

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

BULLETIN 1518

June 19, 1963

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

BULLETIN 1518

June 19, 1963

1. APPELLATE DECISIONS - FAM BAR-LIQUORS v. BERKELEY HEIGHTS.

Fam Bar-Liquors)
Appellant,) On Appeal
v.)
Township Committee of the) CONCLUSIONS AND ORDER
Township of Berkeley Heights,) Respondent.)

Richard G. O'Brien, Esq., and Walter Goldberg, Esq., co-counsel,
Attorneys for Appellant
Edward A. Pizzi, Esq., Attorney for Respondent
Hughes, Hartlaub, Thorn and Laurie, Esqs., by J. Alan Drummond,
Esq., Attorneys for Jane Katherine Hoffman
Kein, Scotch & Pollatschek, Esqs., by Julius R. Pollatschek, Esq.,
Attorneys for Objector Union County Retail Liquor Stores Assn.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the unanimous action of the respondent Township Committee (hereafter Committee) in denying an application for person-to-person and place-to-place transfer of a plenary retail consumption license from Jane Katherine Hoffman, t/a Berkeley Bar & Grill, to appellant and from premises 279 Springfield Avenue to premises 372 Springfield Avenue, Berkeley Heights.

"The petition of appeal sets forth that the action of the Committee was erroneous for the following reasons:

1. It was against the weight of the evidence.
2. It was the result of passion, prejudice, partiality and mistake.
3. That the reasons given by it are erroneous and de hors the record.
4. That certain evidence received by it over objection deprived applicant of a fair hearing and its right to cross-examination.'

"Prior to detailing to some extent the testimony of the various witnesses, I might point out that, in the absence of the members of the respondent Committee to appear and testify at the instant hearing, it will be necessary to refer to the reasons given by respondent for its action contained in the resolution dated December 17, 1962 (Exhibit A-23). The said resolution, signed by Thomas J. Williams as chairman of respondent Committee and attested to by W. C. Russo, Township Clerk, reads in pertinent part as follows:

1. That the area of the proposed location is presently amply accommodated and does not require any additional liquor outlets to serve the needs of the residents of Berkeley Heights.

2. That the proposed location would increase the motor vehicle traffic in and out of the shopping center, of which the proposed location is a part, and compound the present congestion in the parking area servicing said shopping center.
3. That local sentiment favors keeping the aforesaid shopping center, frequented predominantly by women and children, free of taverns and package stores.
4. That there is no public need or necessity to transfer said license to said location.
5. That it is not in the best interest of Berkeley Heights to transfer said license from its present location to the proposed location.'

"It appears from the record herein that the proposed premises is located in a shopping center containing various types of retail business establishments. The sketch of the interior of the premises in question shows a ten-foot bar adjacent to the left wall approximately eleven feet from the entrance. Coney A. Mea, president of appellant corporation, testified that it is the intention of the licensee to emphasize sale of alcoholic beverages in original containers for off-premises consumption. Photographs of various shopping centers in other municipalities showing liquor outlets were marked in evidence on behalf of appellant.

"Stephen Sussna, a professional planner, testifying on behalf of appellant said that he made a study of the area in which appellant seeks the transfer of the license. He also testified that he visited eleven other shopping centers within a radius of twenty-five miles wherein were liquor outlets. In answer to a hypothetical question propounded by appellant's attorney, Mr. Sussna said:

'My reasoning is, first, that this is a reasonable use within a shopping center; it is, secondly, better located on a comparative basis than its existing location in that it is further removed from the church and old home sites, from the school, and its proximity to the school would--the problem of its proximity to the school would to some extent be obviated, and it is also saliently true for its current proximity to the bowling alley and the Dairy Queen; in addition, in my opinion, there would be in the proposed location less of an enclosed bar use than there is in the current location; further, I believe that as far as ingress and egress is concerned and parking there would be an improvement; in my opinion, this would further good planning in that this use, which I am of the opinion is a proper use within a shopping center, would be part of an integrated shopping pattern; there would be removal of the current liquor sign on Mrs. Hoffman's premises, and the ordinance provides sign control at the proposed location.'

"Rev. Harry Dietrich, a minister residing in Chatham Township, testified that plans have been submitted to the local planning board and permission is requested to erect a church in Berkeley Heights approximately 1,200 feet from the present location of the liquor license, which contemplated church is one-half mile from the proposed location. In his opinion, Reverend Dietrich testified:

'We would rather have it removed. We can't speak where it is to be removed, but we would not want it any closer than where it is, the present location.'

On cross examination Reverend Dietrich added:

'I am opposed to any such likes of the type of establishment of any kind in Berkeley Heights. If we could rid Berkeley Heights of it we would be in favor of it.'

"Alfred E. Willett, residing in Spring Lake, New Jersey, testified that he is the administrator for the Methodist Home for the Aged and that the institution is the owner of land 'across the street from the church of Mr. Dietrich' and is approximately the same distance from the present and proposed locations, respectively, of the license in question. Mr. Willett stated that his church is 'definitely' opposed to the consumption of liquor and, although he would be pleased if alcoholic beverages were legislated out of existence, he had 'no opinion as to where it [the license] should go; we would prefer that if a transfer be made it be further away than the present site.'

"Four other witnesses for appellant, among whom were a hardware store proprietor in the shopping center and a teacher, testified that in their opinion it would be beneficial to the Township to permit the transfer of the license now under consideration.

"Robert G. Strong, a zoning consultant called by respondent, testified that the existing ordinance, prepared under his supervision, does not permit a tavern (plenary retail consumption license) in a B-2 zone in which the shopping center is located. An examination of the provisions of the said ordinance, as read into the record, expressly permits among retail business activities 'package liquors' but does not expressly prohibit a plenary retail consumption license.

"At this juncture I might state that, although a zoning violation might result, the law is clear that the issuance of a liquor license or the grant of a transfer does not permit the licensee to operate without complying with all the applicable statutes or ordinances; and a variance necessary to operate a licensed premises is not required to be obtained prior to the grant of the transfer. Lubliner et al. v. Paterson et al., 59 N.J. Super. 419 (1960).

"Mr. Strong further testified that there was no public need 'for a consumption license or, for that matter, a package license at this location' which opinion was based 'on the premise that within a thousand feet of the proposed location that there is both a consumption license in existence and a package license.'

"Albert F. Christensen, a local police sergeant, testified that, in the capacity of safety officer, he made a traffic study in the area of the shopping center and that the accident records from 1959 to 1962 inclusive disclosed '1959-reportable accidents at the entrances or exits, 3--if I may state, reportable accidents are damage in excess of \$100 or injuries to any person involved-- 1960 there were 2 at the entrances and exists, 1961 there was 1, 1962 there was 4. Non-reportable accidents within the parking area itself, 1959 3, 1960 3, 1961 2, 1962 3.' Sergeant Christensen further testified that, in general, he made a 'study of the parking situation in the shopping center' and ascertained that 'At the present time there are 57 parking spaces available for customer parking. This is in the area in front of the stores facing Springfield Avenue and in the area on the easterly end of the buildings adjacent to the post office. And of these spaces in excess of 15 are being used by employees or tenants of the buildings.' Moreover, Sergeant Christensen testified that there is an unpaved portion in the area west of the shopping center which 'is apparently being

provided for parking, but as far as I can see not in compliance with the ordinance as far as lighting is required.'

"George T. Loman, a member of the Regional Board of Education and a former township committeeman, testified that 'in my opinion, I think the slight needs of the community in so far as package stores are concerned are well satisfied with the existing number of outlets in town at the present time, and I feel that the transfer of this license as a consumption license under that guise would create another liquor store not in the best interests of the town, and further if for reasons that may occur later this establishment does not succeed in its main objective of selling package liquors it could quite easily, as I understand the license, revert to a bar as such, and in my opinion this is not a suitable location for a bar.'

"Luther M. Smythe, a former township committeeman and now one of seven members of the local planning and zoning board, presented a resolution which gave his authority to speak on behalf of the board. Mr. Smythe testified that 'My opinion is from the standpoint of planning this is not a good move, it does not benefit the township nor the people, it is complex so far as parking is concerned, so far as traffic, and that I can see personally no reason for making such a transfer that would benefit the community.'

"Johanna H. Walters, president of the Woman's Club of Berkeley Heights, testified that there are 280 members in the organization, and presented a resolution by its Board of Directors wherein she was authorized to voice the objections of the club. Mrs. Walters testified that 'We oppose the transfer of the liquor license from the present address to the proposed address because of the location. It is a shopping center where there are many children, many small children, and also children of high school age. We think it would be wrong to subject these children to a bar, and a bar it will be because with a Class "C" license they must serve liquor. That is the main position.'

"John F. Gilbert, chairman of the Berkeley Heights Division of the Summit Area Chamber of Commerce, testified that the association has a membership of forty-five business and professional people in the Township. He presented a resolution authorizing him to speak on behalf of the association. Mr. Gilbert testified that 'The main reason was that if the present license, type of license, was transferred to the shopping center the Chamber of Commerce did not feel this was conducive to stimulation of business in that particular center. The existing store had been vacant for some length of time. We were hoping some other type of operation would go in there which would offer more variety to retain the shoppers in town. We were all very much concerned with the number of people who do not shop in town, and this is one of the things the chamber is trying to do--stimulate additional types of business.'

"Nine other residents of the Township, including the local postmaster, testified in opposition to the transfer of the license to the proposed location.

"A set of petitions with 138 signatures in favor of the transfer were marked as an exhibit herein, as were three sets of petitions containing a total of 657 signatures opposed to the transfer.

"It is apparent that the application for the proposed transfer of the license in question has aroused local interest

(both pro and con) on the part of many residents of the Township. In view of this situation I have quoted verbatim part of the pertinent testimony of witnesses which might have a direct bearing on the issues involved.

"In order for the appellant to succeed in the appeal, it must be shown that the respondent has abused its discretion in denying the application for transfer. The appellant's obligation to overcome this burden, especially in a matter of discretion such as this, must show manifest error or some abuse of discretion by respondent. Nordco, Inc. v. State, 43 N.J. Super. 277, 287 (App. Div. 1956); Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598, 600 (App. Div. 1955).

"It has been consistently ruled that a transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Gentes v. Middletown, Bulletin 1327, Item 1; Biscamp and Hess v. Teaneck, Bulletin 821, Item 8. See also Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949) where, as in the case sub judice, the issuing authority denied a transfer of liquor license because it was of the opinion that there was no need or necessity for a liquor outlet in a particular location in the community.

"I cannot accept appellant's theory that, because one or more municipalities approve liquor outlets in shopping centers, it is incumbent upon the members of all issuing authorities to disregard the exercise of discretion vested in them and follow such example. Each case stands solely upon its individual merits, depending on the facts present therein.

"It has long been held that the question of whether or not a license should be permitted at a particular location is strictly within the sound discretion of the issuing authority, and that the Director's function on appeal is not to substitute his opinion for that of the issuing authority but, rather, to determine whether cause exists for its opinion and, if so, to affirm. Redfield v. Long Branch et al., Bulletin 1027, Item 1. It is apparent by the unanimous vote of the respondent that appellant failed to satisfy the members thereof that the public interest would best be served by the transfer of the license, and nothing appears in the record indicating, or even suggesting, that respondent's refusal to grant appellant's application was inspired by improper motives. See Fanwood v. Rocco and Division of Alcoholic Beverage Control, 59 N.J. Super. 306 (App. Div. 1960); aff'd 33 N.J. 404 (1960).

"After considering all the evidence herein, including the exhibits, I conclude that appellant has failed to sustain the burden that the action of respondent was erroneous, arbitrary, capricious and unreasonable or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15.

"It is recommended, therefore, that an order be entered affirming respondent's action and dismissing the appeal."

Pursuant to the provisions of Rule 14 of State Regulation No. 15, written exceptions to the Hearer's Report and written argument thereto were filed with me by the attorneys for the appellant. Written answering argument was filed with me by the attorney for the respondent.

After carefully considering the testimony, exhibits, Hearer's Report, exceptions thereto and written argument filed in behalf of appellant and the respondent, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 14th day of May 1963,

ORDERED that the action of respondent Township Committee of the Township of Berkeley Heights be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed.

EMERSON A. TSCHUPP
ACTING DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - HINDERING INVESTIGATION - PRIOR SIMILAR VIOLATIONS - LICENSE SUSPENDED FOR 45 DAYS.

In the matter of Disciplinary Proceedings against
188 Boyd St., Inc.
188 Boyd Street
Newark, New Jersey
Holder of Plenary Retail Consumption License C-158, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark

CONCLUSIONS
AND ORDER

Saul C. Schutzman, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"Licensee pleaded not guilty to the following charges:

'1. On Friday, September 7, 1962, at about 10:40 P. M., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a 4/5 pint bottle of Coronet V.S.Q. Brandy, in its original container for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverage in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38.

'2. On Friday, September 7, 1962, between 10:45 P. M. and 11:55 P. M., you, through officers, directors, stockholders, agents, servants and persons employed on your licensed premises and in your behalf, failed to facilitate, attempted to hinder and delay, hindered and delayed and caused the hindrance and delay of an investigation, inspection and examination at your licensed premises then and there being conducted by an Inspector

and an Investigator of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey; in violation of R.S.33:1-35.'

"The testimony of Agent D was that at 10:35 P. M. on September 7, 1962, as he and Agent S were seated in an automobile parked on Waverly Avenue, Newark, a car stopped on Waverly Avenue and the driver (subsequently identified as Alan Orr) alighted from the car and entered the rear door of the building in which the licensed premises in question is located; that at 10:40 P. M. Orr emerged from the said rear door and walked directly to his car; that he (Agent D) observed Orr 'adjusting something inside his jacket, the belt line of his pants'; that immediately he and Agent S walked over to Orr's car, identified themselves as ABC agents, informed Orr that they had seen him enter and leave the rear door and, at their request, Orr took a bottle of brandy 'from the inside of his jacket--in between his pants and his shirt' and he handed it to him (Agent D); that Orr admitted buying the bottle of brandy at the licensee's premises and, at the agents' request, he reluctantly accompanied them into the tavern; that, upon entering, Agent D and Agent S identified themselves to George Malone and told him that Orr had made a purchase of a bottle of liquor; that Malone 'yelled that he didn't buy anything in here, and why don't we go away and leave him alone, and he walked away'; that as the agents attempted to question Orr, Malone came from behind the bar and 'jumped' in front of Orr and said, 'He didn't get that bottle in here. Tell him you didn't get that bottle in here'; that Orr then said that he didn't get the bottle in the tavern but that he had reached up and had taken it from the shelf; that he (Agent D) then observed the location of the shelf in question at the rear of the bar and found 'I couldn't reach it from the patrons' side of the bar, because the bar is about--oh, let's say a foot and a half wide, and then behind the bar you have the place where the bartenders stand, which is about two and a half--three feet, and then the shelf where this was on was about two feet off the bar shelf. So, it would mean you have to reach for two to five feet'; that after three requests, Malone produced Joseph Schutz (an officer of the corporate licensee) and, after explaining to him the alleged violation, the agents asked Orr for a statement but, before he replied, Schutz said 'I don't want you to give a statement'; that he (Agent D), Agent S and Schutz proceeded to a table as Malone walked behind him (Agent D) who was carrying a brief case in one hand and a bottle of brandy in the other; that on two occasions Malone used his elbow to shove him (Agent D) in the 'small of the back'; that when he registered a complaint to Schutz, the latter told Malone 'to go behind the bar and stay there'. Agent D further testified that, during a conversation, Schutz said 'There are good cops, and there are those who do their jobs. I know about you' and pointing to Agent S, said 'You don't get me good'; that Schutz continued asking why the agents didn't give him a break by leaving out the conversation which the agents had had with Orr on the outside of the premises and only mention what was discussed inside; that Schutz followed the agents to the street, again asking for a break and saying 'I have been caught before' and 'This could be my last ticket.'

"The attorney for the licensee cross examined Agent D at great length but with very little, if any, variation from the testimony given by Agent D during direct examination.

"It was stipulated and agreed by the attorneys for the respective parties hereto that, if Agent S was called by the Division, his testimony would be cumulative and would tend to corroborate the testimony given by Agent D.

"Joseph Schutz testified that he is the president of the corporate licensee and explained that, if you enter the rear door of the building and then turned to your right, there is a stairway leading to upstairs apartments but 'if you take three steps beyond this entrance you come to my door which leads into the tavern'; that when he returned at 10:05 P. M. to the licensed premises, he saw a couple of men speaking to Malone; that the latter called him over and, after the men identified themselves as ABC agents, they stated that they had stopped a man outside who had a bottle and they had brought him back to the tavern; that he did nothing to impede the investigation but cooperated fully; that he did not see Malone push Agent D as alleged by the agent or did he remonstrate with Malone at any time for his alleged conduct; that at no time did he do anything to minimize the alleged violation or attempt in any manner to influence the agents.

"Alan Orr testified that he worked until about 3:30 P. M. on September 7, 1962, and visited the premises 'Well, around 9, I think 9:30' where he had a drink and purchased the bottle of Coronet V.S.Q. brandy in question which he thought was sold to him by Malone who took the bottle from the shelf and placed it in a paper bag; that he then left the tavern and went across town to James Street to pick up a lady friend; that thereafter, while he was on his way to his home on Treacy Avenue, he stopped in to see Herman Chavis who 'lived on the second floor, right over the tavern'; that he parked his car on Waverly Avenue near the licensed premises and walked to the rear entrance of the building, going directly upstairs; that he remained for less than five minutes at Chavis' home and, when Chavis decided not to accompany him, he returned to his car; that, when he entered his car, he took the bottle of brandy which had been lying on the seat, stuck it in his pocket and had just started the car when the ABC agents came over and questioned him; that in response to the agents' suggestions, he said he told them there was no need to return to the tavern but, when one agent said 'Well, my gun is itchy', he agreed to go to the licensee's premises.

"During cross examination Orr testified that 'It was after ten. It was around ten, a few minutes maybe past ten.' Orr denied practically all of the conversation attributed to him by the agents as having occurred both outside and inside the licensed premises.

"Herman Chavis testified that he lives above the licensee's premises and that at six o'clock he had a drink with Orr on the day in question; that at 'ten, five minutes to ten' Orr called at his home but he declined his (Orr's) invitation to go out with him that evening. During cross examination Chavis admitted not being too certain about the time when Orr called at his home, as he hadn't looked at a clock. When cross examined about his knowledge of the alleged violation, he testified as follows:

- 'Q Well, the first time that Mr. Schutz spoke to you about it, you say was two or three weeks --
- A Offhand.
- Q Now, two or three weeks ago --
- A Could have been a month.
- Q Two or three weeks ago or a month ago when Mr. Schutz spoke to you about it and Mr. Schutz said to you, "Now, on that particular night Mr. Orr was up to your house to visit you."

A Yes.

Q Now, when Mr. Schutz was talking to you two, three or four weeks ago, how did you at that time fix as the date in question, the date of September 7th --

A Yes.

Q --as the day Mr. Orr was in your house?

A Because I spoke to Mr. Orr a week or so after that, after it happened.'

"George Malone testified that he is employed as bartender and manager by the licensee and that on September 7, 1962, he started working at 'five o'clock'; that 'about 9:15, 9:30' he saw Orr in the licensed premises but had no recollection of seeing him at 6:00 P. M. but remembered seeing Chavis at that time; that he sold Orr the bottle of brandy at 'about 9 o'clock'; that at 10:15 P. M. the agent spoke to him, saying 'We are Alcoholic Beverage Investigators' and, in response, Malone said 'Yes, I'll be right with you as soon as I finish the customer'; that when the agents told him Orr bought the brandy after ten o'clock, he (Malone) disputed it and said the bottle was sold by him 'about nine, quarter after nine'; that he did not tell Orr to make no statement; that when Schutz came into the premises and because the place was busy, he (Malone) went behind the bar.

"On cross examination Malone reiterated that he told the agents that Orr did not purchase the bottle of brandy after 10 P. M. but admitted that he never told the agents the time when the bottle was allegedly bought by Orr; that as Schutz was leading the agents to a table, he (Malone) testified that he was walking behind the agents in the same direction towards the bathroom when one of the agents said to him 'Don't be punching' which he denied doing.

"Agent S, when called to testify, denied that any mention was made to Orr with reference to guns that the agents carried at the time.

"Inasmuch as the outcome of the instant case will ultimately be determined on the factual testimony presented, I have set forth quite fully the pertinent testimony given by the various witnesses. It is apparent from an examination of the testimony of the respective witnesses that there is a sharp conflict with reference to the events which actually occurred on the night in question. Agent D's testimony, together with the testimony of Agent S, by stipulation, portrays with accuracy the apprehension of Orr after leaving the rear door of the building and the finding of the bottle of brandy on his person. The incredible story given by Orr, that he had purchased the bottle after 9:00 P. M., is surely not worthy of belief. Chavis' testimony that he drank with Orr at 6:00 P. M., that Orr visited him that evening (the time of which appeared uncertain) is also unworthy of belief. In fact, Orr says he came to the premises for the first time at 9:00 P. M. whereas Chavis testified that he and Orr drank in the licensee's premises at 6:00 P. M. Such stories are a complete fabrication of the actual facts, and one would have to be naive indeed to accept such testimony as true.

"Now, in so far as Malone is concerned, I am satisfied that his testimony, that he cooperated with the agents, is mere fantasy. He ignored them in the beginning after they had identified themselves and made known their mission, and directed Orr to tell the agents, even though false, that he (Orr) did not purchase the bottle in the licensee's premises. Malone even shouted for the agents to go away.

"Schutz did cooperate to some extent with the agents in their investigation, but did not hesitate to try to influence them in deleting certain damaging facts when they prepared a report of the occurrences which had taken place at the time. There is no question that Malone hindered, or at least failed to facilitate, the investigation.

"Under the circumstances appearing herein, I conclude that the Division has established the truth of the charges by a fair preponderance of the believable evidence and, as a result thereof, I recommend that the licensee be adjudged guilty of both charges.

"Licensee has a prior adjudicated record. Effective October 15, 1956, and November 10, 1958, its license was suspended by the local issuing authority for ten and twenty-five days, respectively, for sales during prohibited hours, in violation of Rule 1 of Regulation No. 38. A Minimum penalty for a first offense 'hours' violation such as the one now being considered is fifteen days. Re Ruth & Middaugh, Bulletin 1504, Item 6. However, because of the suspension for a similar violation within a ten-year period and another suspension for similar violation within a five year period, it is recommended that twenty days be added to the suspension of fifteen days with reference to Charge 1, making thirty-five days because of said violation. Cf. Re Black's Brass Rail, Inc., Bulletin 1501, Item 4. In addition thereto, on Charge 2 I shall give the licensee the benefit of the doubt of deliberate pushing of Agent D by recommending a minimum penalty of ten days for such violation based solely on the counselling of Orr by Malone and Schutz to falsely state what actually occurred at the time in question. Re Restivo, Bulletin 1480, Item 2.

"I, therefore, recommend that an order be entered suspending the license herein for a period of forty-five days."

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 record herein, including the transcript of the testimony and the Hearer's Report, I concur in the findings of the Hearer and adopt his recommendations. Hence, I find the licensee guilty as charged.

Accordingly, it is, on this 20th day of May, 1963,

ORDERED that Plenary Retail Consumption License C-158, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to 188 Boyd St., Inc. for premises 188 Boyd Street, Newark, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1963, commencing at 2:00 A. M. Monday, May 27, 1963; and it is further

ORDERED that any renewal license that may be granted shall be and remain under suspension until 2:00 A. M. Thursday, July 11, 1963.

EMERSON A. TSCHUPP,
ACTING DIRECTOR.

3. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - NO REMISSION FOR PLEA ENTERED ON HEARING DATE - LICENSE SUSPENDED FOR 55 DAYS - EFFECTIVE DATE OF PENALTY DEFERRED

In the Matter of Disciplinary Proceedings against Curley's, Inc. t/a Curley's Tavern 78-80 Wilson Ave. & 438 Lafayette St. Newark 5, N. J. Holder of Plenary Retail Consumption License C-646, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark

CONCLUSIONS AND ORDER

Sarcome and Mascia, Esqs., by Emil E. Mascia, Esq., Attorneys for Licensee. David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control. BY THE ACTING DIRECTOR:

Licensee pleads non-vult to a charge alleging that on February 5, 1963, it possessed alcoholic beverages in eighteen bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifty-five days (cf. Re Novelty Inn, Bulletin 1473, Item 3; Re Melchiorre, Inc., Bulletin 1478, Item 3) without remission for the plea in view of its untimely entry on the date scheduled for hearing. Re Beesley & Tuite, Bulletin 1461, Item 2.

Admittedly, the licensed business is not presently being conducted, having been discontinued since February 1963, and thus no effective penalty can be imposed at this time. The effective dates for the suspension will be fixed by the entry of a further order herein after operation of the licensed business is resumed. Re The Arctic Corporation, Bulletin 1482, Item 14.

Accordingly, it is, on this 23d day of May, 1963,

ORDERED that Plenary Retail Consumption License C-646, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Curley's, Inc., t/a Curley's Tavern, for premises 78-80 Wilson Avenue and 438 Lafayette Street, Newark, be and the same is hereby suspended for fifty-five (55) days, the effective dates thereof to be fixed by further order as aforesaid.

EMERSON A. TSCHUPP, ACTING DIRECTOR.

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 AND MUNICIPAL HOURS ORDINANCE - PRIOR SIMILAR VIOLATION - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

John E. Coleman)
t/a Ricoe's)
614 Communipaw Avenue)
Jersey City 4, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-162, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City)
-----)

Licensee, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to charges alleging that on Sunday, May 5, 1963, at 10:25 A. M., he sold a pint bottle of whiskey (1) for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, and (2) in violation of municipal hours ordinance.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days, effective July 26, 1954, for sale to minors and permitting a brawl, and by the Director for fifteen days, effective July 21, 1958, for violation of State Regulation No. 38. Re Coleman, Bulletin 1239, Item 10.

The prior record of dissimilar violation disregarded because occurring more than five years ago but considering the record of similar violation within the past five years, the license will be suspended for thirty-five days with remission of five days for the plea entered, leaving a net suspension of thirty days. Re Page, Bulletin 1454, Item 4.

Accordingly, it is, on this 22d day of May, 1963,

ORDERED that Plenary Retail Consumption License C-162, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to John E. Coleman, t/a Ricoe's, for premises 614 Communipaw Avenue, Jersey City, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 A. M. Wednesday, May 29, 1963, and terminating at 2:00 A. M. Friday, June 28, 1963.

EMERSON A. TSCHUPP,
ACTING DIRECTOR.

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

In the Matter of Disciplinary Proceedings against)

George J. Dolan t/a Dolan's Place II 6900 Tonnelle Avenue North Bergen, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-51, issued by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen)

Licensee, Pro se. David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non-vult to a charge alleging that on April 23, 1963, he 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 Romano, Bulletin 1511, Item 9.

Accordingly, it is, on this 27th day of May, 1963,

ORDERED that Plenary Retail Consumption License C-51, issued by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen to George J. Dolan, t/a Dolan's Place II, for premises 6900 Tonnelle Avenue, North Bergen, be and the same is hereby suspended for five (5) days, commencing at 3:00 A.M. Monday, June 3, 1963, and terminating at 3:00 A. M. Saturday, June 8, 1963.

EMERSON A. TSCHUPP, ACTING DIRECTOR.

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 Brookside Tavern, Inc.)
 Noteboom & Bridge St.)
 Pemberton Township)
 PO Browns Mills, N. J.)
)
 Holder of Plenary Retail Consumption License C-12, issued by the Township Committee of Pemberton Township)
)
 -----)

CONCLUSIONS AND ORDER

James Logan, Jr., Esq., Attorney for Licensee.
 David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 6, 1963, it possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension by the Director for five days, effective October 31, 1955, for sale to minors (Re Brookside Tavern, Inc., Bulletin 1088, Item 6) and by the municipal issuing authority for fifteen days, effective February 6, 1962, again for sale to minors.

The prior record of suspension for dissimilar violation in 1955 disregarded because occurring more than five years ago but the prior record of dissimilar violation occurring within the past five years considered, the license will be suspended for fifteen days (Re Szymanski, Bulletin 1505, Item 7), to which will be added five days by reason of the previous record of suspension (cf. Re Dzialo, Bulletin 1428, Item 10), making a total of twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days.

Accordingly, it is, on this 27th day of May, 1963,

ORDERED that Plenary Retail Consumption License C-12, issued by the Township Committee of the Township of Pemberton to Brookside Tavern, Inc. for premises Noteboom and Bridge Street, Pemberton Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 A. M. Monday, June 3, 1963, and terminating at 2:00 A. M. Thursday, June 18, 1963.

EMERSON A. TSCHUPP,
 ACTING DIRECTOR.

7. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE AND NUMBERS BETS) - SALE BELOW FILED PRICE - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

THOMAS C. GARSKY & MARY R. GARSKY)
t/a CLIFF'S CAFE)
1112 Chestnut Avenue)
Trenton, N. J.)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-242, issued by the City Council of the City of Trenton.)

Licensees, by Thomas C. Garsky, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensees plead non vult to charges alleging that (1) and (2) on April 20, 27, May 1 and 4, 1963, they permitted the acceptance of horse race and numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20, and (3) on April 27, 1963, they sold a 4/5 quart bottle of wine at less than filed price, in violation of Rule 5 of State Regulation No. 30.

Licensees have a previous record of suspension of license by the municipal issuing authority for (1) five days, effective December 1, 1958, for permitting foul language and (2) for ten days, effective November 26, 1962, for sale to minors.

The license will be suspended on the first and second charges for twenty-five days (Re Sganga, Bulletin 1513, Item 5) and on the third charge for ten days (Re Lell, Bulletin 1513, Item 6), to which will be added ten days for the record of two suspensions for prior dissimilar violation occurring within the past five years (Re Half Way Inn, Bulletin 1496, Item 6), making a total suspension of forty-five days. Five days will be remitted for the plea entered, leaving a net suspension of forty days.

Accordingly, it is, on this 29th day of May, 1963,

ORDERED that Plenary Retail Consumption License C-242, issued by the City Council of the City of Trenton to Thomas C. Garsky and Mary R. Garsky, t/a Cliff's Cafe, for premises 1112 Chestnut Avenue, Trenton, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1963, commencing at 2:00 a.m. Wednesday, June 5, 1963; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Monday, July 15, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

8. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - SALE TO A MINOR - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

GEORGE DOHONEY
746 West Side Avenue
Jersey City, N. J.

)
)
) CONCLUSIONS
) AND ORDER
)

Holder of Plenary Retail Consumption License C-505, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

James H. Dowden, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to charges alleging that on March 14, 1963, he (1) and (2) permitted the acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20, and (3) sold drinks of beer to a minor, age 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended on the first and second charges for twenty-five days (Re Hassett, Bulletin 1499, Item 6) and on the third charge for ten days (Re Eagle Package Liquor Co., Inc., Bulletin 1496, Item 7) or a total of thirty-five days, with remission of five days for the plea entered, leaving a net suspension of thirty days.

Accordingly, it is, on this 27th day of May, 1963,

ORDERED that Plenary Retail Consumption License C-505, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to George Dohoney for premises 746 West Side Avenue, Jersey City, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1963, commencing at 2:00 a.m. Monday, June 3, 1963; and it is further

ORDERED that any renewal license that may be granted shall be and remain under suspension until 2:00 a.m. Wednesday, July 3, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

9. STATE LICENSES - NEW APPLICATION FILED.

Jack Daniel Distillery, Lem Mitlow, Prop., Inc.
Lynchburg, Tennessee
Application filed June 14, 1963 for Plenary Wholesale License for the period 1963-64.


Emerson A. Tschupp
Acting Director