

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1612

May 5, 1965

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STATE OF NEW JERSEY  
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May 5, 1965

1. APPELLATE DECISIONS - HOPKINSON v. PASSAIC.

W. GEORGE HOPKINSON and WILLIAM )  
P. HOPKINSON, t/a CAPITOL WINES )  
& LIQUORS, )  
Appellants, ) ON APPEAL  
v. ) CONCLUSIONS  
BOARD OF COMMISSIONERS OF THE ) AND ORDER  
CITY OF PASSAIC, )  
Respondent. )

-----  
Jeffer, Walter & Tierney, Esqs., by Reginald F. Hopkinson, Esq.,  
Attorneys for Appellants.  
Herbert S. Alterman, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the action of respondent whereby it unanimously denied appellants' application for place-to-place transfer of their Plenary Retail Distribution License No. D-4 from premises 314 Monroe Street to premises 125 Main Avenue, Passaic.

Respondent's determination is set forth in the minutes of its meeting held on September 29, 1964 (Exhibit R-1 in evidence) which reads as follows:

"After a lengthy hearing on the application for a transfer of Plenary Retail Distribution License No. D-4 from W. George Hopkinson and William P. Hopkinson, t/a Capitol Wines & Liquors for premises at 314 Monroe Street to W. George Hopkinson and William P. Hopkinson, t/a Capitol Wines & Liquors for premises located at 125 Main Avenue, the application for transfer was denied.

"On call of roll, yeas 5: Kaplan, Siegendorf, Stanek, Sullivan and De Muro."

Appellants contend in their petition of appeal that the action of respondent was erroneous and should be reversed for the following reasons:

(1) The respondent initially denied appellants a public hearing by precluding their cross examination of objectors;

(2) It stated reasons "not supported by the evidence and based on apparently invalid consideration" for its action;

(3) Its determination was an "abuse of discretion individually, prejudicial to the appellants and the result of passion, partiality and mistake."

Respondent in its answer denied the allegations of the petition and sets forth the following separate defenses:

(1) Its action was a reasonable exercise of its discretion and authority;

(2) It acted in consonance "with the basic requirements of liquor control;"

(3) Its action was based upon the paramount consideration of public necessity and convenience;

(4) The appellants were not denied due process; and

(5) It acted properly and in the public interest.

This appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present additional testimony and cross examine witnesses.

By stipulation of counsel certain papers and maps were introduced at the hearing which demonstrated that twenty-nine plenary retail distribution licenses were presently in existence and issued by the respondent. In addition there was a zoning map accepted into evidence as well as photographs of the proposed premises to which the license is sought to be transferred. It was also stipulated that the present location as well as the proposed new location are both presently in a commercial zone.

In his opening statement counsel for appellants alleged in furtherance of the petition filed herein that appellants were denied a public hearing because they were denied the right of cross examination of certain objectors who appeared at the hearing before respondent. In this connection and at this juncture it might be well to indicate that, in matters relating to the transfer of such licenses, under Rule 10 of State Regulation No. 6, no hearing need be held if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to grant the transfer applied for. However, in the instant matter the minutes of the meeting and the testimony both support respondent's position that a lengthy hearing was actually held and objectors were permitted to set forth their reasons for objecting to the application for transfer.

William P. Hopkinson (one of the appellants herein) testified that from his observation he determined that the present liquor outlets in the area to which he sought a transfer of his license do not have adequate parking facilities, whereas the proposed new location, which is about one and one-half miles from his present location, would contain parking facilities for about forty-five to fifty cars. He also stated that the proposed site contains new supermarkets, new stores, and "it's quite an area there." Furthermore, he asked some people in the area whether they would like a liquor store and "they were satisfied it would be in a good place to have a liquor store."

On cross examination it appeared that he spoke casually to strangers in the general area on a Friday night about a month before this appeal hearing. He also admitted that the parking facilities which he described would also be used by four other stores located contiguously to this proposed site. One of these stores is a Dairy Queen ice cream store.

Walter Pecar (a building inspector of the City of Passaic), called by the appellants, testified that there were three supermarkets in the general area which had been built during the past five years. However, he insisted that this was not a shopping area; that "shopping areas wouldn't be the right word." On cross examination he further explained that by saying that the Good Deal supermarket is located about two and one-half blocks from the proposed site, as is the Finast supermarket. He described the proposed site as being a store building, "it houses one or two tenants, but it's not what in the prior question what the layman knows as a shopping center." He was further questioned with respect to the construction in the Passaic Park section, which is located near the said site. His records reflected the fact that there had been construction of a garden apartment project containing seven families and another apartment house in the Passaic Park area containing forty-three families. At a substantial distance from this area, i.e., on Brook Avenue near River Road, is located a garden apartment complex built for one hundred eighty-six families.

Joseph Hirkala (the clerk of respondent Board) testified that three plenary retail distribution licenses were issued to such licensees in the immediate area of the proposed site in 1934 or 1935, and that one license was subsequently transferred on October 19, 1959 (the transfer being from 223 to 184 Main Avenue, a short distance away). He also testified that one of the licensees was located about four hundred feet from the proposed site.

At this point appellants rested, and a motion was made to dismiss the application on the ground that "there hasn't been one iota of evidence or one bit of testimony indicating any abuse of discretion, any unreasonableness in the Board of Commissioners of the City of Passaic denying this transfer." I reserved decision on this motion because this would be in the nature of a final judgment which resides only within the authority of the Director. However, I believe that the testimony up to this point has not established any abuse of discretion and that the appellants have not at this juncture sustained their burden of proving that the action of the respondent was erroneous so as to warrant reversal thereof (Rule 6 of State Regulation No. 15). I nevertheless recommend that this motion be denied. In the administrative process great liberality is given to the appellants in the presentation of their case and, since fairness is the touchstone of these proceedings, I feel that the entire testimony should be evaluated and a final determination should be reached on the merits.

Joseph Hirkala, recalled as a witness on behalf of the respondent, testified that, as the assistant City Clerk assigned to processing of liquor applications, he received on behalf of the respondent five letters of objection, two of which were from clergymen. He also noted that the distance between the present premises of the appellants and the proposed site was about one mile; that there are twenty-nine retail distribution licenses issued by respondent, of which seven are located on Main Avenue (the street on which the proposed new premises is situated).

He also emphasized that the respondent and its predecessor Board had during the past five years denied similar applications for transfer to the area in which the proposed new premises is located.

Joseph A. Stanek (a member of the respondent, who is the present commissioner of parks and public property of Passaic) explained his reasons for voting against the application for transfer. He felt that there were "more than enough liquor establishments there," and that there would be trouble in the park system which surrounds that area. He explained that Memorial Park, which has a large tennis area, plus Tennyson area which has a children's playground and is located only a few hundred feet away from the proposed site, would be deliteriously affected by the introduction of this facility. "This area invites many mothers and their children there, many in baby carriages, and I'm afraid that with an additional establishment that dispenses liquor the City of Passaic is heading for trouble in so far as these recreational areas are concerned." He stated that his vote, and indeed the vote of respondent, has been consistent in voting against prior applications by other applicants for the reason indicated. He also indicated that he had discussed this matter with many people and that many neighborhood residents have personally visited him to protest against such transfer. On cross examination he stated that he estimated that there were approximately thirty-five hundred residents in the Passaic Park area; that, while he had discussed this matter with around fifteen persons from that area, he received the definite impression that the concensus of public opinion was opposed to another liquor establishment. He added that some residents expressed the feeling, with which he agreed, that the introduction of another liquor establishment "may create a condition in our park and recreation areas that would perhaps require additional police protection and action. We have had that in other areas where there's a great number of liquor dispensing places." The witness also admitted that one of the considerations which entered into his final judgment to vote against this application was that, where there are too many liquor facilities, the profits of these licensees are cut down and they might tend to become "unscrupulous in that business" and feel tempted to sell to minors; that limiting the number of these establishments, conversely, would make these licensees more independent. It was his impression that there were four such licenses in the immediate area (there seems to be some question, from the evidence herein, as to whether there were actually three or four such licenses. However, this question was not completely resolved because the specific area upon which this witness was questioned was not accurately delineated).

David B. Kaplan (a member of respondent and also director of public safety of this municipality) similarly expressed his reasons for voting against the transfer. He supplemented the reasons hereinabove set forth as follows:

"...as a director of public safety it could present a problem to the department in view of the fact that there is a Dairy Queen serving hundreds of children for quite a period of the year and to me this would be detrimental to the best interests of the community to vote favorably for the transfer of

such a license. I wish we could reduce the number of licenses right through the community, not only in that area."

He further explained that he had on prior occasions voted to deny similar applications by others for transfer to this area for the reasons expressed. On cross examination he was referred to a statement by Mayor De Muro that "he did not see any desperate need for a liquor license." The witness stated that, while he did not necessarily agree with the word "desperate", he did not feel that it was necessary to take exception to the Mayor's statement because he generally agreed with the Mayor's position that there was no need for the granting of a transfer to this specific location. There was also some question as to whether he agreed with the Mayor's statement as to the fact that there were four distribution licenses at this location instead of three. It was pointed out in redirect examination that a license known as Marshall's, located on River Road, may well have been within the contemplation of the Mayor when he asserted that there were four such licenses. This witness also took sharp issue with appellants' attorney with respect to the parking situation. He did not concede that the matter of such on-premises facilities was an overriding consideration or presented a serious problem in the ultimate determination of respondent in its consideration of the merits of the subject application.

It was further stipulated by counsel at the conclusion of the testimony offered that the other three members of the respondent who did not appear at this hearing voted to deny the application for the reasons expressed by Stanek and Kaplan.

I have given careful consideration to the pleadings, the exhibits and the testimony contained in the voluminous transcript at this plenary de novo appeal. I think it would be desirable to set forth some of the basic principles of law which are applicable on this appeal. In order for appellants to succeed in the instant appeal it is incumbent upon them to show an abuse of discretion on the part of respondent in denying the application for transfer. To meet this burden appellants must show manifest error and that indeed such finding was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Hoboken, 135 N.J.L. 502, 511; Nordco v. State, 43 N.J. Super. 277 (App. Div. 1957); Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955).

At this point I want to state that in all fairness the issuing authority should set forth the reasons for its decision. This has not been done in the minutes received in evidence, but such failure is not fatal where the reasons are set forth in the respondent's answer or fully developed at the appeal hearing. Rokay Wines & Liquors, Inc. v. Passaic, Bulletin 1198, Item 1; cf. Borough of Fanwood v. Rocco et al., 33 N.J. 404. However, the reasons for the denial were fully developed at this plenary appeal. Cf. Spring Manor, Inc. v. Newark, Bulletin 1319, Item 4.

It has consistently been held by this Division and the courts that a transfer of a liquor license is not an inherent or automatic right. The issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Andrew C. Kless Enterprises Inc. v. East Orange, Bulletin 1588,

Item 2; Gentes v. Middletown, Bulletin 1327, Item 1. See also Biscamp & Hess v. Teaneck, 5 N.J. Super. 172 (App.Div. 1949), where the issuing authority was upheld in denying a transfer of a liquor license because it was of the opinion that no need existed for a liquor outlet in that location of the community. Also, in Fanwood v. Rocco et al., 59 N.J. Super. 306, 321, Judge Gaulkin stated:

"The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24) and place-to-place transfer thereof '[O]n application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to said premises.' N.J.S.A. 33:1-26."

As was stated in Ward v. Scott, 16 N.J. 16 (1954):

"Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications.... And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)...."

The issuing authority may grant or deny a transfer in the exercise of reasonable discretion and such discretion will not be disturbed in the absence of a clear abuse. Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484; Zicherman v. Driscoll, 133 N.J.L. 586.

The Court stated in Fanwood v. Rocco, 59 N.J. Super. 306 (App.Div. 1960):

"No person is entitled to [the transfer of a license] as a matter of law" and "If the motive of the governing body is pure, its reasons, whether based on morals, economics or aesthetics, are immaterial."

In this connection it may be well to quote further from Fanwood v. Rocco, 59 N.J. Super. 306, at p. 320:

"The primary purpose of the act is to promote temperance (R.S. 33:1-3) and 'to be remedial of abuses inherent in liquor traffic and shall be liberally construed' to effect those purposes. R.S. 33:1-73; Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs of City of Hoboken, supra. Because these are the purposes there is a sharp and fundamental distinction between the power of the Director when a license is denied by the municipality and when one is granted, because refusing a license cannot lead to intemperance or to any of the other evils the act is intended to prevent."

Advancing this reasoning, as the Fanwood case enunciates, where the municipality decides in good faith that

a license should not be transferred to a particular area the Director may not interfere. Cf. Bumball v. Burnett, 115 N.J.L. 254. When the respondent acted unanimously in denying this application for transfer, it did not act out of personal malice against the applicants as counsel for the appellants advocates in his memorandum. He asserts that the primary motive of respondent in its action was to "bestow economic favoritism to other licensees in the area. It is not sufficient to say that other reasons were expressed. It is glaringly apparent that all other reasons were merely 'window-dressing' and, on close analysis, in fact emphasize this true underlying motivation. This expressed purpose is so invidious that it contaminates the entire action taken by the Respondent-Municipality."

The testimony is clearly to the contrary. While it is true that Commissioner Stanek expressed the feeling that additional facilities in this area would affect the economic position of the other liquor establishments, I am satisfied that this was not a primary consideration that entered into his final determination. There were a number of substantial reasons presented by both Commissioners Stanek and Kaplan and which, by stipulation, were applicable to the other members of respondent, which primarily and substantially motivated them in reaching their unanimous decision to deny. It need only be restated that they felt that the closeness to a children's playground and recreation area, where hundreds of mothers and small children play; the fact that this proposed site was next door to a Dairy Queen ice cream parlor which attracted thousands of children and teenagers during eight months of the year; that, as Commissioner Kaplan expressed it, an additional police protection problem might be created in this area with the introduction of this facility; that numerous neighborhood residents had expressed their opinions privately to members of the respondent, as well as two clergymen who addressed their objections by letters directly to respondent; that there were already adequate facilities in this area; that there was no present need for any additional outlets -- all of these factors entered into the consideration of respondent in its ultimate decision.

It is also important to note, in connection with the charge of discriminatory treatment against the appellants, that the action of the respondent has been a consistent one because it has repeatedly denied applications for transfer of similar liquor licenses to this area.

Finally, there is nothing in the evidence to suggest that the members of respondent were improperly motivated. In the absence thereof, their determination, based upon proper and bona fide use of their discretion, must be supported. Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Hoboken, supra; Blanck v. Mayor and Borough Council of Magnolia, supra.

It must also be emphasized that, as was indicated hereinabove, the Director's function on appeal is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Broadley v. Clinton and Klingler, Bulletin 1241, Item 1; Ware v. Newark, Bulletin 1420, Item 3. Cf. Tavares and Pica v. East Orange, Bulletin 1583, Item 3. It also should be recognized that this is particularly important in this case which concerns the question of liquor regulation and in which the respondent did not grant but denied the application.

I do not find that the action of the municipal issuing authority was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Hoboken, supra.

After carefully considering all the evidence herein and the articulate memoranda of counsel, I conclude that the appellants have failed to sustain the burden of establishing that the action of respondent was arbitrary, unreasonable or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15. Hence I recommend that an order be entered affirming respondent's action and dismissing the appeal.

#### Conclusions and Order

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

I have carefully considered the entire record herein and, as a result, I concur in the Hearer's findings and conclusions and adopt his recommendation. In passing, however, for purposes of clarification and future guidance I wish to comment on the respondent's failure to permit the appellants to cross examine the objectors who appeared and testified at the hearing before the respondent.

Rule 8 of State Regulation No. 6 provides that "it shall become the immediate duty" of each municipal issuing authority, upon receipt of a written objection to the transfer of a license, "to afford a hearing to all parties" and immediately notify the applicant and/or the licensee, and the objector, of the date, hour and place thereof. This requirement of affording all parties a hearing encompasses the right of an adverse party to cross examine witnesses who have given direct testimony before the issuing authority. The rule envisages a full and fair hearing at which the parties may test the accuracy and credibility of witnesses and, consequently, the issuing authority has a "duty not to interfere with the production of proper proofs at such a hearing." Florence Methodist Church v. Florence Township, 38 N.J. Super. 85, 90 (App.Div. 1955).

While it is true that Rule 10 of State Regulation No. 6 provides that no hearing need be held if the municipal issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to grant the transfer for which application has been made, this does not mean that a hearing held pursuant to Rule 8 of said Regulation may be a limited or restricted one. Although an applicant does not have a right to a hearing where his application is denied upon the basis of the issuing authority's own investigation, he does have a right to test and meet any evidence that may be presented to the issuing authority by objectors. In the latter instance the duty is to "afford a hearing to all parties."

In the instant case, however, the appeal before this Division was heard de novo with full right of direct and cross examination. Under the circumstances, appellants have not shown sufficient prejudice to their position, by reason of their being denied the right to cross examine objectors in the hearing below, to warrant reversal of the respondent's action. See Neiden Bar & Grill, Inc. et al., v. Newark et als., 40 N.J. Super. 24 (App.Div. 1956).

I shall therefore affirm the respondent's action and dismiss the appeal herein.

Accordingly, it is, on this 10th day of March 1965,

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

JOSEPH P. LORDI  
DIRECTOR

2. APPELLATE DECISIONS - HEDY'S BAR v. HIGHTSTOWN.

HEDY'S BAR (A Corporation) )  
t/a HEDY'S BAR, )

Appellant, )

v. )

ON APPEAL  
ORDER

COMMON COUNCIL OF THE BOROUGH OF )  
HIGHTSTOWN, )

Respondent. )

-----  
Jamieson, Walsh & McCardell, Esqs., by Thomas C. Jamieson, Jr.,  
Esq., Attorneys for Appellant.

Timothy J. Kilty, Jr., Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant appeals as from denial by the respondent of renewal of plenary retail consumption license for 1964-65 for premises 500 Mercer Street, Hightstown.

Prior to the hearing on appeal, by letter dated March 9, 1965, the attorneys for appellant advised me that the appeal was withdrawn. No reason appearing to the contrary,

It is, on this 10th day of March 1965,

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

JOSEPH P. LORDI  
DIRECTOR

3. APPELLATE DECISIONS - PIEROZAK v. ELIZABETH and BOBOWSKI.

ANDREW PIEROZAK and AMELIA PIEROZAK, )

Appellants, )

v. )

ON APPEAL  
ORDER

CITY COUNCIL OF THE CITY OF ELIZABETH, )

and CHARLES BOBOWSKI, t/a CHARLIE'S )

BAR AND GRILL, )

Respondents. )

-----  
Anthony Luongo, Esq., Attorney for Appellants.

John M. Boyle, Esq., by Raymond A. Leahy, Esq., Attorney for  
Respondent City Council.

Weiner, Weiner & Glennon, Esqs., by John T. Glennon, Esq.,  
Attorneys for Respondent Charles Bobowski.

BY THE DIRECTOR:

Appellants appeal from grant on February 10, 1964,  
by respondent City Council of transfer of plenary retail  
consumption license issued to respondent Bobowski from  
premises 757 Brunswick Avenue to premises 747-751 Brunswick  
Avenue, Elizabeth.

Prior to the hearing on appeal, by letter dated  
March 9, 1965, the attorney for appellants advised me that  
the appeal was withdrawn. No reason appearing to the  
contrary,

It is, on this 10th day of March 1965,

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

JOSEPH P. LORDI  
DIRECTOR

## 4. SPECIAL PERMITS - SAMPLE PERMITS - CONDITIONS UNDER WHICH ISSUED.

April 20, 1965

TO ALL MANUFACTURERS AND WHOLESALERS OF ALCOHOLIC BEVERAGES OTHER THAN MALT ALCOHOLIC BEVERAGES.

Re: Sample Permits

I have noted the number of applications filed for sample permits, under Rule 13 of State Regulation No. 34 and have been concerned over the lack of control we exercise over solicitors who obtain, transport and use these samples for dispensing, by the drink, to retail licensees or display purposes.

It has been Division policy to issue a permit to a wholesale licensee which permits a solicitor, employed by the permit holder, to transport alcoholic beverages in his vehicle even though the vehicle bears no transit insignia; to transport alcoholic beverages in a vehicle without having in his possession an invoice covering the beverages and to dispense the alcoholic beverages, by the drink, in retail licensed premises. All of these are prohibited by either the Statute or the Regulations.

To avoid conflict and so that we may be the better enabled to deter, or be in a position to be alerted to possible violations, I have determined that effective April 26, 1965 sample or display permits shall be granted only under the following terms:

1. Separate permits will be required for each brand of beverage to be sampled by retail licensees and for each brand to be displayed to retail licensees.

2. Sample permits to be issued for dispensing alcoholic beverages by the drink, to retail licensees, shall be issued at a fee of \$10.00 and only for new brands or products (including changes in formula of existing brands) or for brands specifically approved by the Director and then only for a period not to exceed 90 days and thereafter not renewable.

3. Neither the permittee nor any solicitor employed by the permittee shall carry or transport more than two sample bottles of the brand designated in the permit at any one time and that each bottle shall not exceed one-fifth gallon (or one quart if not packaged in one-fifth gallon size).

4. That each sample bottle shall be clearly marked "SAMPLE - NOT FOR SALE" in ink across the label of the bottle, in letters not less than one-half inch in height and of proportionate width.

5. Permits to be used for the purpose of displaying packaging, labels or bottles shall be issued at a fee of \$10.00 for a period not to exceed 90 days and thereafter not renewable. Under authority of these permits permission will be granted to carry or transport only one bottle of the brand designated in the permit at any one time and that the bottle shall be clearly marked "FOR DISPLAY PURPOSES ONLY - NOT FOR SALE OR CONSUMPTION" on a label attached to the bottle, in letters not less than one-half inch in height and of proportionate width.

6. That each permittee or solicitor transporting or possessing bottles in accordance with the above shall have in his possession a copy of the permit, certified to by the Director as a

true copy, to be issued at a fee of \$1.00 for each certified copy and each certified copy shall bear the signature of the person so authorized to transport the beverage.

7. The permittee shall maintain a record, available for inspection by agents of this Division, indicating to whom alcoholic beverages were given for either sampling or display purposes; the date or dates they were given; the quantity given and in the case of "display" permits the date the beverage was returned to the permittee's inventory.

JOSEPH P. LORDI  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

RENEE MARCUS )  
t/a RENEE'S BAR AND LIQUOR STORE )  
534-536 Kaighn Avenue )  
Camden, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-38, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden. )

-----  
Cahill, Wilinski & Mohrfeld, Esqs., by Robert Wilinski, Esq., Attorneys 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 February 2, 3, 4, 5, 6 and 11, 1965, she permitted the acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days effective February 13, 1961, for employing a criminally disqualified person.

The license will be suspended for sixty days (Re R.C.J. Corp., Bulletin 1603, Item 3), to which will be added five days by reason of the record of suspension of license for dissimilar violation occurring within the past five years (Re Lafayette Bar, Inc., Bulletin 1603, Item 7), or a total of sixty-five days, with remission of five days for the plea entered, leaving a net suspension of sixty days.

Accordingly, it is, on this 15th day of March, 1965,

ORDERED that Plenary Retail Consumption License C-38, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Renee Marcus, t/a Renee's Bar and Liquor Store, for premises 534-536 Kaighn Avenue, Camden, be and the same is hereby suspended for sixty (60) days, commencing at

7:00 a.m. Monday, March 22, 1965, and terminating at 7:00 a.m. Friday, May 21, 1965.

JOSEPH P. LORDI  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against )

ERLTON BOWL LOUNGE, INC. )  
North corner at Ellisburg )  
Shopping Center )  
Cherry Hill, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Board of Commissioners of the Township of Cherry Hill. )

-----  
Stein, Abrams & Rosen, Esqs., by Nicholas J. LaRocca, Esq., and Irving Younger, Esq., Attorneys for Licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Saturday night October 31 and early Sunday morning November 1, 1964, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Richard I.---, age 20 and Edmund F.---, age 20, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

At the hearing held herein, the Division called as witnesses Edmund ---, Richard I. ---, Carl Rogers, and an ABC agent hereinafter referred to as Agent S.

Edmund (20 years of age) testified that he was born on February 24, 1944, and that at 7:30 p.m. on October 31, 1964, he and Carl Rogers visited licensee's premises; that they sat at the "oval bar" which is situated in the barroom to the left when entering the front door of the establishment; that during the time he and Rogers remained in the premises, he consumed the contents of two bottles of Schlitz beer, which beer had been served to him by a male bartender. At about 8:00 p.m., he and Rogers left the premises. Thereafter, at approximately 12:30 a.m. the following morning (November 1, 1964), they returned to the licensee's premises accompanied by Richard I., Richard Donley and another male companion. Edmund testified that on this visit he had two bottles of Schlitz beer, one of which he obtained at a U-shaped bar in the middle of the barroom

in front of which his friends were congregated and the other bottle, at his request, being obtained by Rogers and brought to a table where he (Edmund) was seated with some girl friends. Edmund further testified that he was not asked by anyone to produce proof concerning his age before service of the beer to him.

Richard I. (20 years of age) testified that his date of birth was January 15, 1944; that at 12:45 a.m. November 1, 1964, he entered the licensee's premises, at which time he was accompanied by Edmund, Carl Rogers, Donley and another male companion. He further testified that during the time he was in the said premises, he purchased, was served and consumed two mixed drinks containing "V. O. and seltzer and a twist of lemon"; that he had not been questioned as to his age before service of said drinks. He saw Edmund seated at a table with some girls and drinking beer. Richard stated that he was not asked for proof of age or to make any written representation with reference thereto before he was served the aforementioned drinks by the bartender.

Carl Rogers' testimony corroborated the testimony given by Edmund and Richard I. about ordering, having served to them and consuming beer and whiskey, respectively. Rogers further testified that he did not hear anyone question Edmund or the others as to their ages. However, on the second visit (November 1, 1964) when entering the licensed premises with the group in single file, he, the last in line, was questioned as to age. In response thereto, he "showed him identification."

Agent S testified that on November 4, 1964, he and Edmund went to the licensed premises and on November 17, 1964 he and Richard I. went there. Neither of the minors was able to identify the bartender or bartenders who had served the drinks to them on the dates in question. The bartenders who allegedly were on duty at the time or times stated they had no recollection of serving or seeing the said minors.

David Murphy, manager of the licensed premises, testified that "the square bar or oval bar to the left does not even open until 9 p.m." On cross examination, Murphy stated that on special occasions it may open prior to 9:00 p.m. but on October 31, 1964, even though it was Hallowe'en, the bar was not open.

Harold Regan testified that he is employed by the licensee as a doorman and was stationed at the front door checking the ages of patrons coming into the premises from 9:00 p.m. on October 31 until the early morning of November 1, 1964. He stated that it is "a house policy to ask everyone for identification." He further said that at 10:30 or 11:00 p.m. Edmund, Rogers and Donley came into the premises. Donley, being first to enter, produced a military identification card and also an inoculation card which indicated that he was over the age of 21 years. The other two showed him automobile driver's licenses and also a classification card which indicated to him that they were of age. Thereafter, they went into the barroom. He testified that he had no recollection of seeing Richard I. enter the barroom that evening. After the group left the premises, he was summoned because some of the youths had taken out drinks with them. When he tried to obtain the drinks from them, one stated that he knew local officials and threatened to have the licensee's establishment closed.

On cross examination, Regan said he had questioned the youths about their ages "because they looked young" but did not request written representation thereof. He further testified that they were served alcoholic beverages by bartender "Jimmy Camel".

William Toth testified that he is employed as a doorman at the licensed premises and came on duty at 9:00 p.m. on October 31. He further testified that he stationed himself at the back door but the minors in question and their companions did not enter the premises through that door. He also said he did not see them leave the premises by way of the back door. In fact, he was not aware that they had left until a waitress advised him that some fellows had taken their drinks off the premises. While Toth attempted to get the drinks, Donley threatened that he knows everyone in town and that he could have the liquor license taken away. Thereafter, a scuffle ensued.

Edmund, Richard I. and Rogers testified that they did not hear anyone make any threats concerning the licensed premises.

Licensee's attorneys filed a memorandum in which they advocated as a ground for dismissal of the charge that the minors involved failed to identify the person who had served the alcoholic beverages to them.

It has long been established that failure to identify the person making the sale or service of alcoholic beverages to a minor is not fatal in disciplinary proceedings provided it is established that a minor purchased, was served or was permitted to consume alcoholic beverages on licensed premises. Re LaCorte, Bulletin 469, Item 1; Re Cohen, Bulletin 495, Item 6; Re Dante, Bulletin 771, Item 9; Re Kurinsky and Ancel, Bulletin 1100, Item 7; Re Keller's Tavern and Grove, Inc., Bulletin 1245, Item 4; Ott's Inc. v. Division of Alcoholic Beverage Control (App. Div. 1962), not officially reported, reprinted in Bulletin 1444, Item 1.

Although a not guilty plea to the charge was entered, there was no testimony presented on behalf of the licensee that the minors Edmund and Richard were not sold alcoholic beverages in the licensed premises on the dates in question. In fact, Harold Regan, called by the licensee, testified that he remembered Edmund's being served alcoholic beverages at the bar by bartender Jimmy Camel. He did not remember seeing Richard I., but recalled Edmund's producing an automobile driver's license and a classification card which were acceptable to him. His testimony was vague in this regard but he did not deny that he failed to get written representation of age from Edmund.

The testimony of William Toth cast little light on the occurrences in the licensed premises on October 31 and November 1, 1964. His testimony was merely that an altercation took place between him and Donley in the parking lot after the youths had left the licensed premises.

Neither Regan nor Toth reported for duty until 9:00 p.m. on October 31. Edmund and Rogers testified that they were in the premises at 7:30 p.m. on October 31 and had left before 9:00 p.m.

Despite the testimony of David Murphy that the oval bar in the premises does not open until 9:00 p.m., I am satisfied and believe Edmund's and Rogers' testimony that the bar was open for business on October 31 at 7:30 p.m. (when they entered the licensed premises).

I have carefully considered all of the testimony adduced herein and find that the minors Edmund and Richard, and Rogers their adult companion, gave an accurate and truthful account of what occurred in this matter and am unable to find any material inconsistencies in their testimony. The licensee's contention that the youths aforementioned had a motive to accuse the licensee unjustly, or that they in any way conspired against it, has not been established. Furthermore, there was adequate explanation shown why Donley could not appear at the hearing herein because he is serving in the military service outside of this state. The minors themselves testified that they had obtained alcoholic beverages at the time or times in question. I find as a fact that Edmund and Richard I. were sold, served and permitted to consume alcoholic beverages at the licensed premises on the dates in question.

I conclude that the preponderance of the believable evidence produced sufficiently discloses that the licensee is guilty of the charge preferred herein and it is recommended that such a finding be made.

The licensee has no prior adjudicated record. It is further recommended, therefore, that an order be entered suspending the license for ten days, the minimum penalty for sale and service of alcoholic beverages to two 20-year-old minors. Re Club Bar, Inc., Bulletin 1511, Item 8.

#### Conclusions and Order

No written exceptions to the Hearer's Report were filed within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the transcript of the proceedings, the memorandum submitted by the attorneys for the licensee and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 9th day of March, 1965,

ORDERED that Plenary Retail Consumption License C-2, issued by the Board of Commissioners of the Township of Cherry Hill to Erlton Bowl Lounge, Inc. for premises North corner at Ellisburg Shopping Center, Cherry Hill, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. Tuesday, March 16, 1965, and terminating at 3:00 a.m. Friday, March 26, 1965.

JOSEPH P. LORDI  
DIRECTOR

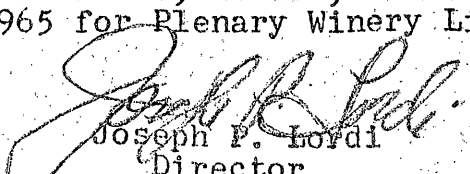
#### 7. STATE LICENSES - NEW APPLICATIONS FILED.

Mondavi Wines, Inc., 211 East 43d St., New York, N.Y.  
Application filed April 28, 1965 for Wine Wholesale License.

The Cathay Corporation, 815 Fairview Ave., Fairview, N. J.  
Application filed April 29, 1965 for Plenary Wholesale License.

Rosa Wine Co., Inc., 830 Raymond Blvd., Newark, N. J.  
Application filed May 3, 1965 for Plenary Winery License.

New Jersey State Library

  
Joseph P. Lordi  
Director