

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

BULLETIN 1148

JANUARY 29, 1957.

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

BULLETIN 1148

JANUARY 29, 1957.

1. RULES AND REGULATIONS - REVISION - HEREIN ALSO NOTICES TO MUNICIPAL CLERKS AND A. B. C. BOARD SECRETARIES, CHIEFS OF POLICE, AND ALL LICENSEES.

I am hereby promulgating a revised pamphlet of State Rules and Regulations.

The revision is to become effective January 1, 1957. Previous State Rules and Regulations continue in full force until and including December 31, 1956 and disciplinary proceedings for any violation thereof during that time shall not be barred or abated by reason of the taking effect of the revision.

Copies of these new pamphlets will be forwarded to the respective municipal clerks or to the clerks or secretaries of municipal boards of alcoholic beverage control where such exist, chiefs of police, and to all licensees.

Although in general the revision leaves most of the State Rules and Regulations as they stand, there are, however, various changes in substance, or in wording, or in regrouping of the Rules.

Every licensee should very carefully read and become familiar with this new pamphlet since, effective January 1, 1957, he will be bound by the contents thereof.

WILLIAM HOWE DAVIS

Dated: December 27, 1956.

Director.

TO ALL MUNICIPAL CLERKS AND A. B. C. BOARD SECRETARIES:

Enclosed is a pamphlet containing the revised State Alcoholic Beverage Control Rules and Regulations, effective as of January 1, 1957.

Of course, all Municipal Clerks and A. B. C. Board Secretaries should familiarize themselves with the provisions of the Rules and Regulations applicable to retail licensees, and the Table of Contents (page 4) and Index (starting on page 87) will be helpful.

We here stress certain matters:

Rule 9 of State Regulation No. 2 (Notices of Application for retail license) and Rule 18 of State Regulation No. 6 (Notices of Application for transfer of license) are new, although they follow long-established rulings of this Division not heretofore put into the formal Rules and Regulations. These important Rules permit grant of an application for license or license transfer before completion of advertising, but only on Special Condition (Revised Statutes, 33:1-32) that there shall be no actual issuance or transfer until 2 whole days shall have passed following publication of the second Notice of Application.

Rules 9 and 10 of State Regulation No. 3 (new licenses and renewals) and Rules 23 and 24 of State Regulation No. 6 (license transfers) are not new. They have long been in the Rules and Regulations but some Municipal Clerks have been lax in complying with them. Whether a grant is of a new retail

license or of a renewal or of a transfer it is the duty of the Municipal Clerk (or A.B.C. Board Secretary, as the case may be) to make daily certification thereof to the State Director -- in the prescribed form and not later than the next business day; and to send to the Director, with such daily certification, a certified copy of the resolution or motion granting the license or license transfer. And note, well, that Special Conditions (Revised Statutes, 33:1-32), if any, must be set forth in the granting resolution or motion.

The second sentence in Rule 6 of State Regulation No. 4 and the second portion of Rule 14 of State Regulation No. 6 are new in the formal Rules and Regulations, but those provisions have long been established as rulings of this Division. Where an application is a combined one for person-to-person and place-to-place transfer the applicant gets no person-to-person transfer (gets nothing) unless the place-to-place transfer goes through.

In Rule 1 of State Regulation No. 7, note that no new club license can lawfully be issued unless the membership is at least 25 persons. Formerly the minimum membership requirement was 5.

In connection with disciplinary proceedings, it is pointed out that, at the time the charge is served upon the licensee, he should be advised that he must enter a plea of guilty or non vult or not guilty a specified number of days (at least three) in advance of the hearing date (see instructions on page 76 and Form No. 1 on page 79).

It should also be noted that the notice to the owner of the premises (other than the licensee) warning of the possibility of the ineligibility of such premises to become the subject of any further license for a period of two (2) years should be served only in cases where there is a strong possibility that the license may be revoked (see instructions on page 76 and Form No. 2 on page 81).

In connection with sales to minors, Rule 1 of State Regulation No. 20, although remaining unchanged in its language, now carries an asterisk referring to a special note appearing at pages 77 and 78 of the pamphlet, which note explains the defense available to a licensee charged with sale of alcoholic beverages to minors and suggests a form of representation to be obtained by licensees from suspected minor patrons and the procedure to be followed in obtaining the written representation from the patron.

Copy of the pamphlet will be mailed directly to each licensee of your municipality within the next few days. Please so advise any who may inquire of you as to the furnishing of such copies to them.

WILLIAM HOWE DAVIS
Director.

Dated: January 15, 1957.

TO ALL CHIEFS OF POLICE:

Enclosed is pamphlet containing revised State Alcoholic Beverage Rules and Regulations which became effective January 1, 1957.

In view of the provision of the Alcoholic Beverage Law contained in R. S. 33:1-24 which declares it to be the primary responsibility of the municipal license issuing authority to enforce the Alcoholic Beverage Law and regulations against all retail licensees of its municipality, you will be particularly interested, in connection with your responsibility and enforcement activity, in certain of the revised and new rules as follows:

State Regulation No. 7, Rule 1, p. 21. This rule has been revised to require a club to have at least 25 members to be eligible to hold a new club license, rather than only 5 as heretofore.

State Regulation No. 7, Rule 11, p. 22. This new rule, codifying long-existing administrative interpretation, prohibits club licensees from selling alcoholic beverages to another organization conducting a social affair on the club licensed premises pursuant to special permit.

State Regulation No. 7, Rule 12, p. 22. This new rule requires club licensees to maintain true books of account available for inspection by local and state liquor authorities.

State Regulation No. 13, Rules 3, 4, 5 and 6, pp. 28-29. These revised rules authorize employment of persons disqualified by age, residence or citizenship without permit for a period not to exceed 10 days provided an application for employment permit is filed within that period.

State Regulation No. 17, Rule 4, p. 36. This new rule, codifying a long standing special ruling, permits holders of state licenses authorizing sale of alcoholic beverages at retail (such as state beverage distributors) to transport alcoholic beverages without invoices provided that customer route cards in prescribed form are carried on the vehicle together with a loading list. Peddling from the vehicle is still prohibited.

State Regulation No. 17, Rule 12, p. 37. This new rule permits all licensees to transport alcoholic beverages without having the usual transit insignia affixed to the vehicle, provided that the insignia is carried in the vehicle and the vehicle bears a painted inscription as prescribed by the rule.

State Regulation No. 20, Rule 1, p. 41. This rule, although remaining unchanged in its language, now carries an asterisk referring to a special note appearing at pp. 77 and 78 of the pamphlet, which note explains the defense available to a licensee charged with sale of alcoholic beverages to minors and suggests a form of representation to be obtained by licensees from suspected minor patrons and the procedure to be followed in obtaining the written representation from the patrons.

State Regulation No. 20, Rule 2, p. 41. This revised rule codifies numerous special rulings which have determined which special and municipal elections require discontinuance of sale of alcoholic beverages by retail licensees during polling hours. It is to be particularly noted that not all special or municipal elections require such discontinuance but only those now specified in the rule.

State Regulation No. 20, Rule 25, p. 44. This revised rule now permits storage of alcoholic beverages without permit for a period not to exceed 5 days at formerly licensed premises after the license has been transferred to new premises.

State Regulation No. 20, Rule 30, p. 44. This new rule, codifying numerous and long standing special rulings, prohibits the employment by liquor licensees of regular police officers and the holding of liquor licenses by regular police officers.

State Regulation No. 20, Rule 31, pp. 44-45. This new rule prohibits the employment by liquor licensees of persons who refuse to submit themselves for fingerprinting if required to do so by local or state liquor authorities.

State Regulation No. 38, Rule 1, p. 66. This revised rule, continuing the prohibition of sale and delivery of alcoholic beverages in original containers for consumption off the licensed premises on Sundays and before 9:00 a.m. and after 10:00 p.m. on weekdays, now also prohibits the mere removal from the licensed premises of any alcoholic beverage in its original or opened container during the same prohibited hours.

It will be appreciated if you will carefully preserve the pamphlet since our reserve supply is extremely limited, in consequence of which it may be difficult, if not impossible, to furnish you with a replacement in the event of its loss.

Copy of the pamphlet will be mailed directly to each licensee of your municipality within the next few days. Please so advise any who may inquire of you as to the furnishing of such copies to them.

WILLIAM HOWE DAVIS
Director.

Dated: January 15, 1957.

TO ALL LICENSEES:

Enclosed is pamphlet containing revised State Alcoholic Beverage Rules and Regulations which became effective January 1, 1957.

As a licensee, you should familiarize yourself with the provisions of these Rules and Regulations since their violation by you is cause for suspension or revocation of your license.

Examine the Table of Contents appearing at page 4 of the pamphlet, and read carefully those Regulations applicable to your class of license and your type of licensed business.

The supply of these pamphlets is limited. It is therefore requested that you carefully preserve this copy, since its replacement may be difficult if not impossible.

WILLIAM HOWE DAVIS
Director.

Dated: January 23, 1957.

2. APPELLATE DECISIONS - NORDCO, INC. v. NEWARK.

NORDCO, INC.,)
)
 Appellant,)
)
 -vs-)
)
 MUNICIPAL BOARD OF ALCOHOLIC)
 BEVERAGE CONTROL OF THE CITY)
 OF NEWARK,)
)
 Respondent.)
 -----)

ON APPEAL
CONCLUSIONS AND ORDER

Braff, Litvak & Ertag, Esqs., by Jerome B. Litvak, Esq.,
 Attorneys for Appellant.
 Vincent P. Torppey, Esq., by James E. Abrams, Esq.,
 Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from denial of appellant's application for renewal (for the 1956-57 licensing year) of its plenary retail consumption license for premises at 213 Court Street, Newark.

Upon the filing of this appeal the Director, on June 29, 1956, entered an order extending the term of the license then held by appellant until entry of a further order herein. R. S. 33:1-22.

The petition of appeal alleges that the action of respondent was erroneous in that the said refusal to renew was unreasonable, arbitrary and capricious; that said decision was not based upon facts of factual investigation; that the alleged hearing held on June 26, 1956 before respondent was no hearing at all in that appellant was not permitted to produce witnesses or testimony to refute the alleged charge against it; that the only witness permitted to be heard was Police Captain Pluck, who was not sworn and who testified entirely from hearsay evidence; that the failure to issue a renewal license was predicated on matters extraneous and outside the scope of legal inquiry by the said respondent.

The stenographic transcript of the proceedings before respondent on June 26, 1956 was submitted as part of the record in this case. Rule 8 of State Regulations No. 15. Additional testimony and exhibits were introduced at the hearing held herein.

The transcript of proceedings before respondent on June 26, 1956 discloses that, at the outset thereof, the Chairman of the Municipal Board announced that appellant and five other licensees had "been asked to come here today to show cause to the A.B.C. as to why their licenses should be renewed for the new term. There is not going to be any testimony taken here today. We are going to listen to the respective police captains who have rendered disapprovals in their own estimation as to each one of these matters. No testimony to be taken; it will be on motion and argument of counsel. There will be no

testimony taken today." Thereafter Captain Pluck of the Fourth Precinct (in which appellant's premises are located) was called but not sworn. He stated that he was in charge of investigations relating to renewal of licenses; that his investigation disclosed that, effective January 3, 1955, respondent had suspended appellant's license for twenty days for permitting a brawl on its premises on December 16, 1954, and that the Director had suspended appellant's license for fifteen days, effective May 14, 1956, for a sale of alcoholic beverages in violation of State Regulations No. 38 on Sunday, July 10, 1955; that based upon these suspensions and reports of brawls occurring on appellant's premises on July 3, 1955, April 29, 1956, May 11, 1956 and June 2, 1956, he had recommended disapproval of the pending application to renew. Upon cross-examination by the applicant's attorney, Captain Pluck admitted that he had no personal knowledge of any of the four incidents last mentioned, and that no disciplinary proceedings had been instituted because of any of said incidents. He further stated that he had previously recommended approval of renewal of said license for the 1955-56 year but explained that he had then been in charge of the Precinct for only four months and that the applicant then had an adjudicated record of only one violation. At the close of the hearing the attorney for applicant produced a copy of an agreement, contingent upon renewal of the license, for the sale of the business by appellant to a qualified person and requested renewal of the license "so that we may effectuate this contract." Respondent reserved decision and, later, denied appellant's application for renewal by a two-to-one vote.

At the hearing held herein Captain Pluck testified under oath that he had disapproved the present application for renewal upon the basis of the two suspensions, effective January 3, 1955, and May 14, 1956, and that the report as to the four alleged brawls "had some bearing on it." He also testified that his detectives had reported that police were called to appellant's premises fifty-nine times between July 1, 1955 and June 30, 1956. Detective Thomas A. Pierce (attached to the Fourth Precinct Licensing Division) identified a list he had made of fifty-nine calls to appellant's premises between July 1, 1955 and June 30, 1956, and said list was admitted in evidence.

On behalf of appellant, the Conclusions and Order of the Director dated April 26, 1956 in Nordco, Inc. v. Newark (Bulletin 1114, Item 5) and the testimony given in that appeal were introduced into evidence in this case. In addition, Robert E. Brown, Secretary of the Municipal Board, testified as to the proceedings on June 26, 1956, and as to the action taken by the Board on the applications for renewal filed by the five other licensees who had been called to show cause on that date. Detective Philip J. Smith, appearing in response to subpoena issued by appellant, testified substantially in the same manner as he had testified in the prior appeal and further testified that, in his opinion, appellant was blameless as to the brawls referred to in Captain Pluck's testimony. On cross-examination he testified that, because of larger crowds, appellant has more trouble than other taverns in the area. Arthur Nordon, President of Nordco, Inc., did not "quarrel" with respondent's testimony that the police had been called to the premises on fifty-nine occasions during the 1955-56 year, and said that, if a patron "may look like he wants to quarrel with somebody, I don't wait for him to quarrel. I ring the button and call the police. They come and throw him out." He further testified that he received a copy of the Director's opinion in the prior appeal on April 27, 1956; that he obtained the license certificate from respondent on May 9, 1956; that he started negotiations

with the proposed purchaser for the sale of the business on May 10, 1956; and that respondent does not accept applications for transfer between May 15 and June 30. In his testimony Secretary Brown had admitted that respondent does not accept applications for transfer between the dates mentioned above.

There is no provision in the Alcoholic Beverage Law or the Rules and Regulations of this Division which requires a local issuing authority to issue an order to show cause why a license should be renewed. In disciplinary proceedings, of course, charges must be prepared and served upon the licensee and the licensee must be given an opportunity to be heard. However, a local issuing authority is not required to conduct any hearing as a requisite to denial of a new or renewed license. Lipman v. Newark, Bulletin 356, Item 6, and cases therein cited. Rule 8 of State Regulations No. 2 provides:

"No hearing need be held if no such objections shall be lodged [but this in nowise relieves the issuing authority from the duty of making a thorough investigation on its own initiative], or if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to issue a license to such applicant."

As this is a trial de novo, the question is not whether the evidence before the local Board was technically sufficient but whether, under all the evidence now before me, the license should be renewed. Borden v. Newark, Bulletin 148, Item 8; Kuhta v. Paterson, Bulletin 460, Item 10; Ritter v. North Bergen, Bulletin 546, Item 2.

Since appellant was not entitled to a hearing, it has no valid complaint because it was not permitted to present testimony below or because Captain Pluck was not sworn. Even if Captain Pluck's testimony as to the four alleged brawls is disregarded as hearsay, his testimony as to the two suspensions concerned matters of record not denied by appellant. One suspension was imposed during the 1955-56 licensing year. Moreover, while it has been said repeatedly that a licensee should summon the police whenever it appears that trouble may develop, the fact that police were summoned on fifty-nine occasions during the 1955-56 licensing year indicates that appellant's premises constituted a trouble-spot. In my opinion the evidence in this case is clearly sufficient to warrant denial of a renewal of the license. Kaplan v. Newark and K & K Co., Inc. v. Newark, Bulletin 352, Item 2; Haino v. Newark, Bulletin 352, Item 4; Lipman v. Newark, supra; Umberger v. Andover, Bulletin 632, Item 8; Zicherman v. Newark, Bulletin 647, Item 5, affirmed sub. nom. Zicherman v. Driscoll, 133 N.J.L. 586; Nakrosis v. Harrison, Bulletin 885, Item 3.

I find no merit in appellant's contention that respondent was arbitrarily discriminatory in denying appellant's application and granting renewals to other licensees. In Lipman v. Newark, supra, Commissioner Burnett said:

"*** The comparative worthiness of persons applying for a license is a question lying within the sound discretion of the issuing authority. Orsi v. Newark, supra. My attention is not brought to any instance where respondent has renewed the license of a tavern keeper who, like appellant, has been twice found guilty of a series of violations and who escapes mandatory disqualification from a license only because he was not convicted of a statutory offense in each case. See R. S. 33:1-25; Re Lipman, supra. Furthermore, even had respondent granted a renewal to a licensee with an equal record, the remedy is not in compelling respondent to renew appellant's license but in reversal of the renewal of such other license.***"

The action of respondent Board in refusing to renew so that the license might be transferred was not unreasonable. An application for transfer might have been filed between April 27, 1956 and May 15, 1956. Moreover, in Downie v. Somerdale, decided on September 17, 1956 (Bulletin 1135, Item 1), the Director said:

"In effect, appellant is requesting me to reverse respondent's action and to order renewal of the license so that an application for transfer to another party may be considered. Were I to follow this procedure as a general practice, a desirable reduction in the number of licensed places would never be accomplished. In this case respondent might have renewed the license on condition that it be transferred to another person within a stated time. After the appeal was filed respondent might have indicated its consent to a reversal by me for such limited purpose. Instead, respondent chose to stand upon its answer and the record of the licensee. I find nothing unreasonable or unduly harsh in respondent's action.***"

The Hearer in this matter filed a report wherein the above facts and pertinent principles were set forth, and recommended affirmance of the action of respondent. Thereafter, pursuant to Rule 14 of State Regulation No. 15, the attorney for appellant filed exceptions and written argument thereon. I have carefully considered the entire record in this case, including the transcript of testimony, the Hearer's Report and the exceptions and written argument of counsel.

It is appropriate to stress the importance and necessity of presenting to this Division whatever testimony is pertinent and legally admissible in support of the respective positions to the parties to the appeal. In arriving at my decision in each case I am limited to and bound by the record before me and cannot be influenced by public opinion which is unsupported by credible evidence and proper proof. When I reversed the denial of appellant's application for the 1955-56 renewal of its license respondent had presented little, if any, probative testimony in support of its denial. In the instant proceedings there is ample testimony to support and justify respondent's action. I shall adopt the Hearer's Report as my Conclusions herein. I shall affirm the action of respondent and enter an order accordingly.

Accordingly, it is, on this 26th day of November, 1956,

ORDERED that the action of respondent be and the same is hereby affirmed; and it is further

ORDERED that my previous order dated June 29, 1956, extending the term of the license then held by appellant, be vacated effective at 2:00 a.m. November 29, 1956, at which time all activity under the license as extended shall terminate.

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - MOSKOWITZ v. NEWARK.

MORRIS MOSKOWITZ,)

Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC
BEVERAGE CONTROL OF THE CITY
OF NEWARK,)

Respondent.)

-----)
John J. Clancy, Esq. and Joseph Brody, Esq., Attorneys for
Appellant.

Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney
for Respondent.

BY THE DIRECTOR:

This is an appeal from denial of appellant's applica-
tion for renewal (for the 1956-57 licensing year) of his
plenary retail consumption license for 60 Waverly Avenue,
Newark.

Upon the filing of this appeal the Director, on June
29, 1956, entered an order extending the term of the license
then held by appellant until entry of a further order herein.
R. S. 33:1-22.

It is admitted in the pleadings that respondent denied
the application for renewal for the following stated reasons:

1. That on February 12, 1956, appellant sold at retail
bottled goods in the original container on Sunday;
that the appellant permitted foul, filthy and obscene
language in and upon his licensed premises and that
he hindered an investigation;
2. That the Police Captain in charge of the precinct
wherein the appellant's premises are located refused
to recommend issuance of the Plenary Retail Consump-
tion License.

The petition of appeal alleges that the action of
respondent was unreasonable, arbitrary and capricious because
no decision had been made by the State Director upon the charges
set forth in (1) and the Police Captain's recommendation had
been made based upon certain incidents which were condoned by
respondent.

The transcript of proceedings before respondent on
June 26, 1956 discloses that, at the outset thereof, the Chairman
of the Municipal Board announced that appellant and five other
licensees had "been asked to come here today to show cause to
the A.B.C. as to why their licenses should be renewed for the
new term. There is not going to be any testimony taken here
today. We are going to listen to the respective police cap-
tains who have rendered disapprovals in their own estimation
as to each one of these matters. No testimony to be taken; it
will be on motion and argument of counsel. There will be no
testimony taken today." Thereafter Captain Pluck of the Fourth
Precinct (in which appellant's premises are located) testified
that he had recommended denial of the application for renewal

because the license had been suspended for ten days effective January 27, 1955, and for ten days effective May 3, 1955; because there were several disturbances which required the detective bureau being called in and because two women had been arrested on the premises on January 22, 1956, and again on February 5, 1956, by a special officer employed by appellant. The members of the Newark Board apparently knew of the charges pending before the Director concerning the alleged violations on February 12, 1956, because the attorney for respondent then asked Captain Pluck if he knew that said charges were pending and he stated that he had no knowledge thereof.

At the hearing held herein Captain Pluck gave substantially the same testimony he gave on June 26, 1956. On cross-examination he admitted that he did not know the details of the arrests on January 22, 1956, or February 5, 1956. Detective Pierce of the Fourth Precinct testified that the police had been called to appellant's premises twenty-five times during the 1955-56 licensing year.

Robert Brown, Secretary of respondent Board, was called as a witness by appellant. He testified that respondent renewed the licenses of three of the licensees who appeared on June 26, 1956, but stated that each had a record of only one suspension. He was examined at length as to the previous record of other licensees whose licenses have been renewed. Appellant admitted the two suspensions resulting from violations committed in November 1954. He testified that he has held a license ten years; that he had refused to serve the women arrested in January 1956 and February 1956 and that, when a disturbance starts, "we have a button that we push that automatically notifies Newark District. They in turn notify the police and a car comes."

There is no provision in the Alcoholic Beverage Law or the Rules and Regulations of this Division which requires a local issuing authority to issue an order to show cause why a license should be renewed. In disciplinary proceedings, of course, charges must be prepared and served upon the licensee and the licensee must be given an opportunity to be heard. However, a local issuing authority is not required to conduct any hearing as a requisite to denial of a new or renewed license. Lipman v. Newark, Bulletin 356, Item 6, and cases therein cited. Rule 8 of State Regulations No. 2 provides:

"No hearing need be held if no such objections shall be lodged [but this in nowise relieves the issuing authority from the duty of making a thorough investigation on its own initiative], or if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to issue a license to such applicant."

Since appellant was not entitled to a hearing, he has no valid complaint because he was not permitted to present testimony below.

As this is a trial de novo, the question is not whether the evidence before the local Board was technically sufficient but whether, under all the evidence now before me, the license should be renewed. Borden v. Newark, Bulletin 148, Item 8; Kuhta v. Paterson, Bulletin 460, Item 10; Ritter v. North Bergen, Bulletin 546, Item 2.

The records of the Division show that respondent Board denied appellant's application to renew for the 1955-56 licensing

year, but its action was reversed by the Director for the reasons set forth in Moskowitz v. Newark, Bulletin 1114, Item 1. In Zicherman v. Newark, Bulletin 227, Item 7, Commissioner Burnett, in referring to a previous condoned record, said:

"If coupled with new offenses, either of the same or of different kind, it may, of course, be reverted to as a link in the proof-chain of general unworthiness."

By Conclusions and Order dated July 16, 1956, the Director found appellant guilty of selling alcoholic beverages in original containers for off-premises consumption on Sunday, February 12, 1956, and permitting foul, filthy and obscene language on his licensed premises on said day, and not guilty on the charge of hindering an investigation. As a result, he suspended appellant's license, as extended, for forty days, effective July 23, 1956. Re Moskowitz, Bulletin 1127, Item 4. Taking into consideration that this charge was pending at renewal time, together with the prior record of appellant, I conclude that the evidence herein is clearly sufficient to warrant a denial of renewal of the license. Kaplan v. Newark and K & K Co., Inc. v. Newark, Bulletin 352, Item 2; Haino v. Newark, Bulletin 352, Item 4; Lipman v. Newark, *supra*; Umberger v. Andover, Bulletin 632, Item 8; Zicherman v. Newark, Bulletin 647, Item 5, affirmed sub. nom. Zicherman v. Driscoll, 133 N.J.L. 586; Nakrosis v. Harrison, Bulletin 885, Item 3.

I find no merit in appellant's contention that respondent was arbitrarily discriminatory in denying appellant's application and granting renewals to other licensees. In Lipman v. Newark, *supra*, Commissioner Burnett said:

"*** The comparative worthiness of persons applying for a license is a question lying within the sound discretion of the issuing authority. Orsi v. Newark, *supra*. My attention is not brought to any instance where respondent has renewed the license of a tavern keeper who, like appellant, has been twice found guilty of a series of violations and who escapes mandatory disqualification from a license only because he was not convicted of a statutory offense in each case. See R. S. 33:1-25; Re Lipman, *supra*. Furthermore, even had respondent granted a renewal to a licensee with an equal record, the remedy is not in compelling respondent to renew appellant's license but in reversal of the renewal of such other license.***"

The Hearer in this matter filed a report wherein the above facts and pertinent principles were set forth, and recommended affirmance of the action of respondent. Thereafter, pursuant to Rule 14 of State Regulations No. 15, the attorney for appellant filed exceptions and written argument thereon. I have carefully considered the entire record in this case, including the transcript of testimony, the Hearer's Report and the exceptions and written argument of counsel.

It is appropriate to stress the importance and necessity of presenting to this Division whatever testimony is pertinent and legally admissible in support of the respective positions of the parties to the appeal. In arriving at my decision in each case I am limited to and bound by the record before me and cannot be influenced by public opinion which is unsupported by credible evidence and proper proof. When I reversed the denial of appellant's application for the 1955-56 renewal

of his license (Moskowitz v. Newark, Bulletin 1114, Item 1), respondent had presented little, if any, probative testimony in support of its denial. In the instant proceedings there is ample testimony to support and justify respondent's action. I shall adopt the Hearer's Report as my Conclusions herein and affirm the action of respondent and enter an order accordingly.

Accordingly, it is, on this 26th day of November, 1956,

ORDERED that the action of respondent be and the same is hereby affirmed; and it is further

ORDERED that my previous order dated June 29, 1956, extending the term of the license then held by appellant, be vacated, effective at 2:00 a.m. November 29, 1956, at which time all activity under the license as extended shall terminate.

WILLIAM HOWE DAVIS
Director.

4. APPELLATE DECISIONS - BOOTS 'N SADDLE v. NEWARK (CASES NOS. 2, 3 and 4).

#2476-
BOOTS 'N SADDLE, (a New Jersey Corporation),
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent.
(Case No. 2)

#2477-
BOOTS 'N SADDLE, (a New Jersey Corporation),
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent.
(Case No. 3)

#2491-
BOOTS 'N SADDLE, (a New Jersey Corporation),
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent.
(Case No. 4)

ON APPEAL

CONCLUSIONS AND ORDER

Irving Zwillman, Esq., Attorney for Appellant.
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney for Respondent.

BY THE DIRECTOR:

These appeals concerning a plenary retail consumption license held by appellant for premises at 441 Washington Street, Newark, will be decided together.

In Case No. 2 appellant appeals from denial of its application to renew its license for the 1956-57 licensing year.

In Case No. 3 appellant appeals from a suspension of its license for fifteen days, effective July 2, 1956, for selling to and permitting consumption of alcoholic beverages by a minor on its licensed premises.

In Case No. 4 appellant appeals from an additional suspension of its license for twenty days, effective if its license be renewed, for permitting a brawl on its licensed premises.

Upon the filing of appeals in Cases Nos. 2 and 3, orders were entered by the Director on June 29, 1956, extending the term of the license then held by appellant until entry of a further order (R. S. 33:1-22) and staying respondent's order of suspension until entry of a further order (R. S. 33:1-31). No order staying suspension was entered in Case No. 4 because it was not to become effective until the license was renewed.

In Case No. 2 it is admitted that the application for renewal was denied for the following stated reasons:

"that said licensee was unfit to continue in business and that Capt. Scanlon of 1st Precinct of Newark disapproved application for renewal because of certain alleged incidents which were said to have taken place during the current year."

The petition alleges, in effect, that the action of respondent was arbitrary, discriminatory and an abuse of discretion and against the true facts because licensee was not found guilty of any charges except as to serving a minor, "which is now on appeal."

The transcript of proceedings before respondent in this case was submitted as part of the record herein. Rule 8 of State Regulations No. 15. Therefrom it appears that the application for renewal was denied by a two-to-one vote. Additional testimony and exhibits were introduced at the hearing held herein.

At the hearing below, Captain Scanlon, who was then in charge of the First Precinct, testified that he disapproved the application for renewal because of "four items that are pending hearing before this Board;" because there were "casualty complaints" and because the Director suspended appellant's license for forty-five days on November 9, 1953. At the hearing herein, Captain Scanlon testified that, in addition to the four pending items, his records showed that police were summoned to appellant's premises on sixty occasions during the licensing year beginning July 1, 1955, and ending June 30, 1956. Four Newark detectives testified that they had investigated various complaints concerning appellant's premises during the same period.

On behalf of appellant, Joseph Lee (a bartender) and Jacob Watkins (manager) testified that they had summoned police "on the buzzer" whenever it appeared that there might be a disturbance. Benjamin Chesner (president of appellant corporation) admitted that he spends very little time on the licensed premises, and testified that, after receiving on April 27, 1956, a copy of the Director's Conclusions and Order in Boots 'N Saddle v. Newark, Bulletin 1114, Item 2, he verbally agreed with Helen

Milchman to sell the business to her. The proposed purchaser corroborated his testimony as to the verbal agreement. Robert Brown (Secretary of respondent Board) was called as a witness by appellant and testified at length as to the previous record of other licensees whose licenses have been renewed.

In Case No. 3, a transcript of the hearing below was introduced into evidence herein. Therefrom it appears that respondent announced its decision before it considered the application to renew. At the hearing below Horace --- (19 years of age) testified that on April 5, 1956, he was in appellant's premises and had a "couple of beers" served by Joseph Lee (appellant's bartender) who did not question him as to his age. He testified that Lee had served him beer on previous visits. His testimony as to April 5, 1956, was corroborated by a woman who accompanied him to appellant's premises. Joseph Lee testified that he never sold beer to Horace --- and that he never saw him prior to April 23, 1956, when he entered with Newark detectives. The evidence presented is clearly sufficient to sustain the finding of guilt and, hence, the action of respondent in Case No. 3 is affirmed.

In Case No. 4, a transcript of the hearing below was introduced into evidence and additional testimony taken. From the transcript it appears that respondent held the hearing and announced its decision after denying the application to renew. At the hearing below, Dorothy George testified that, when she was in appellant's premises on July 16, 1955, a disturbance occurred during which she was struck by three women patrons and knocked over a stool; that the disturbance lasted "about ten minutes or more" and that Joseph Lee (the bartender) did nothing to stop it. She further testified that, after the disturbance, she found that her purse was missing and that, after summoning police, she accused one of the women of stealing her purse. Her testimony as to the brawl is not directly corroborated, but Patrolman Hughes, of the Newark Police, testified that he responded to a call to appellant's premises at 4:05 p.m. July 16, 1955, and arrested a male patron and a female patron as a result of information received from Dorothy George. The fact that the Grand Jury subsequently failed to indict either of the patrons is immaterial. Joseph Lee testified that nothing unusual happened in the tavern on the afternoon in question, but admitted that the policeman called and arrested the male patron. The evidence presented is clearly sufficient to sustain the finding of guilt and, hence, the action of respondent in Case No. 4 is affirmed.

Although two of the four items mentioned by Captain Scanlon were either dismissed or not prosecuted, it appears that the other two items resulted in the suspensions referred to in Cases Nos. 3 and 4 herein. The sixty calls for police indicate that appellant's premises constituted a trouble-spot. Appellant's license was suspended for forty-five days on November 9, 1953 (Bulletin 990, Item 2). In Zicherman v. Newark, Bulletin 227, Item 7, Commissioner Burnett, in referring to a previous condoned record, said:

"If coupled with new offenses, either of the same or of different kind, it may, of course, be reverted to as a link in the proof-chain of general unworthiness."

The evidence herein is clearly sufficient to warrant denial of renewal of the license.

I find no merit in appellant's contention that respondent was arbitrarily discriminatory in denying appellant's application and granting renewals to other licensees. In Lipman v. Newark, Bulletin 356, Item 6, Commissioner Burnett said:

"*** The comparative worthiness of persons applying for a license is a question lying within the sound discretion of the issuing authority. Orsi v. Newark, supra. My attention is not brought to any instance where respondent has renewed the license of a tavern keeper who, like appellant, has been twice found guilty of a series of violations and who escapes mandatory disqualification from a license only because he was not convicted of a statutory offense in each case. See R.S. 33:1-25; Re Lipman, supra. Furthermore, even had respondent granted a renewal to a licensee with an equal record, the remedy is not in compelling respondent to renew appellant's license but in reversal of the renewal of such other license.***"

As to the refusal to renew so that the license might be transferred, it appears that an application for transfer might have been filed between April 27, 1956 and May 15, 1956. In any event, I find that the action of respondent in refusing to renew so that the license might be transferred was not unreasonable or unduly harsh. Downie v. Somerdale (decided on September 17, 1956, Bulletin 1135, Item 1).

The Hearer in this matter filed a report wherein the above facts and pertinent principles were set forth, and recommended affirmance of the action of respondent in the three cases. Thereafter, pursuant to Rule 14 of State Regulations No. 15, the attorney for appellant filed exceptions and written argument thereon. I have carefully considered the entire record in these cases, including the transcript of testimony, the Hearer's Report and the exceptions and written argument of counsel.

As to Case No. 2 herein, which involves denial of renewal of the license, it is appropriate to stress the importance and necessity of presenting to this Division whatever testimony is pertinent and legally admissible in support of the respective positions of the parties to the appeal. In arriving at my decision in each case I am limited to and bound by the record before me and cannot be influenced by public opinion which is unsupported by credible evidence and proper proof. When I reversed the denial of appellant's application for the 1955-56 renewal of its license (Boots 'N Saddle v. Newark, Bulletin 1114, Item 2), respondent had presented little, if any, probative testimony in support of its denial. In the instant proceedings there is ample testimony to support and justify respondent's action. I shall adopt the Hearer's Report as my Conclusions in Case No. 2. I shall affirm the action of respondent in said case and enter an order accordingly.

As to Cases Nos. 3 and 4, I shall adopt the Hearer's Report as my Conclusions in said cases. I shall affirm the action of respondent in both cases but, in view of the fact that the denial of the renewal has been affirmed, there is no need to enter a further order fixing effective dates for the suspensions imposed in Case No. 3 or Case No. 4.

Accordingly, it is, on this 26th day of November, 1956,

ORDERED that the action of respondent in Cases Nos. 2, 3 and 4 be and the same is hereby affirmed; and it is further

ORDERED that my previous order dated June 29, 1956, extending the term of the license then held by appellant, be vacated effective at 2:00 a.m. November 29, 1956, at which time all activity under the license as extended shall terminate.

WILLIAM HOWE DAVIS
Director.

5. STATE LICENSES - NEW APPLICATIONS FILED.

Colonial Mineral Waters, Ltd.
375 Second Street
Jersey City, N. J.

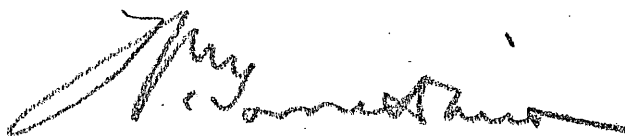
Application filed January 22, 1957 for person-to-person transfer of State Beverage Distributor's License SBD-220 from Colonial Mineral Waters, Inc.

Carmine Cocco and Annette Cocco
t/a Millville Beverage Company
Rear of 323 North High Street
Millville, N.J.

Application filed January 24, 1957 for place-to-place transfer of State Beverage Distributor's License SBD-12 from Snyder Avenue, Vineland, N. J.

Ocean Beer Co.
Adamson-Mantoloking Road
Osbornville, Brick Township, N.J.

Application filed January 28, 1957 for place-to-place transfer of salesroom to Northwest Corner of Hooper Avenue and Drum Point Road, Osbornville, Brick Township, N. J., on State Beverage Distributor's License SBD-28.



William Howe Davis
Director.