

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

BULLETIN 994

DECEMBER 16, 1953.

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (East Rutherford) - SUSPENSION REIMPOSED AFTER AFFIRMANCE BY COURT OF DIRECTOR'S DECISION.
2. APPELLATE DECISIONS - HICKEY v. ALPINE.
3. APPELLATE DECISIONS - PENTA v. LONG BRANCH.
4. APPELLATE DECISIONS - MONROE TAVERN, INC. v. ELIZABETH AND STADECK.
5. DISCIPLINARY PROCEEDINGS (Wildwood) - SALE FOR OFF-PREMISES CONSUMPTION FROM AN ADDITIONAL PUBLIC BARROOM IN VIOLATION OF RULE 7 OF STATE REGULATIONS NO. 32 - LICENSE SUSPENDED FOR 10 DAYS.
6. DISCIPLINARY PROCEEDINGS (Camden) - SALE TO WOMEN DIRECTLY OVER A BAR IN VIOLATION OF LOCAL REGULATIONS - LICENSE SUSPENDED FOR 5 DAYS.
7. DISCIPLINARY PROCEEDINGS (East Paterson) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS.
8. DISCIPLINARY PROCEEDINGS (Paterson) - CHARGE ALLEGING POSSESSION OF AN ALCOHOLIC BEVERAGE IN A BOTTLE BEARING A LABEL WHICH DID NOT TRULY DESCRIBE ITS CONTENTS DISMISSED.
9. DISCIPLINARY PROCEEDINGS (Jersey City) - CONDUCTING BUSINESS AND PERMITTING PERSONS OTHER THAN LICENSEE AND AGENTS ON LICENSED PREMISES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATIONS - PRIOR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
10. DISCIPLINARY PROCEEDINGS (Newark) - SALE ON ELECTION DAY WHILE POLLS OPEN FOR VOTING - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

STATE OF NEW JERSEY  
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DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 994

DECEMBER 16, 1953.

1. DISCIPLINARY PROCEEDINGS - SUSPENSION REIMPOSED AFTER AFFIRMANCE  
BY COURT OF DIRECTOR'S DECISION.

In the Matter of Disciplinary )  
Proceedings against )

JOSEPH MAZZA )  
T/a TRAVELER'S HOTEL & RESTAURANT )  
300 Paterson Plank Road )  
East Rutherford, N. J., )

ORDER

Holder of Plenary Retail Consump- )  
tion License C-10, issued by the )  
Borough Council of the Borough of )  
East Rutherford. )  
-----)

BY THE DIRECTOR:

On May 26, 1953, the defendant's license was suspended for a period of 180 days, effective June 3, 1953. See Bulletin 972, Item 1. Pending the defendant's appeal to the Superior Court, Appellate Division, the suspension was stayed by the Court. On November 13, 1953, the Court sustained the imposition of the suspension (see Bulletin 992, Item 1), and the penalty may now be reimposed.

Accordingly, it is, on this 25th day of November, 1953,

ORDERED that Plenary Retail Consumption License C-10, issued by the Borough Council of the Borough of East Rutherford to Joseph Mazza, t/a Traveler's Hotel & Restaurant, for premises 300 Paterson Plank Road, East Rutherford, be and the same is hereby suspended for a period of one hundred eighty (180) days, commencing at 2:00 a.m. December 2, 1953, and terminating at 2:00 a.m. May 31, 1954.

DOMINIC A. CAVICCHIA  
Director.

2. APPELLATE DECISIONS - HICKEY v. ALPINE.

GORDON and DANIEL HICKEY, trading )  
as ALPINE CASTLE, )  
Appellants, )

-vs-

MAYOR AND COUNCIL OF THE BOROUGH )  
OF ALPINE, )  
Respondent. )

ON APPEAL  
CONCLUSIONS AND ORDER

Henry J. Bendheim, Esq., by Sheldon M. Liebowitz, Esq., Attorney for Appellants.

Schneider and Schneider, Esqs., by C. Conrad Schneider, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's denial, on June 9, 1953, of appellant's application for transfer of their 1952-1953 plenary retail consumption license from Old Dock Road to Closter Dock Road, Borough of Alpine.

Respondent's resolution of denial sets forth the following grounds for its action:

"(1) The premises to be licensed are directly across the street from property of the Catholic Church, and said land having been presented to the Catholic Church for a future Church site, the granting of said application would seriously inconvenience said Church in its purpose.

"(2) The said premises requested for transfer are in close proximity to the Alpine Methodist Church, and are within close proximity to the Parish House of said Church. Said Church has objected to the granting of said application, and it is felt that the rights of the members of said Church and their children should not be interfered with.

"(3) The premises are located near Route 9W and in close proximity to the new Parkway. Closter Dock Road at this point presents a difficult traffic hazard, and the granting of said transfer would create a more dangerous traffic hazard, not only to property, but to the persons of Alpine residents and all Alpine citizens and especially the children who may be attending Church or the Community Center near said building.

"(4) The Zoning Ordinance of the Borough of Alpine shows that the property in question is contained in a B 2 business area. The Ordinance states that this zone is designed for the purpose of promoting retail business for sale to the ordinary consumer and is intended to prevent all types of business other than general small retail business. No business which creates a nuisance or danger to the community by reason of obnoxious or offensive odors, smoke, sound or sights, shall be permitted. The said Ordinance further provides for special permission of the Mayor and Council in the case of certain other types of business, and in the case of any business structure containing more than 2500 sq. ft. of floor space. Said matter has been referred to the Planning Board in accordance with the provision of this Ordinance. The Planning Board has made a study of the proposed use and has filed with the Mayor and Council an objection to the proposed use on the grounds that it would create a traffic problem, that it was within 400 feet of the Alpine Methodist Church, and within 50 feet of its parsonage, and across the street from a future Catholic Church, and on the further grounds that there was danger of obnoxious or offensive odor, sound and sight, and the location of this use in the heart of the Borough is contrary to the Planning Board and the general public's idea of the development of the Borough as expressed in its Zoning Ordinance and master plan. It is the opinion of the Mayor and Council that the proposed use is contrary to the Planning and Zoning desires of the Borough of Alpine and its people.

"(5) There has been considerable objection from nearby neighbors and an adjoining neighbor that the proposed use would be detrimental to the enjoyment of their property and would depreciate their values. The Mayor and Council are of the opinion that their objection is a valid one.

"(6) The Borough of Alpine has two liquor licenses which is one more than the population standard now set forth in the law of New Jersey. Heretofore there was no objection to said liquor licenses because they were in premises adjoining the State Highway and were used primarily by persons traveling along said highway, and not necessarily by the residents of the Borough. As such they did not interfere with the life of the community. The proposed transfer would bring one of said licenses from the Highway into the heart of the community, and would result in a use not contemplated by the governing body or by the people of Alpine when the original licenses were granted.

"(7) The proposal for the transfer states that the primary use of the premises was to be that of a restaurant and the incidental sale of alcoholic beverages. The evidence seems to establish that the primary use of the premises will be that of a tavern with the restaurant use incidental thereto.

"(8) The proposed plan calls for a parking lot in the rear of the building in a section surrounded by brush and heavy woodland, and it is the opinion of the Mayor and Council that said parking lot would be difficult to supervise, and police and would present a moral hazard for the Borough of Alpine."

Taking up the eight stated grounds of denial in regular order, the Petition of Appeal sets forth that respondent's action was erroneous for the following reasons:

1. There is no Church upon said premises.
2. The Church is not within 200 feet of the premises to be licensed.
3. No traffic hazard will be created.
4. Appellants' business does not conflict with Section 6, Paragraph B of the Zoning Ordinance of the Borough.
5. Appellants deny that the objection to the transfer was considerable.
6. There is no violation with respect to the number of existing licenses in proportion to the population and, further, the Borough of Alpine is guilty of laches.
7. Appellant alleges that the evidence discloses and that it is the intention to conduct primarily a restaurant upon the premises.
8. Appellants deny that the parking lot would be difficult to supervise or that it would create a moral hazard.

The Petition of Appeal then alleges as to all eight of the stated grounds of denial: "The action of the Mayor and Council was arbitrary and unreasonable and in abuse of its discretionary powers. The aim of the Mayor and Council was to unlawfully restrict the transfer of the license."

The evidence discloses that for more than six years past appellants have conducted a tavern and restaurant on premises located at Old Dock Road and Highway 9-W. This property is being condemned for the purpose of improving Highway 9-W. Appellants accordingly filed with respondent an application to transfer their 1952-53 license a distance of approximately a half-mile to the premises on Closter Dock Road. Written objections to said application having been filed, a public hearing was held by respondent on May 26, 1953, and at its meeting held on June 9, 1953, said application was denied by the unanimous vote of the six members of the Borough Council. (Appellants obtained a proper 1953-54 renewal of their license for the old premises on Old Dock Road and a license, properly renewed, remains valid despite loss of premises during the license term.)

There would appear to be some merit in each of the grounds set forth in respondent's resolution of denial but, under the circumstances herein, my specific findings and my determination on this appeal shall be directed to grounds (1), (2), (3), (5) and (6). With respect to Ground (4) it is noted that while a transfer may not be granted in violation of an operative zoning ordinance, it is not clearly established that the granting of the transfer sought would

have contravened the particular zoning measure. Nevertheless, respondent's attention to the policy question and to the Planning Board's objection was not improper. Similarly, while the fear of developments incident to Grounds (7) and (8) might not have been realized if the transfer had been granted respondent's consideration of the two matters in question was not out of place.

As to Grounds (1) and (2): The premises on Closter Dock Road are almost directly opposite two large tracts of land facing on the same road and owned, respectively, by the Alpine Methodist Church and St. Theresa's Roman Catholic Church. The Alpine Methodist Church building is some 350 to 400 feet from the premises sought to be licensed but one corner of that Church's property is only 41 feet therefrom. The Minister and the Chairman of the Official Board of the Alpine Methodist Church testified in objection to the transfer at the hearing herein. No building has been erected on the property of the Catholic Church but the Pastor thereof filed with respondent a written objection to the transfer because "this property in Alpine is for a future Catholic Church." It has been long and uniformly held that proximity to churches or schools is a valid ground for denial of license transfer albeit beyond the distance of 200 feet prohibited by R. S. 33:1-76. (Staciewicz v. Trenton, Bulletin 35, Item 10; Price v. Millburn, Bulletin 976, Item 3, *affd.* Price v. Millburn, Super. Ct., decided November 5, 1953, not yet officially reported -- Bulletin 991, Item 1.) The proximity to the Methodist Church alone was a valid Ground (2) of denial and I so find. Furthermore, I do not find Ground (1) to be unreasonable.

With respect to Ground (3): "A municipal issuing authority may validly deny a license or place-to-place transfer of a license because of a reasonable apprehension of aggravated or undue traffic peril." (Freed v. Wayne Township, Bulletin 892, Item 7.) I find Ground (3) to be reasonable and valid.

There is no evidence of improper motivation on the part of respondent and, from the record before me, I find no unreasonableness in Grounds (5) and (6).

"The transfer of a liquor license is not a right inherent in the license but is, rather, a privilege which the issuing authority may grant or deny in the exercise of a reasonable discretion. When the transfer is denied on reasonable grounds, such action will be affirmed. Drucker v. Trenton, Bulletin 474, Item 9." (Minsky v. Woodbridge Township, Bulletin 897, Item 3.) Although I am well aware of the unfortunate circumstances under which appellants must move through no fault of their own I am constrained to find, for the reasons hereinabove set forth, that they have failed to sustain the burden of establishing that respondent's action denying their application for transfer was arbitrary or unreasonable so as to constitute an abuse of discretion warranting reversal of that action. (See Rule 6 of State Regulations No. 15.) The denial of appellants' application will, therefore, be affirmed.

Accordingly, it is, on this 25th day of November, 1953,

ORDERED that respondent's action be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed.

DOMINIC A. CAVICCHIA  
Director.

3. APPELLATE DECISIONS - PENTA v. LONG BRANCH.

NICHOLAS PENTA, )

Appellant, )

-vs- )

BOARD OF COMMISSIONERS OF THE )  
CITY OF LONG BRANCH, )

Respondent. )  
-----)

ON APPEAL  
CONCLUSIONS AND ORDER

Milton P. Cranmer, Esq., Attorney for Appellant.  
Edward F. Juska, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from an alleged denial of appellant's application for a plenary retail distribution license for premises at 1193 Lincoln Place, Long Branch.

The petition of appeal recites that on November 17, 1953, respondent failed to consider said application or to grant or deny the same, although the appellant's attorney, on November 3, 1953, served on respondent a demand that the application be granted or denied on or before November 17, 1953.

Prior to the date fixed for hearing herein, the attorney for appellant advised me in writing that:

"\*\*\*At the regular meeting of the Board of Commissioners, held November 24, the one remaining license was issued to another applicant. It would therefore appear that there is now no basis for my appeal and the same is hereby withdrawn."

No reason appearing why the request to withdraw the pending appeal should not be granted,

It is, on this 1st day of December, 1953,

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

DOMINIC A. CAVICCHIA  
Director.

4. APPELLATE DECISIONS - MONROE TAVERN, INC. v. ELIZABETH AND STADECK.

MONROE TAVERN, INC., )

Appellant, )

-vs- )

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF ELIZABETH, and ANN E. STADECK, )

Respondents. )

ON APPEAL  
CONCLUSIONS AND ORDER

-----)  
Saul C. Schutzman, Esq., Attorney for Appellant.  
Louis P. Longobardi, Esq., Attorney for Respondent Municipal Board.  
John L. McGuire, Esq., Attorney for Respondent Ann E. Stadeck.

BY THE DIRECTOR:

This is an appeal from the action of respondent Municipal Board whereby it transferred a plenary retail distribution license from James W. Higgins and Bernard J. Higgins to respondent Ann E. Stadeck and from premises known as 1172 Spring Street to premises known as 553 Madison Avenue, Elizabeth.

In its amended petition of appeal appellant alleges that the action of respondent Municipal Board was erroneous because said action violated the provisions of Section 7 and Section 14 of an ordinance of the City of Elizabeth, adopted on March 5, 1952. The answers filed by respondents denied this allegation and asserted that respondent Municipal Board had the right to grant the transfer in the exercise of its discretionary power. Other reasons for reversal set forth in the amended petition of appeal were abandoned at the hearing.

Counsel for the respective parties stipulated at the hearing that Sections 7 and 14 of the ordinance in question read as follows:.

"Section 7. No licenses, excepting club licenses and excepting renewals and person-to-person transfers of other licenses now outstanding shall be granted for or transferred to premises within a radius of 1500 feet of then existing licensed premises.

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"Section 14. No license shall be issued to a natural person unless he shall have been a resident of the City of Elizabeth, New Jersey, for at least one (1) year continuously immediately prior to the filing of the license application."

It appears from the evidence herein that on March 28, 1952, respondent Municipal Board granted a new plenary retail distribution license to James W. Higgins and Bernard J. Higgins for premises at 1172 Spring Street, and it is admitted that said premises were not within a radius of 1500 feet from other licensed premises. The issuance of said license was affirmed upon appeal. Union County Retail Liquor Stores Assn. v. Elizabeth and Higgins, Bulletin 938, Item 4. It was stipulated at the hearing herein that 553 Madison Avenue is within a radius of 1500 feet from 515 Jackson Avenue and 521 Jackson Avenue, Elizabeth, both of which are, and were at the time the application for transfer herein was filed, existing licensed premises. It was further stipulated that respondent Ann E. Stadeck stated in her application for transfer that she resided at 216 Sterling Place, Roselle, N. J. She still resides at that address.

As to Section 7 of the ordinance: The intent of the section seems to be perfectly clear. It prohibits the issuance or transfer of a license for premises within a radius of 1500 feet of existing licensed premises, and exempts from its provisions club licenses, and renewals and person-to-person transfers. A prior resolution of the City of Elizabeth prohibiting the issuance of any licenses except renewals within 1500 feet of an existing licensed place was held to be reasonable. Gural and Toplovich v. Elizabeth, Bulletin 153, Item 7. See, also, Fine v. Elizabeth, Bulletin 346, Item 18; Elizabeth Beverage Dealers Assn. v. Elizabeth and Fenik, Bulletin 514, Item 3; New Jersey Licensed Beverage Assn. v. Elizabeth and Fraternal Order of Eagles, Bulletin 665, Item 9. The present exemption of club licenses and the exception in favor of renewals and person-to-person transfers appear to be reasonable. The argument made by counsel for respondent Stadeck that the section does not apply because this case involves a person-to-person transfer completely overlooks the fact that it involves also a place-to-place transfer. In my opinion, it is clear that while a person-to-person transfer of a license for the same premises is permissible, a place-to-place transfer of the license to other premises within the prohibited distance of existing licensed premises violates the provisions of said section. I so find. Cf. Jersey City Retail Liquor Dealers' Assn. v. Jersey City and Dal Roth, Inc., Bulletin 976, Item 4; affd. in Dal Roth, Inc. v. Division of Alcoholic Beverage Control, et al., Super. Ct., Decided November 6, 1953, not yet officially reported -- Bulletin 991, Item 2.

As to Section 14 of the ordinance: Counsel for respondent Stadeck argues that the section refers only to the issuance of new licenses and does not prohibit the transfer of a license to a non-resident of the City of Elizabeth. The argument would appear to have merit since regulations which superimpose local residential requirements upon the requirements specifically set forth in the Alcoholic Beverage Law should be strictly construed. If the intentment is that this section should apply to transfers of licenses, it would seem advisable to amend the ordinance accordingly. However, I do not deem it necessary in this case to construe Section 14 because of my finding that the transfer of the license violated the provisions of Section 7 of the ordinance.

It is well established that an issuing authority may not issue or transfer a license in violation of the terms of a local regulation. Tube Bar, Inc. v. Commuters Bar, Inc., 18 N. J. Super. 351; Elizabeth Beverage Dealers Assn. v. Elizabeth and Fenik, *supra*; Jersey City Retail Liquor Dealers' Assn. v. Jersey City and Dal Roth, Inc., *supra*. In my opinion, it is clear that while a person-to-person transfer of a license for the same premises was prohibited by Section 7 of the ordinance referred to herein, it follows that respondent Board had no jurisdiction to grant such transfer. I shall, therefore, reverse its action.

Accordingly, it is, on this 3rd day of December, 1953, ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Elizabeth, in transferring the plenary retail distribution license from James W. Higgins and Bernard J. Higgins to Ann E. Stadeck, and from premises known as 1172 Spring Street to premises known as 553 Madison Avenue, Elizabeth, be and the same is hereby reversed.

DOMINIC A. CAVICCHIA

Director

5. DISCIPLINARY PROCEEDINGS - SALE FOR OFF-PREMISES CONSUMPTION FROM AN ADDITIONAL PUBLIC BARROOM IN VIOLATION OF RULE 7 OF STATE REGULATIONS NO. 32 - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against )

LEO GRANDE and JOSEPH D. SCHIPANI )  
T/a GRANDE'S CAFE )  
200 W. Rio Grande Avenue )  
Wildwood, N. J., )

CONCLUSIONS  
AND ORDER

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Holders of Plenary Retail Consumption License C-51, issued by the Board of Commissioners of the City of Wildwood. )

Sidney Simandl, Esq., Attorney for Defendant-licensees.  
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to the following charge:

"On July 9, 1953, you sold an alcoholic beverage in its original container for off-premises consumption from an additional public barroom established on your licensed premises after May 28, 1948, to wit, on or about May 28, 1953, without having notation (the so-called 'broad package privilege') on your then current license certificate and statement in the application for your then current license, as respectively set forth in Rules 4 and 2 of State Regulations No. 32; in violation of Rule 7 of State Regulations No. 32."

The file herein discloses that on July 9, 1953, an ABC agent entered the new addition of defendants' licensed premises in which he observed a new bar, stools, a back bar and a cash register, above which were shelves containing sealed bottles of alcoholic beverages. A large room which comprised the original licensed premises and which adjoins this new section contained a large oblong bar having a column on each end extending from the floor to the ceiling. Around these columns were three shelves, one of which contained opened bottles of alcoholic beverages and the other two shelves contained sealed bottles of alcoholic beverages in original containers.

As the agent stood at the new bar in the new addition to defendants' premises, a female employee of defendants who had been standing near a small sandwich counter, located on the right of the new bar, walked over to the agent and informed him that only the large bar was open. He then told the employee that he wished to purchase a pint bottle of whiskey. She thereupon walked behind the new bar and obtained from the shelf behind it a pint bottle of the brand of whiskey desired. The agent observed a quantity of paper bags on the end of the bar and requested that the employee use one of the bags. However, she went to the large bar in the adjoining room and handed the bottle of whiskey to a bartender who inserted it in a paper bag. The woman then returned to where the agent was standing and handed him the package as he stood in front of the new bar. He handed her a five dollar bill which she took to the bartender behind the large bar, who rang up \$2.83 on the cash register and handed her the proper change. The woman employee then returned and gave the change to the agent. The agent then identified himself to the woman, who called over one of the defendants, Joseph D. Schipani, who was in the large barroom. The woman employee made a written statement corroborating the sale as outlined above.

The defendants were notified by telegram June 26, 1953 to discontinue sale and display for sale of alcoholic beverages in original containers for off-premises consumption in their additional barroom, then recently established on the west side of their licensed premises, as such sale and display for sale were prohibited by Rule 7 of State Regulations No. 32. This communication was acknowledged on their behalf by their then attorney under date of June 30, 1953. Notwithstanding such warning, they continued to engage in the prohibited practice.

The defendants have no prior adjudicated record. Under all the circumstances and giving consideration to the plea entered herein, I shall suspend their license for a period of ten days. See Re Faller Bowl O'Drome, Inc., Bulletin 959, Item 8.

Accordingly, it is, on this 20th day of November, 1953,

ORDERED that Plenary Retail Consumption License C-51, issued by the Board of Commissioners of the City of Wildwood to Leo Grande and Joseph D. Schipani, t/a Grande's Cafe, 200 W. Rio Grande Avenue, Wildwood, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. November 30, 1953, and terminating at 2:00 a.m. December 10, 1953.

DOMINIC A. CAVICCHIA  
Director.

6. DISCIPLINARY PROCEEDINGS - SALE TO WOMEN DIRECTLY OVER A BAR IN VIOLATION OF LOCAL REGULATIONS - LICENSE SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary )  
Proceedings against )  
JAMES W. ESKRIDGE )  
T/a JIMMY'S TAVERN )  
2802 Buren Avenue )  
Camden, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-26, issued by the )  
Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Camden. )

----- )  
William B. Knight, Esq., Attorney for Defendant-licensee. )  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic )  
Beverage Control. )

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On July 10, 1953 and August 28, 1953, you served beverages to women directly over a bar on your licensed premises; in violation of Section 10 of an Ordinance adopted by the Board of Commissioners of the City of Camden on December 27, 1934, as amended by an Ordinance adopted September 12, 1935."

Section 10 of the ordinance referred to in the charge provides (so far as here pertinent):

"No woman shall be served with beverages directly over any bar;..."

The evidence shows that defendant's licensed premises contain two large rooms, one of which is described as the ordinary type of barroom and the other of which is variously described as a service

room, cocktail lounge or dining room. The latter room (hereinafter referred to as the service room) contains two structures. One is a square wooden structure approximately 14 ft. x 16 ft., on three sides of which there are about twenty regular bar stools with leatherette tops. (There is no dispute that this structure is a "bar" within the meaning of the ordinance, and there is no evidence in the case that any woman was served with beverages over this bar.) The other, approximately two feet from the bar hereinabove described, is a "U" shaped wooden structure, of approximately the same height, which was described by the agent as being "about 30 feet long and 6 or 7 feet wide" and around which have been placed twenty-five or thirty regular bar stools with leatherette tops. There are no "taps" within this structure and no alcoholic beverages are stored there. In the service room there are also a number of tables at which patrons are served, and an orchestra stand which is used six nights a week between 9:00 p.m. and closing time by an orchestra hired by defendant. It is possible to enter the service room from the street without entering the barroom.

At the hearing herein an ABC agent testified that he entered defendant's premises on July 10, 1953, at about 11:00 p.m. and sat at the square bar behind which three bartenders were working; that he observed between thirty-five and forty patrons seated on the stools surrounding the "U" shaped structure and that approximately sixteen of the patrons were women; that he also observed two waitresses, who were working inside of the "U" shaped structure, serving beverages to these women by placing the beverage containers on the top of this structure directly in front of the various patrons, and that the waitresses obtained these beverages by walking to the square bar and receiving them from one of the bartenders on duty.

At the hearing the same ABC agent testified that he, accompanied by his wife, visited defendant's premises on Friday, August 28, at about 8:45 p.m.; that they sat at the square bar, and that one of the bartenders informed them that "he was sorry he couldn't serve us at that bar, that we either have to take seats at the service table or the tables" and that at the same time the bartender pointed to the "U" shaped structure. The ABC agent further testified that he and his wife then took seats on stools at the "U" shaped structure, and that both of them were served with a bottle of beer directly over the top of the structure by a waitress who had obtained the beer from one of the bartenders at the square bar. This agent further testified that, while he and his wife remained on the premises, he observed the two waitresses who were working inside of the "U" shaped structure serve beverages, obtained in the same manner, to "possibly ten" other females who were seated on stools around the "U" shaped structure. At the close of the testimony the attorney for defendant indicated that there was no dispute about the fact of service of beverages to various females directly over the "U" shaped structure on the dates mentioned in the charge.

The sole issue, therefore, is whether the "U" shaped structure is a "bar" within the meaning of the term as used in the ordinance.

At the hearing defendant testified that he has been operating the licensed premises for more than eight years; that, prior to the time he constructed the "U" shaped structure in the service room, the square bar had been in existence and used for dispensing beverages to the waitresses for service to patrons; that, at that time, men were permitted to sit around this bar but that, if a woman came in, she sat at a table. Defendant further testified that there are three large manufacturing establishments near his licensed premises; that he holds a restaurant license issued by the City of Camden; that a kitchen adjoins his licensed premises, and that he serves lunches to male and female employees of these establishments between noon and 1:00 p.m. daily. Concerning the "U" shaped structure, he testified

as follows: Because of the number of patrons who sought to be served food during the lunch hour, he started to erect the "U" shaped structure in November 1950; "at the beginning it was just open, two ten-inch boards stretched across some 2 x 4's to be used as legs with some braces to hold it up"; that some female employees "objected to their limbs being exposed" and "that's why we covered it up" by placing sheets of plywood on the outside over the 2 x 4's. At first, apparently, defendant served nothing but food at this structure. However, he testified that "it got to a point some of the men would order a glass of beer or something like that and then I began to wonder if it was strictly within my rights to do so." Defendant further testified that he then consulted the Chief of Police, the Director of Public Safety and the Deputy Mayor of Camden; that "they told me in their opinion they couldn't see where I was doing anything other than restaurant service", "they said that applied to both male and female" and that, because of these opinions, service has been made over that bar to females. Defendant admits that he never sought any advice from the Division of Alcoholic Beverage Control. Defendant also admits that the waitresses clear off this structure after the noon-hour, "then there is no business hardly around the whole building" until about 6:30 p.m. when the "U" shaped structure functions until closing time. Although defendant testified that "we run hamburgers, cheeseburgers, hot sausage, cheese and crackers" during the evening hours, I am satisfied that during the evening hours it is used principally, if not exclusively, in connection with the sale of beverages. The ABC agent testified that, on both evenings when he was present, he did not see anything other than beverages being served in any part of the service room.

There can be no doubt that the "U" shaped structure is a "bar" within the meaning of the ordinance. As I said in Re Blue Mirror Inn, Inc., Bulletin 961, Item 5, in construing a Pennsauken Township ordinance providing that females shall not be permitted to "sit or stand at any public bar":

"...It is the use to which a facility is put that constitutes it a bar -- not its equipment (such as bottles and glasses) or its fixtures (such as beer taps and sinks). Cf. Re Katzen and Buntele, Bulletin 312, Item 3; Re Albertson, Bulletin 366, Item 8; R. S. 33:1-12.23.

"I am convinced that the purpose underlying the section in question was to keep women away from any public bar, whatever its equipment or lack of equipment, and to get them seated at tables. (With respect to the general validity and reasonableness of such an enactment in the public interest, see Re Davidow, Bulletin 796, Item 11.)"

Former Director (then Commissioner) Hock, in Re Choice Liquors, Inc., Bulletin 827, Item 5, considered the "purpose" of the regulation here involved to be "the prohibition against women mingling and drinking with men at the bar."

In my opinion there is nothing in the cases cited in defendant's brief (Commonwealth v. Rogers, 135 Mass. 539 and Commonwealth v. Everson, 140 Mass. 292) which would lead to a different result in this case.

I find defendant guilty as charged.

Defendant has a prior record. Effective January 15, 1946, his license was suspended by the Commissioner for a period of fifteen days for possession of illicit liquor. Re Eskridge, Bulletin 689, Item 11. However, since this prior dissimilar violation occurred more than five years ago, I shall disregard it in fixing the penalty herein. In view of all the facts I shall suspend defendant's license for the minimum period of five days. Re Choice Liquors, Inc., supra.

Accordingly, it is, on this 20th day of November, 1953,

ORDERED that Plenary Retail Consumption License C-26, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to James W. Eskridge, t/a Jimmy's Tavern, for premises 2802 Buren Avenue, Camden, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. November 30, 1953, and terminating at 2:00 a.m. December 5, 1953.

DOMINIC A. CAVICCHIA  
Director.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against

THE NEW CIRO'S, INC.  
134 Market Street  
East Paterson, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-9, issued by the Borough Council of the Borough of East Paterson.

Defendant-licensee, by Santo Robert Liota, President.  
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On September 18, 1953, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, an alcoholic beverage in a bottle which bore a label which did not truly describe its contents, viz.,  
One quart bottle labeled 'Seagram's Seven Crown Blended Whiskey 86.8 Proof';  
in violation of Rule 27 of State Regulations No. 20."

The file herein discloses that on September 18, 1953, an ABC agent examined thirty-two opened bottles of alcoholic beverages on defendant's licensed premises and seized a quart bottle labeled "Seagram's Seven Crown Blended Whiskey 86.8 Proof" when his field tests indicated a variance between the contents of the bottle and the description on the label. Subsequent analysis disclosed that the contents of the seized bottle were not genuine as labeled.

Defendant has no prior adjudicated record. The minimum penalty imposed for a violation of the kind herein charged is a suspension for fifteen days. Re Rudolph, Bulletin 680, Item 1. The non vult plea was not entered in these proceedings until the date of the hearing. Hence I shall deny any remission of the penalty because of the plea. Re Jagielski, Bulletin 593, Item 6; Re Spinelli, Bulletin 948, Item 3. Under the circumstances I shall suspend defendant's license for fifteen days.

Accordingly, it is, on this 24th day of November, 1953,

ORDERED that Plenary Retail Consumption License C-9, issued by the Borough Council of the Borough of East Paterson to The New Ciro's, Inc., for premises 134 Market Street, East Paterson, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. December 1, 1953, and terminating at 3:00 a.m. December 16, 1953.

DOMINIC A. CAVICCHIA  
Director.

8. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING POSSESSION OF AN ALCOHOLIC BEVERAGE IN A BOTTLE BEARING A LABEL WHICH DID NOT TRULY DESCRIBE ITS CONTENTS DISMISSED.

In the Matter of Disciplinary Proceedings against EFCHARIS CARELIS & ANTIGONE CARELIS 49-53 West Broadway Paterson, N. J., Holders of Plenary Retail Consumption License C-268 for the 1952-53 and 1953-54 licensing years, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

CONCLUSIONS AND ORDER

Herman H. Singer, Esq., Attorney for Defendant-licensees. William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded not guilty to the following charge:

"On May 13, 1953, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, an alcoholic beverage in a bottle which bore a label which did not truly describe its contents, viz.,

One quart bottle labeled 'Calvert Reserve Blended Whiskey 86.8 Proof';

in violation of Rule 27 of State Regulations No. 20."

The bottle in question was picked up by a Division agent when his preliminary field test indicated that the liquor in the bottle might be off in color. Analysis by the Division chemist disclosed that the solids in the whiskey contained in the suspected bottle were lower than those found in any bottle of the same brand and formula previously tested by him.

On the basis of this discrepancy in solids the Division preferred the instant charge. However, from the evidence adduced at the hearing and from additional information received by the Division from the distiller it now appears that the solids in the liquor contained in the suspected bottle may be within the permissible range for this brand and formula. Therefore, since defendants' guilt has not been established by the requisite preponderance of the evidence the charge will be dismissed. Cf. Re Original Cedar Bar & Lodge, Inc., Bulletin 853, Item 10.

Accordingly, it is, on this 24th day of November, 1953,

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

DOMINIC A. CAVICCHIA Director.

9. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AND PERMITTING PERSONS OTHER THAN LICENSEE AND AGENTS ON LICENSED PREMISES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATIONS - PRIOR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

STELLA HRYCENKO )  
136 Pine Street )  
Jersey City 4, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-213, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )

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Stella Hrycenko, Defendant-licensee, Pro Se.  
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging that on Saturday, October 10, 1953, she (1) conducted her licensed business between 2:00 a.m. and 3:20 a.m. and (2) suffered and permitted persons other than herself and her actual employees and agents in and upon her licensed premises during prohibited hours, both in violation of a local ordinance.

Local regulation prohibits the conduct of the licensed business between 2:00 a.m. and 6:00 a.m. on Saturdays and prohibits persons other than the licensee and his actual employees to be in and upon the licensed premises between such hours.

The file herein discloses that, at approximately 3:15 a.m. on Saturday, October 10, 1953, three ABC agents arrived in the vicinity of defendant's licensed premises. They saw a light in the rear of the premises but could not see the interior from the front because of shades or other obstructions in the front door and window. However, they were able to look into the rear of the premises where they saw three men playing cards at a table. Two of the men were drinking beer from glasses. The agents knocked on the front door and were admitted by the licensee's son who acts as bartender and manager. The agents ordered beer but were told that it was too late and that the place was closed. In addition to the two patrons and the licensee's son who had been seen playing cards, the agents saw another man who was asleep at the bar with a full fresh glass of beer and some money in front of him. The agents also found two partly consumed glasses of beer on the table where the men had been playing cards. The bartender refused to give a statement.

Defendant has no prior adjudicated record. The minimum period of suspension for a violation of this kind is fifteen days. Re Feola, Bulletin 988, Item 3. However, the license was originally held by defendant's son, Michael Hrycenko (her present bartender and manager who was in charge of the licensed premises when the instant violations occurred) and was transferred to defendant February 13, 1946. While the license was held by defendant's son it was suspended by the then State Commissioner for ten days, effective June 26, 1945, for sale of alcoholic beverages on Election Day. Re Hrycenko, Bulletin 672, Item 5. Where, as here, the licensee's predecessor in interest, who continues to be employed by the licensee, has a prior record of suspension, such record may be considered in arriving at the proper penalty to be imposed. Cf. Pioneer Tavern, Inc., Bulletin 988, Item 11. See also Re Cherlin, Bulletin 992, Item 4. Since

the violation committed by the predecessor in interest is also a "curfew" violation the instant violation is, in effect, a second similar offense. Re Jansen, Bulletin 673, Item 6. However, in view of the fact that more than five years have elapsed since the previous violation (Re Smith, Bulletin 929, Item 2), I shall suspend defendant's license for a period of twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 25th day of November, 1953,

ORDERED that Plenary Retail Consumption License C-213, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Stella Hrycenko, 136 Pine Street, Jersey City, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. December 2, 1953, and terminating at 2:00 a.m. December 17, 1953.

DOMINIC A. CAVICCHIA  
Director.

10. DISCIPLINARY PROCEEDINGS - SALE ON ELECTION DAY WHILE POLLS OPEN FOR VOTING - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

NATHAN JAFFE )  
59 Broad Street )  
Newark 4, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-24, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )  
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Hymen B. Mintz, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On Tuesday, November 3, 1953, General Election Day, while the polls were open for voting at such election, you sold and offered for sale at retail and delivered alcoholic beverages to a consumer; in violation of Rule 2 of State Regulations No. 20."

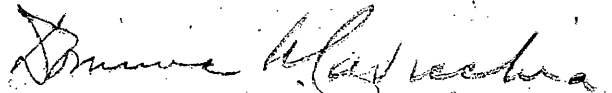
The file herein discloses that at 1:15 p.m., on Tuesday, November 3, 1953, an ABC agent entered defendant's licensed premises. The agent observed a female customer talking to a male employee subsequently identified as a brother of the defendant-licensee. Following the conversation the agent observed the employee place a can of wax on a counter, and take two one-quart bottles of beer from the bottom compartment of a refrigerator and place them in a paper bag. The agent then ordered a loaf of bread from a female employee and also asked for "two quarts of beer." She stated "No beer -- it's Election Day." The agent gave the female employee a dollar bill and while waiting for his change, saw the male employee who was waiting on the female customer write something on the paper bag. He then

rang up \$1.45 on the cash register. The agent left defendant's premises and joined his fellow agent who had remained outside. The two agents identified themselves to the female customer as she came out of the store and she admitted purchasing the two bottles of beer in defendant's licensed premises. The agents and the female customer entered the defendant's licensed premises and after the agents identified themselves, confronted the male clerk with the violation.

The defendant has no prior adjudicated record. I shall suspend the license for a period of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re Bane, Bulletin 950, Item 4.

Accordingly, it is, on this 30th day of November, 1953,

ORDERED that Plenary Retail Distribution License D-24, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Nathan Jaffe, 59 Broad Street, Newark, be and the same is hereby suspended for a period of ten (10) days, commencing at 9:00 a.m. December 7, 1953, and terminating at 9:00 a.m. December 17, 1953.

  
Dominic A. Cavicchia  
Director.