

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

September 23, 1958

BULLETIN 1242

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1. APPELLATE DECISIONS - HUDSON-BERGEN COUNTY RETAIL LIQUOR  
STORES ASSOCIATION ET ALS. v. HOBOKEN AND TERMINELLO.

HUDSON-BERGEN COUNTY RETAIL LIQUOR )  
STORES ASSOCIATION, a New Jersey )  
Corporation, WILLIAM E. HELLO and )  
CASTLE WINES & LIQUORS INC., )

Appellants, )

-vs- )

MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY OF )  
HOBOKEN and RALPH TERMINELLO, )

Respondents. )

ON APPEAL  
CONCLUSIONS AND ORDER

-----  
Samuel Moskowitz, Esq., Attorney for the Appellants.  
Robert F. McAlevy, Jr., Esq., by William Gottlieb, Esq.,  
Attorney for the Respondent Municipal Board of Alcoholic  
Beverage Control of the City of Hoboken.  
William J. Miller, Esq., Attorney for the Respondent  
Ralph Terminello.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board whereby, by unanimous vote, it granted the transfer of Plenary Retail Distribution License D-8 from Louis A. Caraluzzo to respondent Ralph Terminello and from premises 213 - 14th Street to 418 Washington Street, Hoboken.

"It appears that there were no objectors to the transfer at the meeting at which it was granted. Thereafter, the appeal was filed on behalf of a liquor dealers' trade association and two specific package store licensees and was heard de novo pursuant to Rule 6 of State Regulation No. 15.

"The geographic location of taverns and package stores in Hoboken is such that it is fair to state that, in general, there is no section thereof that is not amply served by the present existing licenses. Transfer in question is from one neighborhood to another. Briefly stated, the crux of the controversy is that the appellants object to an additional license in the block in question, only four doors from a similar license, thus aggravating the present concentration of licenses which, allegedly, now amply serve the area, to which the respondents reply that the particular circumstances justify the additional license to serve the liquor requirements of and as a convenience to a particular concentration of the public at large at that location.

"A real estate broker, who was chairman of the Hoboken Planning Board and is a director and chairman of various committees of the Hoboken Chamber of Commerce, testified that the premises to which the license was transferred is in the central business area of the municipality, with a concentrated population both of residents and of transient shoppers; that at the corner of Fifth Street and the west

side of Washington Street (the block and side where such license is located) is a bus stop where passengers are discharged who are on their way to sailings of the Holland-American line at nearby piers, or are on their way to nearby prominent churches; and that the respondent Terminello and his father have for many years conducted a high-grade fruit and vegetable market at the premises to which the license was transferred and the public will benefit by having alcoholic beverages available there. (There is a sign on the establishment reading 'Steamer Baskets'.)

"The general manager of a large department store located at 412 Washington Street, between both package stores, testified that between 12,000 and 15,000 people daily pass his store and that he believes that the establishment of another package store on the block was warranted by the public need and convenience.

"One of the members of respondent Board testified that, despite the absence of any objection to the transfer of the license, he and the two other members of the Board, on the day before the meeting, visited the block to which the license was to be transferred and they concluded that such transfer would advance the beneficial interest of Hoboken because of the great volume of consumer buying there; that, in arriving at such conclusion, they were aware of the existence of the package store at 418 Washington Street and the many tavern and package stores in the immediate vicinity but, nevertheless, they felt that, according to the particular circumstances in that block, 'it would more than well handle it (the business)', in that shoppers generally do their complete shopping in one shopping area. The witness further testified that the members of the Board therefore concluded that transfer of the license in question would fill public need. He reiterated his previous opinion that there was such a need and stated that there are other areas in Hoboken where there are two package stores in one block.

"The objectors to the transfer, consisting of one of the licensees named as appellants, another licensee and a third licensee who is also the owner of the premises of one of the appellants, in their testimony relied mainly on their assertion that there are sufficient licenses presently existing in the area and, incidentally, on the fact that an additional license there would seriously affect their financial interest.

"The Director's function on appeal is not to substitute his 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 his personal views. Weiss v. Newark, Bulletin 1079, Item 7.

"The burden of establishing that respondent's action was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulation No. 15. The decision of respondent Board to grant the transfer is based upon evidence which appears to establish reasonable cause for its opinion that, under the particular circumstances of the case, even taking into consideration the present concentration of licenses there, the public interest would be advanced by the location of an additional license in the specific location and premises in question. I am of the opinion that the appellant has failed to sustain the burden of establishing that the respondent Board's action was erroneous and, hence, recommend affirmance of its action and dismissal of the appeal."

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

After carefully considering the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 7th day of August, 1958,

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

WILLIAM HOWE DAVIS  
Director.

2. APPELLATE DECISIONS - FERDINAND v. NEWARK.

LOUIS A. FERDINAND,	)	
	)	
Appellant,	)	
	)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC	)	
BEVERAGE CONTROL OF THE CITY	)	
OF NEWARK,	)	
	)	
Respondent.	)	

-----  
 Robert W. Wolfe, Esq., Attorney for Appellant.  
 Vincent P. Torppey, Esq., by James E. Abrams, Esq.,  
 Attorney for Respondent.  
 Samuel Avidan, Esq., Attorney for Objector Co-Plane, Inc.  
 Louis K. Press, Esq., Attorney for other Objectors.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby, by a vote of the two members present, it denied appellant's application to transfer his plenary retail consumption license from 424 Mulberry Street to 51 Tichenor Street, Newark.

"The petition of appeal alleges, in general terms, that such action was erroneous, inequitable, unreasonable, arbitrary, capricious and without legal basis and an abuse of discretion. The respondent Board's answer sets forth that it made its decision upon the factual testimony before the Board from which, in its sound discretion, it decided that the transfer should be denied.

"At the hearing herein, the transcript of the proceedings below was introduced in evidence in accordance with Rule 8 of State Regulation No. 15 and additional evidence was presented.

"It appears that at the hearing below before the respondent Board there were present 21 objectors to the transfer. No one in favor of the transfer, other than the licensee,

was present. The licensee's counsel stated that the reason for the application for transfer was that the licensee had been legally notified by the owners of the licensed premises to vacate such premises on June 1, 1958. The licensee testified to this effect; also that the proposed new location is about 250 feet from his present licensed premises; that his license had been suspended for ten days in 1947 for an 'hours' violation, and that there was a disciplinary proceeding against the licensee presently pending.

"The owner of a diner located at 53 Tichenor Street; the owner of a building and the operator of a hardware store there located at 54 Tichenor Street; the owner of the building and a grocery business located at 52 Tichenor Street; the owner and resident of a dwelling located at 49 Tichenor Street; the owner of an apartment house located at 38-40 Tichenor Street; and the superintendent of an apartment house located at 35-37 Tichenor Street, testified in objection to the transfer. All voiced their special objection to the location of appellant's tavern in their close proximity because they claim that the licensee caters to objectionable characters who become drunk and disorderly, and that on occasions persons in such condition committed indecencies on the property of some of the objectors; that if the application is granted there is a strong probability that patrons of such unsavory character will continue to come to the licensed premises.

"James King, Administrative Assistant of the Newark Commission for Conservation and Rehabilitation of Neighborhoods, was also one of the objectors who testified. He stated that his agency requested him to appear at the hearing to present the facts that residents of the area had asked the agency for assistance in protecting their neighborhood from what they term a blighting influence that would prevail if the transfer of this particular license to the proposed location is granted; that investigation, based upon interviews with residents of the area, of business and industry, and from the past history of the tavern in question and the fact that there are seven or eight other taverns within a two-block area, was considered at a meeting of the members of the agency that morning and while they recognize the legal right of the applicant in this particular matter, they believe that the best interests of all these people will not be served by this transfer. Thereupon the agency took formal action at its meeting to declare that because of the above-stated reasons, it wished to be recorded as objecting to such transfer, which recommendation was signed by the chairman of the agency.

"The respondent Board had before it the written recommendation of disapproval of the transfer from the police authorities because of the applicant's previous record and because it was a problem neighborhood, especially at this location, and there were already sufficient number of licenses in the vicinity to satisfy adequately the wants or needs of the public.

"The Board reserved decision and at a subsequent meeting, the chairman of the Board announced that 'in accordance with a resolution adopted, the application for transfer is hereby denied'. The resolution referred to reads:

"That the Board in this application for a Place to Place transfer, having considered and evaluated all of the evidence produced by the applicant for said

license and having also considered and evaluated all of the evidence submitted by the objectors to said license, as well as considering the police refusal to approve the said application, it is, therefore, in the opinion of the Board in the exercise of its sound discretion and unanimous opinion that the application be denied.'

"At the appeal hearing, the police captain who signed the disapproval report forthrightly admitted that he had incorrectly read licensee's previous record as compelling him, under police policy, to disapprove the application, whereas such is not the fact. However, he reiterated his disapproval of the application on the other ground that it was a problem neighborhood -- a trouble spot at its present location, and that there are enough taverns in the immediate vicinity of the proposed new location.

"The licensee presented a legal document which indicated that he had been given until September 1, 1958 to vacate the premises. He testified that his license was then under suspension for a ten-day period for permitting a lottery on his licensed premises and that police officers were at his premises in 1941, 1943, 1952, 1957 and 1958 to investigate various types of alleged criminal conduct in or in the vicinity of his licensed premises.

"Five of the objectors who testified below and five other objectors who reside in the immediate vicinity of the proposed premises, testified at the appeal hearing. It appears therefrom that the old and new premises are on opposite sides of McCarter Highway, along one side of which there is a railroad embankment; that there are mostly factories in the vicinity of licensee's present premises and it is claimed that there is no comparison between that location and the new location which is residential and business; that such last-mentioned neighborhood is a much better block in every respect. The objectors repeated in considerable detail what they considered objectionable conduct at the licensee's present location which led them to oppose the transfer.

"Where, as here, the proposed transfer is from one location in a neighborhood to another location in the same neighborhood, the transfer is generally granted, especially where hardship is involved, since there is no increase in concentration of licenses. Geltzeiler v. Newark, Bulletin 1171, Item 1; Black v. Newark, Bulletin 1219, Item 1. However, this principle is subject to numerous exceptions.

"The transfer of a liquor license to other premises is not an inherent or automatic right. Re Geltzeiler v. Newark, supra. A licensee's problems with his landlord have been frequently considered in appeals to this Division and it has been held that where the economic interests of the licensee conflict with the interests of the public at large, the latter must prevail. Cooperstein v. Elizabeth, Bulletin 1098, Item 1. Even in a so-called 'hardship case' resulting from licensee's difficulties with his landlord, the issuing authority may consider whether the proposed new premises are an appropriate location for such transfer. Higgins v. Elizabeth, Bulletin 1081, Item 5.

"In the instant case, while both premises apparently are in the same area, there appears to be a marked difference in the character of the neighborhood at the proposed new premises and

the old location, the 'other side of the railroad tracks'. In addition, the claim that the licensee caters to an objectionable type of patrons seems to rest on firm ground. The issuing authority, in the exercise of its discretion, did not refuse on that score to renew appellant's license at its old location for the 1958-59 period, and therefore he has been afforded the opportunity to seek another location if he cannot solve his difficulties with his present landlord. The local issuing authority apparently considers the matter as one of the exceptions to the principle above referred to. Cf. Weiss v. Newark, Bulletin 1079, Item 7.

"The Director's function on appeal is not to substitute his 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 his personal views. Re Weiss v. Newark, supra.

"The burden of establishing that respondent's action was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulation No. 15. The decision of respondent Board to deny the transfer is based upon evidence which appears to establish reasonable cause for its action. I am of the opinion that the appellant has failed to sustain the burden of establishing that the respondent Board's action was erroneous and hence, recommend affirmance of its action and dismissal of the appeal."

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

Having carefully considered the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 7th day of August, 1958,

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

WILLIAM HOWE DAVIS  
Director.

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (LESBIANS ON PREMISES AND OBSCENE LANGUAGE) - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 70 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ANNA THORN  
t/a PELICAN BAR  
488 Broad Street  
Newark, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-899, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

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Anna Thorn, Defendant-licensee, Pro se.  
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On June 1, 13, 14, 19, 25 and 26, 1958, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered Lesbians and persons who appeared to be homosexuals in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

"2. On June 25 and 26, 1958, you allowed, permitted and suffered lewdness, immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20."

The file discloses that various AEC agents at the defendant's licensed premises on June 1, 13-14, 19 and 25-26, 1958 observed on each occasion groups of females, varying in number from six to fifteen, who, by their attire, speech, actions and general demeanor appeared to be Lesbians.

On the last three occasions these Lesbians engaged in questionable conduct, attributable to their nature, such as dancing together and exchanging tokens of affection, although not of a degree sufficient legally to establish guilt, in disciplinary proceedings, for permitting lewd and obscene conduct on licensed premises.

These groups were definitely segregated from other patrons by Edward ---, one of the bartenders, who acknowledged that he knowingly permitted these Lesbians to "hang out" on the licensed premises. On June 13th Sam Thorn, son of the licensee, and the manager of the licensed business, in a conversation with the agents, acknowledged that there were Lesbians on the premises and stated that other Lesbians came to the premises including showgirls from New York. After the agents disclosed their identity on June 25th Thorn stated that he assumed there were Lesbians there. Asked why he did not eject them he replied, "What can I do, they come in here, order a drink and we serve them."

On June 25th Edward indulged in vulgar and indecent language and actions consisting of the repeated use of the vernacular word for sexual intercourse and one or two obscene gestures.

Proper liquor control dictates that licensed premises are not to become a haven for Lesbians or homosexuals. The manager of the licensed premises is mistaken in his notion that he may use the licensed premises to suit the convenience of sexual deviates. Where they congregate they constitute a threat to the safety and morals of the public. As was stated by Judge Jayne in Paddock Bar, Inc. v. Alcoholic Beverage Control Div'n, 46 N. J. Super. 405, at page 408:

"Assuredly, it is inimical to the preservation of our social and moral welfare to permit public taverns to be converted into recreational fraternity houses for homosexuals or prostitutes. It is the policy and practice of the Division of Alcoholic Beverage Control to nip reasonably apprehended evils while they are in the bud."

Defendant has a previous adjudicated record in that her license was suspended by the local issuing authority, effective May 22, 1950, for a sale to minors. Inasmuch as the dissimilar violation occurred more than five years ago it will not be considered in fixing the penalty herein. Re Burday and Budowsky, Bulletin 1227, Item 9. I shall suspend defendant's license for a period of sixty days on Charge 1 (Re Clover Leaf Inn, Inc., Bulletin 1159, Item 1), and for an additional ten days on Charge 2 (Re Caridi's Bar, Inc., Bulletin 1185, Item 3), making a total suspension of seventy days. Five days will be remitted for the plea entered herein, leaving a net suspension of sixty-five days.

Accordingly, it is, on this 11th day of August, 1958,

ORDERED that Plenary Retail Consumption License C-899, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Anna Thorn, t/a Pelican Bar, for premises 488 Broad Street, Newark, be and the same is hereby suspended for sixty-five (65) days, commencing at 2:00 a.m. August 18, 1958, and terminating at 2:00 a.m. October 22, 1958.

WILLIAM HOWE DAVIS  
Director.

4. DISCIPLINARY PROCEEDINGS - VIOLATION OF STATE REGULATION NO. 38 - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - PRIOR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

HENRY D. GALLO and ANGELO J. MACRAE )  
t/a TIOGA TAVERN )  
589 Communipaw Avenue )  
Jersey City, N. J., )

CONCLUSIONS AND ORDER

-----)  
Holders of Plenary Retail Consumption License C-126, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Defendant-licensees, Pro se.  
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded guilty to charges alleging that (1) on Sunday, June 29, 1958, they sold an alcoholic beverage in its original container for off-premises consumption in violation of Rule 1 of State Regulation No. 38; and (2) on said date they conducted their licensed business during prohibited hours in violation of a local ordinance.

The file herein discloses that on the above day and date, at about 12:20 p.m., an ABC agent knocked at the rear door of defendants' licensed premises, which door was opened by Henry D. Gallo (one of the licensees). The agent asked Gallo for a pint of port wine and Gallo told the agent to remain outside and he would bring the wine out to him if he

would give him the money. The agent gave Gallo a one-dollar bill. Gallo left the agent and returned within a few moments with a pint bottle of port wine. He gave the agent the wine and forty-five cents change. Gallo then closed the door and locked it. The agent joined a fellow-agent who had remained outside. Both agents then gained admission to the licensed premises, identified themselves to Gallo and Angelo J. Macrae (his fellow-licensee, who was also present) and informed them of the violation. Both licensees admitted the sale and stated there was nothing more to be said.

The local ordinance prohibits the conduct of the licensed business on the premises between the hours of 2:00 a.m. and 1:00 p.m. on Sundays, and State Regulation No. 38 prohibits the sale on Sundays of alcoholic beverages in original containers for off-premises consumption.

Defendants have a prior adjudicated record. Their license was suspended for twenty days (less five days for the plea) effective June 21, 1957, for violations similar to those set forth in the instant charges. Re Gallo and Macrae, Bulletin 1156, Item 8. The minimum penalty for a violation set forth in Charges 1 and 2 is twenty days. Re Gallo and Macrae, supra. Since the defendants committed the similar violations within five years, the penalty will be doubled. Re Clendenny Tavern, Inc., Bulletin 1235, Item 3. I shall suspend defendants' license for forty days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 27th day of August, 1958,

ORDERED that Plenary Retail Consumption License C-126, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Henry D. Gallo and Angelo J. Macrae, t/a Tioga Tavern, for premises 589 Communipaw Avenue, Jersey City, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m. September 5, 1958, and terminating at 2:00 a.m. October 10, 1958.

WILLIAM HOWE DAVIS  
Director.

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

In the Matter of Disciplinary )  
Proceedings against )

F. D. O., INC. )  
t/a OERTELL'S PREVUE LOUNGE )  
453-455 Palisade Avenue )  
Cliffside Park, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-4, issued by the )  
Borough Council of the Borough of )  
Cliffside Park. )

-----  
Luke F. Binetti, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

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

The file herein discloses that on June 18, 1958, an ABC agent, while testing and gauging the licensee's open bottles of alcoholic beverages, seized a number of such bottles because they appeared to have been refilled and submitted the same to the Division's chemist for analysis. The chemist's report shows that, when compared with the samples of the genuine product of the labeled brand, the contents of two bottles labeled "Seagram's Seven Crown American Blended Whiskey 86 Proof" varied substantially in solids and acids.

By way of mitigation the attorney for the corporate licensee has submitted an affidavit executed by its president which I have carefully examined, together with the file in the case and the reports of the agents. I, however, do not find any extenuating circumstances in the case which would impel me to impose less than the established penalties in cases of this kind.

Defendant has no prior adjudicated record. I shall suspend defendant's license for a period of fifteen days (the minimum period where two bottles are involved). Re Kiken, Bulletin 1187, Item 11. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 24th day of July, 1958,

ORDERED that Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Cliffside Park to F. D. O., Inc., t/a Oertell's Prevue Lounge, for premises 453-455 Palisade Avenue, Cliffside Park, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. July 29, 1958, and terminating at 3:00 a.m. August 8, 1958.

WILLIAM HOWE DAVIS  
Director.

6. DISCIPLINARY PROCEEDINGS - SUSPENSION LIFTED UPON CORRECTION OF ILLEGAL SITUATION.

In the Matter of Disciplinary Proceedings against )

GEORGE R. JACOBSEN )  
t/a GEORGE'S TAVERN )  
35 Joyce Street )  
West Orange, N. J., )

O R D E R

Holder of Plenary Retail Consumption License C-9 for the 1957-58 and 1958-59 licensing years, issued by the Municipal Board of Alcoholic Beverage Control of the Town of West Orange. )  
-----)

BY THE DIRECTOR:

By order dated July 14, 1958 I suspended defendant's license for the balance of its term, effective at 2:00 a.m. July 21, 1958, after defendant had pleaded non vult to charges alleging that he failed to notify the issuing authority that he had entered into an agreement to pay an employee 50 per cent of the net profits of the licensed business, and that he had changed his residence. Leave was given to apply to me for an order lifting said suspension if the illegal sharing of profits was thereafter terminated, provided, however, that the suspension would not be lifted until the expiration of twenty days from the effective date thereof.

The licensee has since filed his verified petition supplemented by depositions taken at this Division from which it appears to my satisfaction that the aforesaid profit-sharing agreement has been terminated, and that the licensee proposes hereafter to operate the establishment in a proper and legal manner.

It thus appearing to my satisfaction that the unlawful situation has been corrected, and that the suspension will have been in effect for twenty days at 2:00 a.m. on August 10, 1958,

It is, on this 5th day of August, 1958,

ORDERED that the suspension heretofore imposed be lifted and that License C-9 be restored to full force and operation at 2:00 a.m. August 10, 1958.

WILLIAM HOWE DAVIS  
Director.

7. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING FALSE ANSWER IN APPLICATION FOR LICENSE, DISMISSED.

In the Matter of Disciplinary Proceedings against

TOOLEY'S BAR, INC.  
413 Monroe Street  
Passaic, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-58, issued by the Board of Commissioners of the City of Passaic.

-----  
Fox and Schackner, Esqs., by Donal C. Fox, Esq., Attorneys for Defendant-licensee.  
William F. Wood, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to a charge alleging that it made a false statement in its current license application, in violation of R. S. 33:1-25.

"It appears from the undisputed facts adduced at the hearing herein that in its current license application filed with the Passaic Board of Commissioners on December 5, 1957, defendant corporate-licensee by Myron Sigelbaum, President, answered 'No' to Question 40 therein which asks: 'Have you or has any person mentioned in this application ever had any interest, directly or indirectly, in any application for an alcoholic beverage license in New Jersey which was denied?' It appears further that prior thereto on September 20, 1957, defendant had filed an application with the Newark Municipal Board of Alcoholic Beverage Control for a person-to-person transfer of Plenary Retail Consumption License C-556 and that said Board denied the application by resolution dated October 22, 1957. It also appears that an ABC agent investigating defendant's corporate records was apprised of the aforesaid facts by Melvin Chesner, an officer of the corporation and by the corporation's attorney (not the attorneys appearing for the corporation herein), both of whom, as testified to by the agent, 'were completely cooperative', and that after the agent verified and reported the facts to the Division the charge herein was preferred.

"Myron Sigelbaum testified that he answered Question 40 in defendant's current license application in the negative on the advice of the corporation's attorney.

"The attorney testified that he has been practicing law for seventeen years; that he incorporated and represents the defendant corporation; that said corporation applied to the Newark Board of Alcoholic Beverage Control for a transfer of a plenary retail consumption license; that the Board denied said application because Myron Sigelbaum, age 23, and Melvin Chesner, age 22 1/2, were too young; that he proposed an appeal from the Board's action but that the holder of the license, anxious to dispose of his premises, would not await the outcome of an appeal; that subsequently he prepared defendant's current license application, advised the corporate officers that Question 40

therein was answered in the negative because, in his opinion, the reason stated by the Newark Board for its denial of the application filed with it was invalid and illegal and that pursuant to his advice, Sigelbaum signed and filed the application.

"The official shorthand reporter for the Newark Board of Alcoholic Beverage Control reading from his original notes, testified in substance that the acting chairman of the Board in response to a request by defendant's attorney for a legal reason why the application was denied stated: 'I think these two fellows (Sigelbaum and Chesner) are too young to start out in a business like this. We have given careful consideration to the matter and we think, in the best interests of all and for their good, that the application will not be granted.'

"The basic principle governing the determination of charges preferred by this Division wherein the licensee, by way of defense or in mitigation of the penalty to be imposed, alleged that he acted upon the advice of his attorney, was enunciated by the late Commissioner Burnett in Re Lipman, Bulletin 324, Item 1 and followed by the present Director in Re Eva's Tavern, Inc., Bulletin 1037, Item 3. It follows:

"Advice of counsel" is no excuse for violating the liquor regulations. Licensees who rely upon such advice take the risk of its being inaccurate. The regulations are designed to eliminate undesired conditions at which they are aimed. From the viewpoint of the public interest, it matters little whether a licensee, in violating one of those regulations, acted upon the advice of his attorney.'

"In the cited cases and in others where the aforesaid principle has been applied, there were allegations but no convincing proof that the licensees acted upon the advice of counsel and further there were no uncertainties which would require legal interpretation. In the instant case, however, the attorney, an experienced practitioner in matters involving alcoholic beverage control, appeared and testified that in his considered opinion the reason stated by the Newark Board for denying defendant's application was illegal and capricious and that he advised his client's officers that such reason should not be considered as a previous denial of an application in answering Question 40 in defendant's current license application. It is deemed unnecessary to determine herein the cogency of the attorney's reasoning. Suffice to say that although the negative answer to Question 40 is technically incorrect, nevertheless, as appears from the evidence, Sigelbaum on the advice of his attorney, acted in good faith and that the answer given was neither improperly motivated nor intended to perpetrate a fraud upon the local issuing authority. Cf. Re Havlicek, Bulletin 1026, Item 8.

"Under the facts and circumstances appearing in this case, I recommend that the charge herein be dismissed."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by the attorney representing the Division and written answering argument was filed by defendant's attorney, pursuant to Rule 6 of State Regulation No. 16.

The Division's attorney contends that the principle enunciated in Re Lipman, Bulletin 324, Item 1, and Re Eva's Tavern,

Inc., Bulletin 1037, Item 3, cited by the Hearer, and in Re Pipher & DiMarco, Bulletin 707, Item 2, and Re Turlinski, Bulletin 1120, Item 4, cited in his exceptions, substantiates his contention that it is no defense to a violation such as charged herein that it was committed in reliance upon the advice of an attorney.

Although the contention of the Division's attorney is basically correct, nevertheless, the case sub judice can be distinguished from the cited cases.

Re Eva's Tavern, Inc. and Re Turlinski, supra, involved so-called "front" situations in which an undisclosed person was disqualified from holding a license or having an interest therein. Re Pipher & DiMarco, supra, did not involve false answers in a license application, but the defense raised was a reliance upon the advice of an attorney.

In the aforesaid three cited cases, the attorneys did not appear and testify as did the attorney in this case. It is my opinion that the attorney in the instant case acted in good faith in advising defendant's officers and that they acted in good faith in accepting his advice. The situation herein is rather novel in that the Newark Board rejected defendant's application originally for no apparent reason other than the youthful age and inexperience of two of its officers. The Passaic Board had ample opportunity to observe the appearance and demeanor of defendant's officers when it passed favorably upon the application filed with it and, since none of defendant's officers was disqualified from holding a license, it is doubtful that said Board would have disapproved the application had it known of the action of the Newark Board.

After reading the entire record herein, I am satisfied that no deception was intended by defendant in answering in the negative Question 40 of the application. I shall, therefore, approve the Hearer's Report and adopt his recommendation. Since defendant's mistake has been forgiven, it is cautioned to answer correctly Question 40 and every other question in its application for renewal.

Accordingly, it is, on this 23rd day of July, 1958,

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

WILLIAM HOWE DAVIS  
Director.

8. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

MARLBOROUGH HOTEL CORP. (A Corp.) )  
t/a MARLBOROUGH HOTEL )  
323 Lexington Avenue )  
Lakewood, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Lakewood. )

-----)  
Mark Addison, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On July 26, 1958, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Daniel ---, age 18; in violation of Rule 1 of State Regulation No. 20."

The file herein discloses that ABC agents, acting on information received from the Police Department of the Township of Lakewood, interviewed Daniel --- (age 18) who informed them that on Saturday, July 26, 1958, at about 1:45 a.m., he visited the defendant's licensed premises; that he purchased three one-quart containers of beer from Philip Randaisi (the bartender on duty); that prior to said sale the bartender inquired as to his age and that he displayed a draft card of another which reflected that the person named thereon was over twenty-one years of age.

On August 4, 1958, Philip Randaisi gave a sworn, written statement to agents of this Division setting forth therein that, five minutes after aforesaid sale, the minor returned to the licensed premises with a local police officer to whom he admitted making the aforesaid sale of beer after the minor had shown him a draft card indicating that he was over twenty-one years of age and that he did not request the minor to sign any written representation of his age.

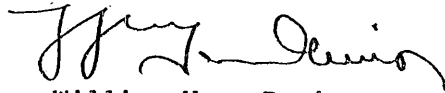
By way of mitigation of penalty the attorney for the licensee has submitted a statement setting forth therein that the bartender did not make the sale of the beer until after he was shown a draft card by the minor, which card indicated a birth date in 1936, and that the licensee had provided the bartender with printed forms to be signed by persons claiming to be twenty-one years of age and that the bartender had failed to request the minor involved herein to sign one of such forms. The licensee, however, cannot escape the consequences of aforesaid acts of his agent. Rule 33 of State Regulation No. 20. Cf. Re Czapliski, Bulletin 1170, Item 6.

Defendant has a prior adjudicated record. Effective March 3, 1958, the defendant's license was suspended by this Division for five days for a sale to a minor. See Bulletin

1218, Item 5. Ordinarily the penalty imposed for the sale of alcoholic beverages to an eighteen-year-old minor, where the defendant has committed a similar violation within a period of five years, is twenty-five days. Re Guariglia, Bulletin 1234, Item 5. However, in view of the circumstances appearing in the instant case I shall suspend defendant's license for a period of twenty days. Cf. Re Florence Warner, Inc., Bulletin 1226, Item 11. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 28th day of August, 1958,

ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Lakewood to Marlborough Hotel Corp. (A Corp.), t/a Marlborough Hotel, for premises 323 Lexington Avenue, Lakewood, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. September 3, 1958, and terminating at 2:00 a.m. September 18, 1958.



William Howe Davis  
Director