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

BULLETIN 1459 July 18, 1962

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ITEM

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1. APPELLATE DECISIONS - B & L TAVERN, INC. v. BAYONNE.

B & L Tavern, Inc., Appellant, v. Board of Commissioners of the City of Bayonne, Respondent.	)	On Appeal CONCLUSIONS and ORDER

Raphael G. Jacobs, Esq., Attorney for Appellant
Frank J. Ziobro, Esq., by John J. Vavrence, Esq., Attorney for Respondent
Samuel Stern, Esq., Attorney for Objectors

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action taken on September 22, 1961, by respondent Board of Commissioners (hereinafter respondent) whereby the five members thereof unanimously voted to deny the application for renewal of appellant's 1961-62 plenary retail consumption license. The application for renewal was for a building to be constructed at 477 Avenue C, Bayonne, in accordance with plans and specifications filed with respondent, on the site of the former licensed premises which had been destroyed by fire.

"Appellant in its petition of appeal alleges that the action of respondent was erroneous in that 'The findings of the Board of Commissioners of the City of Bayonne were not supported by the evidence presented before said Board, and the Board's action therefore constituted an abuse of said Board's discretion resulting in a denial to Appellant of due process of law and the equal protection of the laws.'

"Respondent's answer reiterates in substance the contents of the resolution denying the renewal, viz.,

> '**** that the premises were so operated as to cause a nuisance in the neighborhood, that there was constant noise, disorder and indecent behavior on many occasions in the last year in the neighborhood of the license premises; and it is the opinion of the Board of Commissioners that the tavern at the appellant's location cannot be operated with safety to the public and in such manner as to prevent the same from becoming a nuisance to the public.'

"Appellant, in addition to Max Baer (the president of the corporate licensee), called as a witness LeRoy Rhodes, a bartender employed by appellant; four police officers, one of whom was assigned to perform duties with reference to alcoholic beverage matters in respondent municipality, and a retired police officer.

"Baer testified that for the past eleven years appellant had operated the licensed premises at the same location, but was compelled to cease operation thereof on January 29, 1961, when the building was destroyed by fire; that the first floor of said building constituted the licensed premises, whereas the second floor thereof was rented to and occupied by a social club; that ten other liquor outlets existed in the area, and along Avenue C there are various buildings containing stores on the ground floors and apartments on the second floors thereof; that there are a couple of chicken markets and a car-wash located nearby; that he is on duty in the tavern each day from 7 a.m. until 6 p.m., and on three or four nights a week he returns to the establishment for a visit in order 'to look around;' that Rhodes is a night bartender and, with the exception of Fridays and Saturdays when the establishment is open until 3 a.m. the following day, the place is closed at midnight; that, when he first 'took it over', it was a rough place but he 'barred the troublemakers,' a couple of whom he brought to court; that for four or five years he has not had occasion to call police headquarters to dispatch police; that some of the people who were 'barred' from the premises would congregate in a lot located at the end of the building, and at times they would sit on a 'cement ledge' which was part of the building; that these men would drink wine and would on many occasions throw the empty bottles in the back lot; that approximately four years ago appellant discontinued selling wine in bottles; that at one time Mrs. Shaneen called his (Baer's) attention to bottles in the rear yard and he then pointed out to Mrs. Shaneen that the empty wine bottles had labels thereon 'Eddie's Wine and Liquor Store;' that, when the men became noisy as they congregated in the hallway leading upstairs to the social club, he (Baer) would request the police officer assigned to the area to 'break them up;' that Mrs. Shaneen asked him to erect a fence around the empty lot at the rear of the building but, in his opinion, a fence would 'not necessarily' eliminate 'so-called winos' from gathering there. Moreover, Baer testified that the new building occupies the entire lot 'with the exception of about ten feet which leaves room for a fire escape to go down, and I'm erecting a wall at the end of it and closing it in."

"Rhodes testified that he has been employed for eight years by appellant and tends bar from 6 p.m. to midnight on weekdays and from 6 p.m. to 3 a.m. the following day on weekends; that in the last three years he 'quieted down most of the noise;' that, when arguments arise between patrons, he separates them, talks to them for awhile and, if the arguments do not cease, he orders the participants therein from the licensed premises; that in the evening the appellant's establishment 'is not too noisy;' that he (Rhodes) was not aware that bottles were being thrown in the back yard or did he notice that 'winos congregate outside the tavern' because, he stated, it is his job to take care of the inside; that he at times has heard noise from the social club, especially when the pool players would tap on the floor with cue sticks.

"Sergeant William West (a police officer) testified that during most of the eight years he has been on the police force he had been assigned to the area where the appellant's premises are located; that it is a business section and just 'a normal tavern;' that it is neither noisier nor more disorderly than other taverns in the vicinity; that, when 'winos' gathered in the rear of the tavern either standing, sitting or lounging there, he would disperse them in accordance with the policy of the Police Department.

"Officer William Andrews testified that he has been a police officer in Bayonne during the past eleven and one-half years and that he spent his entire lifetime in the area where the tavern was located and, furthermore, during the time that he has been on the police force he has spent most of his time in that area; that, in his opinion, the operation of the appellant's tavern was comparable to that of other taverns in the vicinity; that during the past three or four years he has not witnessed any trouble in the appellant's former premises although some years previously he had had occasion to break up fights on a number of occasions; that, when he observed the so-called 'winos' lounging near the rear of appellant's premises before it was burned, he would chase them.

"Captain Edward Roake testified that he had been serving on desk duty for a number of years prior to September 1960, at which time he was made Captain in the Police Department, and that he did not specifically recall any complaints being made with reference to the operation of appellant's tavern.

"Detective Vincent Arnot testified that he works 'out of the local ABC' and he searched the records from January 1960 to January 1961 but found no complaints being lodged against the operation of appellant's premises. Moreover, Arnot testified that he made personal inspections of the various taverns in the city and that, from his observation, the appellant's place of business is not conducted any differently than any other tavern in town.

"Thomas Heaney (a retired police officer who formerly served in the capacity of assistant superintendent of the Bureau of Criminal Identification) testified that, since his retirement in September 1960, he has had occasion to go to the appellant's tavern for the purpose of obtaining men to help his brother in the trucking business and, prior to his retirement, he had been in the neighborhood and visited the tavern on many occasions and also the social club which was located on the second floor of the building; that during his many visits to the licensed premises he always found that 'everything was in order at all times.'

"Officer Anthony Dembowski, called as a witness by the respondent, testified that he has lived approximately two blocks away from appellant's premises during the past twenty-seven years and, from his observations while on duty or off duty, he found the premises 'to be the hell hole of the City of Bayonne;' that he observed people not only standing near the side of the building but also in front of the building blocking the corner, at which time passersby would have to step out into the street in order to go around those congregated outside the tavern; that he has seen men drinking in cars, and on one occasion he visited appellant's premises and told the person to whom he spoke 'to clean up the mess that's on the outside of that building', specifically referring to bottles, cans and other things which were lying alongside the building and in the back thereof. Officer Dembowski further testified that the tavern was noisy and patrons engaged in indecent conversation.

"Louis Wernick testified that he resides across the street from appellant's premises at No. 478 Avenue C and operates a poultry market in the building; that he watches 'the tavern all day and night. All day I'm outside, my place is open. At night we can't sleep because the noise from the tavern, fighting, shooting, everything in the world, thousands of people. Cars block up my place, the other place, bottles and cans, everything you could

find in this here block. They come from New York, from Pennsylvania, that's a nest. They know where to hang around.'

"Four members of respondent Board, among whom was Mayor Brady, were called as witnesses on behalf of respondent.

"Mayor Brady testified that his vote against renewal of appellant's licensed premises was based 'on the fact that it was noisy and so many people in the neighborhood were against the location of the tavern in that area' and, in addition to the noise, he considered 'other disorders' such as 'an accumulation of debris in the neighborhood of the tavern, a condition which I felt would warrant complaints of the people living in the neighborhood.' Mayor Brady further testified that he gave a great deal of weight to petitions signed by persons and the great number of persons who attended the hearing and voiced opposition to the renewal of appellant's license. Mayor Brady, when asked if he had any personal knowledge of the area wherein appellant's license was located, answered 'Well, not too intimately, no.' Further, when asked whether he considered a tavern in that neighborhood undesirable, he said he was unable to give 'a direct yes or no on that.' On re-direct examination by the objectors' attorney the Mayor said he listened to the witnesses for and against the renewal, and it was his decision that appellant's tavern was of no benefit to the city.

"The testimony of three commissioners (Fitzpatrick, Januszewski and Prendeville) was in substantial agreement that their respective negative votes were based on the testimony of the witnesses who appeared before respondent Board.

"Commissioner Fitzpatrick further testified that one of the reasons for his action was the fact that a woman alleged that, while passing appellant's premises, 'A bottle of whiskey or an empty whiskey bottle came hurtling through the window. There were constant complaints about noise, there were constant complaints about women being accosted.'

"Commissioner Prendeville further testified that he considered the testimony of witnesses with reference to conditions outside the licensed premises, such as the accumulation of cans and bottles 'in the back yard' and 'the bottle incident', but he did not recall any of the witnesses complaining of any acts inside the premises.

"St. Clair Jackson (a municipal health officer) testified that on two occasions, namely, February 1, 1959, and again on December 10, 1959, he received calls from 'Mrs. Shaneen' regarding the condition of the back yard and his record (which he used to refresh his memory) disclosed the back yard to be 'filthy, bottles there' and also 'contraceptives.' He further testified that on a third occasion he inspected the yard and found that it was pretty clean and he added that Mr. Baer always cooperated with him. Jackson also cited an instance when he investigated a complaint and found that the butcher next door 'had thrown some chicken stuff' in appellant's rear yard.

"Police Officer Michael Hudak testified that from January 1959 to the following October or November he was assigned to duty in the area and, when he observed 'more than four or five men' congregating on the corner in front of appellant's tavern, before they became loud or noisy he would tell them 'to break it up.' Officer Hudak further testified he never heard any swearing and had 'never seen any disturbance or nothing in the B & L.'

"Six women who resided in the immediate area of appellant's premises testified in opposition to the renewal of its license. Some of them cited instances of indecent behavior on the part of men at or near appellant's premises. However, the major objections made by these witnesses appeared general in nature and did not specifically accuse the operators of the appellant's establishment of any wrongdoing. Only in one or two instances did these witnesses attempt to connect appellant's premises with the alleged unsatisfactory conditions about which they complained.

"The police officers, including the officer assigned to the supervision of the alcoholic beverage matters in the city, with one exception testified in effect that the operation of appellant's establishment compared favorably with the operation of other liquor outlets in the community. The accumulation of debris, consisting mostly of empty wine bottles in the rear yard of appellant, and the gathering of men in groups at or near the entrance to both the tavern and the club located on the second floor of the building, appeared to be the most objectionable to the neighbors. The new building erected on the site of the former premises is much larger and occupies most of the rear yard, thus practically eliminating the 'empty bottle situation.' Furthermore, the entrance to the second floor is now around the corner on Avenue C, as is the entrance to the licensed premises.

"It is also significant that, if conditions were as bad as objectors' witnesses claimed or violations had been committed, the respondent had not preferred disciplinary proceedings against appellant. Commissioners Januszewski and Prendeville testified that they are familiar with the area, whereas Mayor Brady stated his knowledge of the area was limited. Nearly all of the evidence of the objectors concerns alleged conditions on the outside but in the immediate vicinity of appellant's premises. The entrance to the club quarters on the second floor of the former building seemed to be an attraction for the men, termed 'winos', to congregate. Elimination of the club as a tenant on the second floor of the new building would be a step in the right direction. Baer testified that he has stopped the sale of wine in original containers for off-premises consumption.

"A licensee, or those in charge of licensed premises, must keep the premises and the patronage under strict control because of the licensee's responsibility for conditions both inside and outside the licensed premises. Cf. Galasso v. Bloomfield, Bulletin 1387, Item 1.

"While it lies within the sound discretion of an issuing authority to determine in the first instance whether an applicant is worthy of renewal of its license privileges, such exercise of discretion must be based on valid and substantial grounds. The present stockholders and officers of appellant corporate licensee have had the license renewed from year to year since approximately 1950. Although the testimony of the neighbors might indicate that appellant's premises perhaps need stricter supervision, common fairness dictates that the investment of a licensee in his business over the years should not be jeopardized except on grounds which are attributable to some malfeasance or misconduct on his part. There are many other licensed liquor outlets in the vicinity which could have contributed in part to some of the annoyances in the area. After reviewing all the evidence, I conclude that the situation in this case is quite similar to that found to exist in Freeland v. Roselle, Bulletin 352, Item 5; Vasto v. Atlantic Highlands, Bulletin 622, Item 4; Monessen v. Lakewood, Bulletin 657, Item 1; Salmanowitz v. Hightstown, Bulletin 807, Item 2;

Seidel v. Upper Freehold, Bulletin 1246, Item 1, and Galasso v. Bloomfield, Bulletin 1387, Item 1. Also cf. Leedie v. Trenton et al., Bulletin 863, Item 4.

"For the reasons aforesaid, it is recommended that an order be entered in this matter reversing the action of respondent in order that appellant may be given an opportunity to demonstrate its worthiness to hold a liquor license, with the added understanding that respondent may, for proper cause appearing in the future, institute disciplinary proceedings or refuse to renew the license for the next licensing term."

Pursuant to Rule 14 of State Regulation No. 15, the attorney for respondent Board filed written exceptions to the Hearer's Report and written argument thereto, and appellant's attorney filed written answering argument. Thereafter the attorneys for the respective parties presented oral argument before me in this matter.

I have carefully considered all the facts and circumstances appearing herein and agree with the Hearer's findings and conclusion as expressed in his Report. However, it is apparent that, because of the social club having been located on the floor above the former premises, many undesirable persons congregated in the street entrance thereof which constituted a nuisance to the neighborhood. Appellant can show the sincerity of itsintentions to live at peace with its neighbors by not permitting a club to be operated at the new premises in order to avoid a repetition of the complaints aired in the instant case. Appellant has testified that a cooling system has now been installed in the licensed premises so that any noise which previously emanated therefrom, especially in the warm weather, will cause no further annoyance to the people living in close proximity thereto.

I shall reverse the action of the respondent Board in refusing to renew appellant's license for the 1961-62 licensing period.

Accordingly, it is, on this 10th day of May 1962,

ORDERED that the action of respondent Board of Commissioners of the City of Bayonne be and the same is hereby reversed, and it is directed that said Board renew appellant's license for the 1961-62 licensing period in accordance with the application filed therefor.

WILLIAM HOWE DAVIS,
Director

2. APPELLATE DECISIONS - CHURM v. JEFFERSON TOWNSHIP

Case No. 1 Henry K. Churm, t/a Bud's Sun Valley Inn, Appellant, v. Township Committee of the Township of Jefferson, Respondent	ON APPEAL CONCLUSIONS AND ORDERS
Case No. 2. Henry K. Churm, t/a Bud's Sun Valley Inn, Appellant, v. Township Committee of the Township of Jefferson, Respondent.	

Henry K. Churm, Pro se.
Schenck, Smith & King, Esqs., Alten W. Read, Esq., of counsel, by James F. McGovern, Jr., Esq., Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"In Case No. 1, appellant appeals from respondent's action on June 19, 1961, in denying his application for a place-to-place transfer of his 1960-61 plenary retail consumption license from premises on Longwood Valley Road to premises to be constructed on Lot 5, Lakeside Shopping Center, Route 15, Township of Jefferson.

"In Case No. 2, appellant appeals from the action of respondent in refusing to renew his license for the 1961-62 licensing period for premises to be constructed on the site of his former licensed premises (which had been destroyed by fire) on Longwood Valley Road, Township of Jefferson. At the hearing herein, both appeals were consolidated and thus they may be decided simultaneously herewith.

"As to Case No. 1, the record discloses that some time prior to May 1960, appellant filed an application for a place-to-place transfer of his plenary retail consumption license containing a broad package privilege to Lot 5, Lakeside Shopping Center, located on Route 15, and after completion of a hearing on May 16, 1960, at which seven objectors appeared, the respondent denied the application. Thereafter, on October 14, 1960, appellant filed with respondent a similar application for transfer and at a hearing on June 19, 1961, at which no objectors appeared, said application was denied by the respondent Committee, four voting to deny and the fifth member abstained from voting on the application.

"The only reason given by respondent for its action in denying said place-to-place transfer was 'that this committee is bound by the provisions of Ordinance 79 which provides that no transfer of a presently existing license shall be granted from its present location to a newly constructed or heretofore unlicensed premises, unless the premises to which the transferee desires the transfer shall be at least one mile from any other presently established licensed premises.'

"The appellant alleges in this case that when he became aware of a proposed construction of a reservoir and hydroelectric plant which would affect his premises on Longwood Valley Road, he immediately got in touch with Jefferson Township Tavern Owners Association (hereafter Association) which association communicated with the respondent concerning appellant's problem. A letter (marked Exhibit A-1) dated November 19, 1960 and signed by Arthur Mitchko, secretary of the association, addressed to the respondent with reference to the section of the ordinance in question, reads as follows:

> 'At the last meeting of the Jefferson Township Tavern Owners it was agreed to ask the Township of Jefferson to consider amending our present ordinance of the one mile limit. We would very much like the Township to retain the one mile limit as presently in force but to make a provision in the ordinance to meet with any hardship case, such as the one confronting Mr. Henry K. Churm.
>
> 'We feel that a hardship case should be defined as forceful eviction from a licensed premises due to a project or projects initiated and/or financed by the Local Municipality, County State or Federal Governments.'

"The matter of the application for transfer of the license, due in part to communications concerning the proposed amendment of the ordinance in question, was held in abeyance by respondent from October 14, 1960 until June 19, 1961, when it was denied by respondent as aforementioned. On July 18, 1961, a petition of appeal from respondent's action was filed at this Division in which appellant contends that 'the action of respondent was erroneous in that: (a) the ordinance in question is unconstitutional, invalid, unreasonable, capricious and arbitrary; (b) the physical attributes of the Township of Jefferson, together with the present location of the liquor license, prevents the continuance of operation under the liquor license for anyone in the direct path of the proposed Longwood Valley Reservoir.'

"In Shenise v. Jefferson, Bulletin 1155, Item 2, the Director considered Ordinance 79 to be unreasonable and inapplicable with respect to the transfer sought by Shenise and entered an order reversing respondent's action in denying said application. The Director made no express finding with respect to the specific distance between the old premises and the proposed location.

"In brief, the evidence presented in the Shenise case was that when Shenise was unable to renew his lease for the premises in which he had been operating for a period of years, he purchased a plot of ground some distance away and applied to the respondent for a transfer of his license. The Director pointed out in said case that in Jefferson Township there are 35 plenary retail consumption licenses issued and outstanding and thus, the one-mile distance regulation effects a substantial stricture insofar as place-to-place transfers are concerned, thus limiting to a considerable degree, desirable locations. The similarity of Case No. 1 and the Shenise case is quite apparent. In both cases the only ground for denial of the transfer rested solely on the fact that it would contravene Ordinance 79. There being no other reason given by the respondent why the place-to-place transfer applied for by appellant should not have been approved, I find that Ordinance 79 is unreasonable and inapplicable with respect to the transfer sought in Case No. 1, and therefore, recommend that the action of the respondent be reversed.

"The 1960-61 license year has expired and appellant has not filed application for 1961-62 renewal of the license for premises to be constructed on Lot 5, Lakeside Shopping Center, Route 15. Therefore, it is further recommended that the order of reversal herein provide that the transfer of appellant's license to said proposed premises be deemed effective as of June 30, 1961

for the sole purpose of affording appellant the opportunity to file an application for renewal of his license for the 1961-62 period at premises to be constructed on Lot 5, Lakeside Shopping Center, Route 15. Re Shenise v. Jefferson, supra.

"Insofar as Case No. 2 is concerned, it is recommended to the Director that he retain jurisdiction thereof until such time as final adjudication is made in Case No. 1."

Pursuant to Rule 14 of State Regulation No. 15, the respondent's attorneys filed exceptions to the Hearer's Report and written argument thereto, and answering argument was filed by the appellant. Thereafter, on my direction, a supplemental hearing was held whereat evidence was introduced pertaining to need and necessity for a license at the proposed site, the number of liquor outlets in the area thereof and the distance between the former premises of appellant and his proposed premises in the shopping center. After completion of said hearing, the Hearer then filed the following Supplemental Hearer's Report:

"This is a supplement to a Hearer's Report dated December 13, 1961 (copies of which were submitted to appellant and to the attorneys for respondent, respectively) wherein I recommended that the action of respondent in disapproving the application for place-to-place transfer of appellant's license be reversed.

"After examination of the record therein by the Director and at his request, a hearing was held on February 15, 1962 for the purpose of taking additional testimony, especially with reference to the need and necessity for a license at the proposed site, the number of liquor outlets in the area, and the distance between the location of the former premises and the proposed premises in the Lakeside Shopping Center (hereinafter shopping center).

"Raymond Sharp, Township Engineer, testified that he measured the distances from appellant's proposed site in the shopping center and various other liquor outlets and indicated such measurements upon a map (Exhibit R-3). The nearest premises (Vunderbar) was found to be 246 feet distant therefrom, whereas four other licensed premises on Route 15 were 1320 to 1396 feet distant from said proposed premises. Furthermore, there is another licensed premises (Chabon) located on Edison and Brady Roads which is 4224 feet from appellant's proposed liquor establishment. Thus, within a distance of one mile from the site of appellant's proposed premises in the shopping center, there are six liquor outlets. The map also discloses that the premises of appellant, which have been destroyed by fire, was 3.40 miles distant from the place in the shopping center where appellant applied for transfer. The additional evidence discloses that the approval of appellant's application for transfer would result in an increase of the number of liquor outlets in the area. At the prior hearings, neither of the parties presented factual testimony concerning the distances aforementioned and nothing specific was presented with reference to the number of licenses in the area.

"In Shenise v. Jefferson, Bulletin 1155, Item 2, used as a citation in my Hearer's Report, the Director made no finding with respect to the specific distance between Shenise's old premises and the proposed location. There appeared to be a conflict in measurement between the surveyors appearing for the respective parties. Shenise's surveyor testified the distance between premises to be in excess of a mile, whereas the respondent Committee's surveyor testified the distance between Shenise's place and any other licensed premises to be less than a mile. In effect, it was held in Shenise that the ordinance was unreasonable as it applied to the facts in that case.

"Inasmuch as Ordinance No. 79 of the Township of Jefferson was adopted April 5, 1954, it is obvious that there can be no charge of improper motivation on the part of the members of the respondent Committee who voted to deny the transfer in question.

"Under the circumstances, I shall revise my previous recommendation regarding Case No. 1 because of a definite violation of the distance-between-premises ordinance known as No. 79, which does not appear to be unreasonable as it applies to the facts in this case. Thus, I now recommend that the action of the respondent in Case No. 1 be affirmed and the instant appeal with reference thereto be dismissed.

"In the 'Agreed Statement of Facts' presented at the prior hearing in these cases, the respondent stated that it did not intend to contest the appeal filed by appellant for renewal of his license for a building to be constructed on the former site. If appellant complies with all the statutory prerequisites necessary for renewal of the said license, it is recommended that the action of respondent in Case No. 2 be reversed and the appellant's renewal application be approved."

I have carefully considered all of the evidence, the exhibits, exceptions to the Hearer's Reports and written arguments with reference thereto by both appellant and the attorneys for the respondent. I concur in the findings and conclusions of the Hearer and adopt the recommendation made by him in the Supplemental Hearer's Report. In view of the completeness of the evidence presented at the supplemental hearing, no oral argument is necessary and, thus, the request of the appellant is denied.

Accordingly, it is, on this 14th day of May 1962,

ORDERED that in Case No. 1 the action of the respondent Township Committee of the Township of Jefferson in denying the transfer of appellant's license from his former premises on Longwood Valley Road to premises to be constructed on Lot 5, Lakeside Shopping Center, Route 15, be and the same is hereby affirmed, and the appellant's petition be and the same is hereby dismissed; and it is further

ORDERED that in Case No. 2 the action of the respondent Township Committee of the Township of Jefferson disapproving the application for renewal of appellant's license for premises to be constructed on Longwood Valley Road, Township of Jefferson, be and the same is hereby reversed and respondent is directed, if and when statutory prerequisites are complied with, to renew said license in accordance with application made therefor.

WILLIAM HOWE DAVIS,
Director

3. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES WITHOUT LICENSE - LEGITIMATE SOURCE AND DESTINATION ESTABLISHED - MOTOR VEHICLE RETURNED TO INNOCENT OWNER - ALCOHOLIC BEVERAGES RETURNED TO CLAIMANTS AFTER UNWITTING VIOLATOR OBTAINS REQUISITE VALIDATING PERMIT.

In the Matter of the Seizure on March 10, 1962 of a quantity of taxpaid alcoholic beverages and a Chevrolet sedan on a public highway at 711 Wendell Place, in the Township of Teaneck, County of Bergen and State of New Jersey.	Case No. 10,790 On Hearing CONCLUSIONS and ORDER

Alfred A. Franciscus, Esq., attorney for Tour-Aid and Harvey S. Finkelstein, claimants.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter came on for hearing pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, and State Regulation No. 28, to determine whether 91 bottles of assorted alcoholic beverages and a Chevrolet sedan, described in an inventory hereinafter referred to, seized on March 10, 1962 on a public highway at 711 Wendell Place, Teaneck, constitute unlawful property and should be forfeited.

When the matter came on for hearing, pursuant to R.S. 33:1-66 an appearance was made on behalf of the registered owner of the motor vehicle who sought its return. Appearances were also made by three claimants who sought the return of certain alcoholic beverages which were part of the inventory herein below set forth, and who opposed forfeiture thereof. No one appeared to oppose forfeiture of the balance of the alcoholic beverages.

The facts as they appear from the report of ABC agents and other documents in the file, presented in evidence with the consent of the claimants herein reflect the following: On March 10, 1962 at about 11:00 A.M. a local police officer found the aforesaid taxpaid whiskey in the motor vehicle in question which was parked in front of premises at 711 Wendell Place, Teaneck, as aforesaid. This motor vehicle bore New York license plates and was registered in the name of Victor Marks of Oceanside, Long Island, New York and its operator, Harvey Finkelstein, was in the process of delivering the said whiskey to nine different individuals in New Jersey.

The vehicle bore no transit insignia and Finkelstein did not possess a permit issued by this Division authorizing the transportation of the said whiskey. The officer took possession of the motor vehicle and whiskey, all of which were later turned over to agents of this Division.

Finkelstein stated that he was in the process of making deliveries for the Tour-Aid company, handlers of goods and liquors from out of the country for the tourist trade. He further stated that he did not have a special validating permit or the requisite license to transport the alcoholic beverages in question in the said motor vehicle. He was thereupon arrested, charged with transporting of alcoholic beverages without the requisite license or special permit contrary to R.S. 33:1-2 and R.S. 33:1-50(a) and was released in bail pending arraignment in the Municipal Court of Teaneck.

At the hearing herein, the following explanation was given of his possession of the said alcoholic beverages: Tour-Aid is in the business of distributing liquor to American residents who

make purchases of same while in foreign countries and who order the same shipped to their homes in the U.S. The usual procedure has been that Tour-Aid would obtain the liquor from New Jersey ports, and bring it to New York from which point it was shipped to these persons by railway express. Tour-Aid has a license permitting them to make such pickups from a New Jersey port for the purpose of bringing the said alcoholic beverages into New York State. However, they were not aware that a special permit was required to distribute the said liquor in the State of New Jersey.

On this particular occasion, the ship carrying this shipment had arrived late in port and Tour-Aid had received many complaints from these persons regarding failure of timely delivery of this merchandise. In order to accommodate them and expedite the shipment they decided to make delivery in the motor vehicle hereinabove described.

Julian Laye, a partner of Tour-Aid, testified that prior to distributing the said alcoholic beverages to their owners he consulted a New York attorney, who thereafter advised him that he had checked with this agency, and was under the impression that this activity was encompassed in the license Tour-Aid already had permitting them to make a pickup from a New Jersey port.

He also stated that in no instance was more than one gallon (the maximum permitted for delivery to any one individual) ever delivered to any one person. On cross-examination Laye admitted that Tour-Aid does not have a license to transport liquor in New Jersey. He stated that Finkelstein borrowed this automobile from a Mr. Marks and that Tour-Aid does have a permit permitting it to transport alcoholic beverages by motor vehicle in the State of New York.

Harvey Finkelstein testified that he was in the process of delivering alcoholic beverages in the State of New Jersey and did not know that a license was required for such delivery. On cross-examination he testified that Laye is his uncle, and that at Laye's request Finkelstein delivered this whiskey in the car owned by Marks.

Victor Marks testified that he was the owner of the 1957 Chevrolet sedan in which this whiskey was transported in this State. He states that his automobile had originally been used to transport alcoholic beverages in New York by Tour-Aid and that he was unaware that whiskey was going to be transported in the State of New Jersey. The car was made available to Tour-Aid. He is related to Laye and since Tour-Aid is a new business he was anxious to help him "get started".

Mrs. D. Keshgegian, Allan S. Cross and Helen Komsa, claimants, testified that they purchased a total of 10 fifth bottles each for themselves and their spouses. Ten fifth bottles represents two gallons each which is the legal maximum permitted to be purchased by each couple.

These claimants had these alcoholic beverages shipped through Tour-Aid and they stated that they were unaware of the fact that Tour-Aid did not possess a permit authorizing them to transport this whiskey to these consignees. None of the other claimants to the balance of the alcoholic beverages, appeared at the hearing.

While the whiskey and the motor vehicle are technically

subject to forfeiture by reason of the unlicensed transportation in this State, R.S. 33:1-2, R.S. 33:1-1(i) and (y), R.S. 33:1-66, nevertheless it has been satisfactorily established by the proofs in this case that the source and destination of the said alcoholic beverages are legitimate. Under these circumstances I am authorized to remit forfeiture and return such property. R.S. 33:1-66(e) and (f), Seizure Case No. 10,123, Bulletin 1318, Item 6; Seizure Case No. 10,103, Bulletin 1334, Item 5.

I am persuaded that Marks, the owner of the motor vehicle, acted in good faith, and did not know or have any reason to suspect that this car would be used to transport alcoholic beverages in violation of the law. I shall therefore order the return of the motor vehicle to the owner, Victor Marks, upon payment of costs of seizure and storage. Seizure Case No. 10,584, Bulletin 1419, Item 2; Seizure Case No. 10,157, Bulletin 1336, Item 6; Seizure Case No. 9797, Bulletin 1251, Item 8.

With respect to the claimants who have appeared at this hearing, I am satisfied that they were unaware of the failure of Tour-Aid to obtain the necessary license. I am persuaded that this similarly applies to other persons whose liquor was seized and who have filed claims but did not appear at this hearing. Fairness dictates that sympathetic consideration should be given to these other persons as well.

This company could legally distribute alcoholic beverages upon obtaining the necessary license from this Division. It was stipulated at the hearing herein that upon obtaining such license or validating permit in lieu thereof, Tour-Aid would be authorized to receive on behalf of these claimants the alcoholic beverages by them and intended to be delivered to them and that Tour-Aid would, in turn, distribute the said alcoholic beverages to the said claimants. Re Seizure Case No. 10,103, Bulletin 1334, Item 5. Under the circumstances of this case, similar authority will be given to Tour-Aid with respect to these other persons whose purchases were subject to these proceedings.

Accordingly, it is DETERMINED and ORDERED that if on or before the 21st day of May, 1962, Victor Marks pays the costs incurred in the seizure and storage of the said motor vehicle, as described in Schedule "A", attached hereto, the said motor vehicle will be returned to him; and it is further

DETERMINED and ORDERED that if on or before the same day Tour-Aid obtains a validating permit then the alcoholic beverages purchased by the claimants, Mrs. D. Keshgegian, Allan S. Cross and Helen Komsa and by such other persons who have filed written claims with this Division, shall be returned for delivery to all of these said claimants upon payment of the costs incurred in the seizure and storage of the said alcoholic beverages.

WILLIAM HOWE DAVIS,
Director

May 11, 1962

SCHEDULE "A"

91 - bottles of assorted alcoholic beverages
1 - Chevrolet sedan, Serial No. A57T179822, Engine No. 45364, New York Registration 8K-7174.

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
Gourmet Quality Liquors & Delicacies, Inc. 1002/4 Clinton Avenue Irvington 11, N. J.	) CONCLUSIONS and
Holder of Plenary Retail Distribution License D-10 issued by the Board of Commissioners of the Town of Irvington.	) ORDER

Licensee, by George Iwankiw, Secretary-Treasurer, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that it sold bottles of alcoholic beverages to four minors, two age 16 and 19, on October 28, 1961, and two age 18 and 19, on October 31, 1961, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for thirty-five days, less five days for the plea entered, leaving a net suspension of thirty days. Cf. Re Mastellone, Bulletin 1439, Item 4.

Accordingly, it is, on this 14th day of May, 1962,

ORDERED that Plenary Retail Distribution License D-10, issued by the Board of Commissioners of the Town of Irvington to Gourmet Quality Liquors & Delicacies, Inc. for premises 1002/4 Clinton Avenue, Irvington, be and the same is hereby suspended for thirty (30) days, commencing at 9:00 A.M. Monday, May 21, 1962, and terminating at 9:00 A.M. Wednesday, June 20, 1962.

WILLIAM HOWE DAVIS,
Director

5. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - ALLEGED MITIGATION - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Charles Paulin t/a Charlie's Bar & Grill Corner Florence Ave. and Stone Road Raritan Township (Monmouth County) PO Keyport, N. J. Holder of Plenary Retail Consumption License C-13, issued by the Township Committee of Raritan Township.	CONCLUSIONS and ORDER

Ezra W. Karkus, Esq., Attorney for licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 13, 1962 and on divers days prior thereto, he sold drinks of alcoholic beverages to a minor, age 18, in violation of Rule 1 of State Regulation No. 20.

In attempted mitigation, licensee claims that the sales were made in reliance on false identification produced by the minor. As to this, it is pointed out that reliance on false identification, in the absence of obtaining requisite written representation of age as contemplated by R.S. 33:1-77, constitutes no defense and very little mitigation. At best, it bespeaks the imposition of the established minimum penalty imposed in age-similar cases, perhaps without possible increase for aggravating circumstances.

Licensee has a previous record of suspension of license by the municipal issuing authority for seven days effective June 5, 1960 for violation of Rule 1 of State Regulation No. 38. The prior record considered, as well as the age of the minor involved, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Skrobiszeski, Bulletin 1300, Item 5.

Accordingly, it is, on this 14th day of May, 1962,

ORDERED that Plenary Retail Consumption License C-13, issued by the Township Committee of Raritan Township, Monmouth County, to Charles Paulin, t/a Charlie's Bar & Grill, for premises corner Florence Avenue and Stone Road, Raritan Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 A.M. Monday, May 21, 1962, and terminating at 2:00 A.M. Tuesday, June 5, 1962.

WILLIAM HOWE DAVIS,
Director.

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against ROBERT J. HEIDENTHAL, ROBERT DE FRANCIS AND JOHN HICKEY t/a BOWER TAVERN 105 Bowers Street Jersey City 7, N. J. Holders of Plenary Retail Consumption License C-482, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	CONCLUSIONS AND ORDER

Licensees, Pro se.
David S. Piltzer, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on March 22, 1962, they possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Santina & Peter Berta, Inc., Bulletin 1441, Item 10.

Accordingly, it is, on this 4th day of June, 1962,

ORDERED that Plenary Retail Consumption License C-482, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Robert J. Heidenthal, Robert De Francis and John Hickey, t/a Bower Tavern, for premises 105 Bowers Street, Jersey City, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, June 11, 1962, and terminating at 2:00 a.m. Saturday, June 16, 1962.

William Howe Davis
Director