to have erected a building in which, when said building is completed and the license in question transferred, the business of F. & J. Liquors will be conducted. John J. Pallone testified that he, alone, will own and operate the licensed business. Frank J. Pallone testified that he and his brother will own the building to be erected, but that he will have no interest in the licensed business to be conducted by John J. Pallone, trading as F. & J. Liquors. In the absence of any other testimony, I find that the transfer of the license would not result in a violation of Rule 30 of State Regulation No. 20 which provides, among other things, that 'no license shall be held by any regular police officer.'

"As to (c): It appears from the testimony herein that the Notice of Intention to apply for the transfer in question was properly advertised on January 27, 1961, and February 3, 1961, in the Long Branch Record, published and circulated in Long Branch. A hearing upon the application for transfer was held by respondent Board on February 7, 1961, and no objectors appeared.

"At the hearing herein Carmen Bradford, Chairman of the Board of Trustees; Milton Bennett, Secretary of the Board of Trustees, and Reverend C. Hayward, Pastor, of St. Luke's Methodist Church, testified that they are subscribers to the Long Branch Record and that, because of severe snow-storms on both January 27 and February 3, the said newspaper was not delivered to their respective homes and that they did not see a copy of said paper on either date. Frank Tokanos, Circulation Manager of the Long Branch Record, was called as a witness on behalf of respondent Pallone. He testified that the paper was published and distributed to 'carrier boys' and newsstands on both dates in volume comparable to the volume usually distributed. Since it appears that the Notice of Intention was properly published in accordance with R.S. 33:1-26, I find no merit as to (c).

"As to (d): There is no evidence that respondent Pallone intends to conduct business in any manner not permitted by the holder of a plenary retail consumption license. If, and when, the proposed building is completed and the license is transferred to him, he will have to comply with all requirements as to the sale of alcoholic beverages for off-premises consumption by the holder of a plenary retail consumption license.

"For the reasons aforesaid, it is recommended that an order be entered herein affirming the action of respondent Board of Commissioners and dismissing the appeal"

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

After carefully considering the evidence, exhibits and the oral argument presented at the hearing held herein, I concur in the findings and conclusions of the Hearer and adopt them, together with the following comments as to the use of the proposed trade name, as my conclusions herein.

The license in question is a plenary retail consumption license. Hence, the use of the trade name "F & J Liquors" must be disapproved as being misleading because it indicates the sale of package goods only. Numerous licensees have been required to change trade names which do not truly designate the type of business conducted under the license. See Essex County Retail Liquor Stores Assn. v. Newark and Willner's Liquors, Bulletin 1394, Item 1. The records of this Division show the respondent Board of Commissioners has granted an application (filed by respondent John J. Pallone, without any reference to a trade name) for a renewal of the license for the 1961-62 licensing year, subject to completion of the premises in accordance with plans and specifications filed with the application. Before the license may be issued, respondent Pallone must notify respondent Board that he has abandoned the use of any trade name, or has lawfully adopted "F & J Tavern and Liquors" or "F & J Bar and Liquors" as a trade name. The license, if and when issued, must be issued accordingly. Since the license in question has expired, no order to issue a license for the 1960-61 year is required.

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

ORDERED that the action of respondent Board of Commissioners be and the same is hereby affirmed, and the appeal be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
DIRECTOR

3. APPELLATE DECISIONS - SHOP-RITE OF STIRLING, INC. v. TOWNSHIP OF PASSAIC.

Shop-Rite of Stirling, Inc.,)	
Appellant,	)	ON APPEAL
v.	)	CONCLUSIONS
Township Committee of the Town-	)	AND
ship of Passaic,	)	ORDER
Respondent.)	

Troast, Mattson & Madden, Esqs., by Edward G. Madden, Jr., Esq.,
Attorneys for Appellant.
David G. Lucas, Esq., Attorney for Respondent.
Rothberg & Linder, Esqs., by David H. Rothberg, Esq., Attorneys
for Objector.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent (Committee) which, on March 3, 1961, by a unanimous vote, denied a person-to-person and place-to-place application for transfer of plenary retail distribution license D-3 from Rose LoPresti to appellant and from premises located on the north side of Valley Road, Gillette, to premises to be erected at Valley Road and Poplar Drive, Stirling. Both communities are in Passaic Township.

"Appellant's petition of appeal sets forth the following grounds for reversal of the action of respondent:

'The action of the respondent was erroneous in that:

- (a) The Township Committee failed to exercise reasonable discretion.
- (b) The Township Committee failed to make findings with respect to the application for a person to person and place to place transfer...
- (c) The decision of the Township Committee was arbitrary and unreasonable and members of the respondent-committee were improperly motivated.
- (d) The Township Committee failed to take into consideration the matter of public convenience or to give consideration to the question of public necessity.
- (e) The Township Committee exercised its discretion improperly and mistakenly.'

"Respondent, in its answer, denies these allegations and alleges that the appellant failed to make any showing of public necessity and convenience which warranted the granting of the relief sought.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. By stipulation of counsel, thirteen exhibits including a copy of the minutes of the meeting of the Committee were received in evidence.

"An examination of these exhibits discloses that the Township of Passaic is 12.6 miles square; that it consists of five communities (Millington, Stirling, Gillette, Homestead Park and Meyersville) with a total population of about 5,500; that the Committee has issued fifteen licenses (eight plenary retail consumption licenses, three plenary retail distribution licenses and four limited distribution licenses); that eight of these licenses (five consumption, one distribution and two limited distribution) are located in Stirling within a radius of 1,900 feet; that the concentrated business and residential area of Stirling is one mile square; that four of the licenses (two consumption and two distribution) are in Gillette; that the population of Gillette is about twice that of Stirling; that in the past thirteen years the population of Stirling has increased by about ten per cent and that of Gillette by about 100 per cent.

"It further appears that the main arteries in Stirling are Valley Road and Main Avenue (a continuation of Central Avenue and separated from it by railroad tracks); that Main Avenue runs north and south through the center of Stirling and intersects Valley Road which runs east and west; that the distance between said intersection and the beginning point of Main Avenue (at Central Avenue) is about 2,350 feet along which, on either side, are one plenary retail consumption license, one plenary retail distribution license and one limited distribution license; that within 650 feet north of the aforesaid limited distribution license on Central Avenue is another limited distribution license; that beginning at the aforesaid intersection and running easterly there are four plenary retail consumption licensed premises on Valley Road within a distance of about 2,700 feet; that the proposed site is about 1,600 feet from aforesaid intersection and is located between two of these licensed premises each of which is about 400 feet from the proposed premises.

"It further appears that Stirling is in the center of the Township; that it adjoins Gillette on the east; that Valley Road continues along the southern border of Gillette; that the four licenses in Gillette are located on Valley Road, two of which (a plenary retail distribution and a plenary retail consumption) are about 6,000 feet from the proposed site; the third (the license in question) is about a mile and a half from the proposed site and the fourth (a consumption license) is a little less than two miles from the proposed site.

It further appears that appellant's application was opposed by four licensees, two unnamed individuals and that a petition signed by 184 residents was filed with the Township Committee. The petition alleged that there was no need and necessity for another liquor license at the proposed site and that it would result in an unequal concentration of liquor outlets in the Township. It further appears that a full and open hearing on the application was held on March 3, 1961 and that the question of public convenience, need and necessity of transferring the license in question to the proposed site was fully discussed at this meeting; that appellant's then counsel had urged the approval of the transfer on the grounds that appellant was constructing a supermarket at the proposed site with off-street parking facilities; that women shoppers would not be required to enter the taverns to purchase alcoholic beverages; that there was a need and necessity for another D license at the proposed site and that it would serve as a public convenience. A real estate broker, who negotiated the proposed sale of the license in question, recommended its transfer. At the end of the meeting, the Committee went into a closed session for forty-five minutes following which it reconvened and unanimously voted against the adoption of a resolution granting the application without formally setting forth its grounds therefor.

"Henry J. Wirth, Township Clerk, on behalf of the Township Committee, located the five communities and the fifteen licenses therein on a map (exhibit S-1) of the Township, the pertinent parts of his testimony (dealing with Stirling and Gillette) are hereinabove set forth.

"John L. Pelissier, on behalf of the appellant, testified that he is a member of the Planning Board of the Township and is president of the Passaic Valley Chamber of Commerce which includes members in the Township; that the proposed site is located in a commercial zone; that the center of the commercial activity in the Township is located in Stirling at the intersection of Main Avenue and Valley Road aforesaid and along either side of these thoroughfares for about 2,000 feet; that the present site of the licensed premises is located in a residential area and that it has a lesser number of businesses than Stirling.

"Thomas Infusino, president of the appellant company, testified that the appellant is in the course of constructing a supermarket with parking facilities for 400 or 500 cars at the proposed site; that he was encouraged in this undertaking by the Committee; that before entering upon this enterprise, surveys were made of the Township and the surrounding area; that these surveys indicated that there was a need for a shopping center at the proposed site and that it would serve patrons from the area surveyed. Mr. Infusino further testified that a D license was needed at the proposed site for the convenience and accommodation of its anticipated patronage.

"On cross-examination, Mr. Infusino testified that at no time during his discussion with the Planning Board and the members of the Committee concerning the shopping center, was there anything said about the availability of a liquor store at the proposed site; that the appellant did not undertake its present venture on the basis of obtaining a liquor license and that the appellant's present plans to include a liquor store in its shopping center was not based on any promises made by the Committee.

"Theodore Sorg, a member of the Committee, on behalf of the appellant, testified that the question of public convenience and necessity of a license at the proposed site was discussed at the open meeting of the Committee and in its closed session which followed; that the Committee denied the transfer for a combination of reasons including the lack of public need and necessity for a license at the proposed site. Mr. Sorg further testified that he had voted against the transfer primarily because there were too many liquor licenses in the area; that a liquor license at the proposed site would adversely affect two of the licensees in the area and secondarily on the question of public convenience and necessity for another license in the area.

"Joseph Tokash, a real estate broker, on behalf of the appellant, testified that he acted as broker in the sale of the land upon which appellant is constructing its shopping center and that about eight months after the sale was consummated, he, at the request of the appellant, solicited the proposed transferor (Rose LoPresti) to sell her license to the appellant.

"Robert J. Best, Mayor of respondent Township and a witness for appellant, testified that the major portion of business conducted in the Township is in Stirling along Main Avenue and Valley Road (as hereinabove described); that neither the proposed site nor the present site of the licensed premises is surrounded by other types of shops; that he voted against the transfer because he was not satisfied that the public interest would be better served by the proposed transfer, and that he was not influenced

in his decision one iota by the unsigned letter (exhibit S-4) (seeking objectors to the transfer) which had been circulated in the Township allegedly by the holder of a D license whose offer to the appellant to conduct his business under a lease at the proposed site was rejected by it.

"The appellant contends that the action of the respondent should be reversed because no formal statement of reasons by the Committee accompanied the denial of its application. There is no merit to this contention. See Fanwood v. Rocco and the Division of ABC, 59 N.J. Super 306 (App. Div. 1960) affirmed 33 N.J. 404 (Sup. Ct. 1960). The record now includes respondent's answer setting forth its reason for its action and the individual testimony of the Mayor of the Township and Theodore Sorg, a committee-man, who stated that the entire governing body was unanimous in its decision that there was no public need and necessity for a license at the proposed site. Moreover, there is no inherent right to transfer a license to other persons or premises. An issuing authority, in the exercise of its sound discretion, may grant or deny a transfer. If denied on reasonable grounds, such action will be affirmed. On the other hand, where it appears that refusal of a transfer is arbitrary or unreasonable, the action of the issuing authority will be reversed. Palmer v. Atlantic City, Bulletin 1017, Item 1, and cases cited therein.

"Considering the evidence adduced herein, it is apparent that the grant of appellant's application would move the license a considerable distance from its present location to an entirely different section of the Township, in which there are presently existing eight liquor outlets, more than ample to serve the needs and convenience of the residents in and around that area. Cf. Larion, Inc. v. Atlantic City, Bulletin 1306, Item 1.

"It has long been held that the question of whether or not a license should be permitted in a particular area or in a particular location is a matter within the sound discretion of the issuing authority and that the Director's function on appeal is not to substitute his opinion for that of the issuing authority's but, rather, to determine whether reasonable cause exists for its opinion and, if so, to affirm, irrespective of his personal views. Redfield v. Long Branch, et al., Bulletin 1027, Item 1. Evidently, appellant failed to satisfy the members of the Township Committee that the public interests would be best served by the transfer of the license and I find nothing in the record indicating or even suggesting that respondent's refusal to grant appellant's application was inspired by improper motives. See Fanwood v. Rocco and Division of Alcoholic Beverage Control, supra.

"After considering all the evidence herein, the exhibits, the briefs filed on behalf of the appellant and an objector and the oral arguments of counsel, I conclude that appellant has failed to sustain the burden of establishing that the action of the Committee was erroneous, arbitrary or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15. It is recommended, therefore, that an order be entered affirming respondent's action and dismissing the appeal."

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

After carefully considering the evidence, exhibits together with the briefs filed on behalf of the appellant and an objector, and the oral arguments of counsel before the Hearer, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 18th day of July 1961,

ORDERED that the action of respondent Township Committee be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - HOSTESSES - EMPLOYING FEMALE BARTENDER IN VIOLATION OF LOCAL REGULATION - CONDUCTING BUSINESS AS A NUISANCE - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)	
Proceedings against)	
Belvedere Restaurant, Inc.	)	CONCLUSIONS
201 Washington St. and 64 Second St.)	
Hoboken, New Jersey,	)	AND
Holder of Plenary Retail Consumption	)	ORDER
License C-19 for the 1960-61 licensing)	
year, and C-20 for the 1961-62 licensing)	
year, issued by the Municipal Board of)	
Alcoholic Beverage Control of the City)	
of Hoboken.)	

Defendant-licensee, by Gaetano B. Prezioso, President
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On Saturday, June 3, 1961, between 2:00 A.M. and 2:45 A.M. and Saturday, June 10, 1961, between 2:00 A.M. and 2:15 A.M., you served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages and, allowed and permitted the consumption of alcoholic beverages on your licensed premises; in violation of Section 1(e) of Article II of an Ordinance adopted by the Mayor and Council of the City of Hoboken on December 7, 1955.
- "2. On Saturday, June 10, 1961, you allowed, permitted and suffered a female employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulation No. 20.
- "3. On Saturday, June 3, 1961 and Saturday, June 10, 1961, you allowed, permitted and suffered the employment of a female as a bartender on your licensed premises; in violation of Section 1(g) of Article VIII of an Ordinance adopted by the Mayor and Council of the City of Hoboken on December 7, 1955.
- "4. On Saturday, June 10, 1961, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance; in violation of Rule 5 of State Regulation No. 20."

The file discloses that an ABC agent entered defendant's licensed premises on Saturday, June 3, at about 1 a.m. The agent found on duty two bartenders, one of whom was a female the name of whom was not obtained. At 2 a.m. the female bartender left the premises, but the male bartender continued to serve patrons who made no attempt to leave the premises. The bartender continued to serve to patrons up to 2:30 a.m.

On Saturday, June 10, ABC agents entered the said premises at about 1 a.m. and remained there until 3 a.m., during which time they were served alcoholic beverages after 2 a.m., and observed other patrons consuming alcoholic beverages which had been served by a male and a female bartender. At this time, on a small raised stage in the rear of the premises, two female entertainers performed for the patrons by singing and playing the guitar. The vocalist (later identified as Lois Delany) then joined several males at the far end of the bar where she was served with an alcoholic drink which was paid for by the males. She then moved to another part of the bar and again was served with an alcoholic beverage at the expense of male patrons. This was then repeated with two other groups of patrons. At 2 a.m. the female bartender (later identified as Sybil Corcia) approached Agent S and stated "That will be one dollar for cursing" and, with that, she took a five-dollar bill from his money which was then before him on the bar, palmed it and walked away. Agent S reported this to the other bartender (later identified as Sergil Prezioso), who then looked on the floor behind the bar, mumbled something and walked away.

The agents then made known their identities, whereupon Sybil Corcia admitted that she tended bar without a permit but stated that she was a cousin of the bartender and was interested in purchasing the license. She then stated that taking the five dollars was a mistake and she offered to return the same. A thorough search was made but the five dollars could not be found. As the agents were leaving the premises, Prezioso loudly informed them that he had just found the five-dollar bill under a case of beer behind the bar.

Prezioso and Sybil Corcia refused to give written statements, but both admitted that Miss Corcia was not a cousin and had been doing bartender duty that day. They also acknowledged that the entertainers did not have permits but that they were not being paid for their services. They could not give the address of the guitar-player except to state that she was known as "Marie Renay" and resides somewhere in New York City.

Defendant has no prior adjudicated record. I shall suspend its license for fifteen days on Charge 1, the minimum penalty for an "hours" violation (Re Barry, Bulletin 1388, Item 7); for an additional twenty-five days for the violations contained in Charges 2 and 3 (Re The Holly Club, Inc., Bulletin 1232, Item 2); and, under the circumstances of this case, for an additional ten days for the violation contained in Charge 4, making a total of fifty days. Five days will be remitted for the plea entered herein, leaving a net suspension of forty-five days.

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

ORDERED that plenary retail consumption license C-20, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Belvedere Restaurant, Inc., for premises 201 Washington St. and 64 Second St., Hoboken, be and the same is hereby suspended for forty-five (45) days, commencing at 2 a.m. Monday, July 31, 1961, and terminating at 2 a.m. Thursday, September 14, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

5.

ACTIVITY REPORT FOR JULY 1961**ARRESTS:**

Total number of persons arrested - - - - -	20
Licensees and employees - - - - -	9
Bootleggers - - - - -	10
ABC agent impersonator - - - - -	1

SEIZURES:

Stillis - over 50 gallons - - - - -	1
Mash - gallons - - - - -	350.00
Distilled alcoholic beverages - gallons - - - - -	1.67
Brewed malt alcoholic beverages - gallons - - - - -	17.03

RETAIL LICENSEES:

Premises inspected - - - - -	454
Premises where alcoholic beverages were gauged - - - - -	443
Bottles gauged - - - - -	7,231
Premises where violations were found - - - - -	50
Violations found - - - - -	74
Unqualified employees - - - - - 25	Disposal permit necessary - - - - - 6
Reg. #38 sign not posted - - - - - 15	Application copy not available - - - - - 3
Other mercantile business - - - - - 7	Improper beer taps - - - - - 1
Prohibited signs - - - - - 6	Other violations - - - - - 11

STATE LICENSEES:

Premises inspected - - - - -	30
License applications investigated - - - - -	8

COMPLAINTS:

Complaints assigned for investigation - - - - -	306
Investigations completed - - - - -	361
Investigations pending - - - - -	175

LABORATORY:

Analyses made - - - - -	210
Refills from licensed premises - bottles - - - - -	30
Bottles from unlicensed premises - - - - -	30

IDENTIFICATION:

Criminal fingerprint identifications made - - - - -	7
Persons fingerprinted for non-criminal purposes - - - - -	438
Identification contacts made with other enforcement agencies - - - - -	298

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - -	10
Violations involved - - - - -	10

Sale to minors - - - - -	5
Sale during prohibited hours - - - - -	4
Service to women at the bar (local reg) - - - - -	1

Cases instituted at Division - - - - -	26
Violations involved - - - - -	33

Sale to minors - - - - - 11	Conducting business as a nuisance - - - - - 2
Sale during prohibited hours - - - - - 8	Substituting drink other than ordered - - - - - 1
Failure to close premises during prohibited hours - - - - - 2	Possessing contraceptives on premises - - - - - 1
Possessing liquor not truly labeled - - - - - 2	Unqualified employees - - - - - 1
Permitting lottery activity (numbers, wagering) on premises - - - - - 2	Fraud in application - - - - - 1
	Permitting immoral activity on prem. - - - - - 1
	Permitting bookmaking on premises - - - - - 1

Cases brought by municipalities on own initiative and reported to Division - - - - -	4
Violations involved - - - - -	4

Sale to minors - - - - -	3
Failure to close premises during prohibited hours - - - - -	1

HEARINGS HELD AT DIVISION:

Total number of hearings held - - - - -	42
Appeals - - - - -	7
Disciplinary proceedings - - - - -	26
Eligibility - - - - -	5
Seizures - - - - -	4

STATE LICENSES AND PERMITS ISSUED:

Total number issued - - - - -	2,033
Licensees - - - - - 588	Social affair permits - - - - - 358
Solicitors' permits - - - - - 50	Miscellaneous " - - - - - 256
Employment - - - - - 410	Transit insignia - - - - - 254
Disposal - - - - - 101	Transit certificates - - - - - 16

OFFICE OF AMUSEMENT GAMES CONTROL

Licenses issued - - - - -	7
Premises inspected - - - - -	653
Premises where violations were found - - - - -	15
Number of violations found - - - - -	15
Enforcement files established - - - - -	53

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

Dated: August 3, 1961

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
 LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
 Proceedings against

The Roman Restaurant (A Corp.)
 355 First Street & 258 Railroad Avenue
 Jersey City 2, N. J.

CONCLUSIONS

AND

Holder of Plenary Retail Consumption
 License C-437 (for the 1960-61 and
 1961-62 licensing years), issued by the
 Municipal Board of Alcoholic Beverage
 Control of the City of Jersey City.

ORDER

 James F. McGovern, Jr., Esq., Attorney for Defendant-licensee.
 David S. Piltzer, Esq., Appearing for the Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

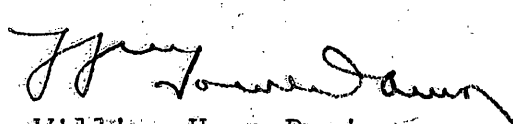
Defendant pleaded non vult to a charge alleging that it pos-
 sessed on its licensed premises alcoholic beverages in bottles bear-
 ing labels which did not truly describe their contents, in violation
 of Rule 27 of State Regulation No. 20.

On May 6, 1961, an ABC agent tested defendant's open stock of
 liquor and seized a number of bottles for further tests by the Divi-
 sion chemist. Subsequent analysis by the chemist disclosed that the
 contents of three of the bottles varied substantially from the con-
 tents of genuine bottles of the labeled brands.

Defendant has no prior adjudicated record. I shall suspend
 defendant's license for twenty days, the minimum penalty imposed in
 cases involving three bottles. Re Levy, Bulletin 1359, Item 10.
 Five days will be remitted for the plea entered herein, leaving a
 net suspension of fifteen days.

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

ORDERED that Plenary Retail Consumption License C-437 for the
 1961-62 licensing year, issued by the Municipal Board of Alcoholic
 Beverage Control of the City of Jersey City to The Roman Restaurant
 (A Corp.), for premises 355 First Street & 258 Railroad Avenue, Jersey
 City, be and the same is hereby suspended for fifteen (15) days, com-
 mencing at 2:00 a.m., Monday, July 24, 1961 and terminating at 2:00 a.m.,
 Tuesday, August 8, 1961.


 William Howe Davis
 Director

New Jersey State Library