

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

BULLETIN 1877

October 2, 1969

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1. COURT DECISIONS - CRANER and PILON v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-189-68

STATE OF NEW JERSEY, DEPARTMENT OF  
LAW AND PUBLIC SAFETY, Division of  
Alcoholic Beverage Control,

Plaintiff-Respondent,

v.

JOHN A. CRANER and RAYMOND PILON,  
t/a MUGGSY'S FRIENDLY TAVERN,

Defendants-Appellants.

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Argued September 8, 1969 - Decided September 18, 1969

Before Judges Kilkenny, Labrecque and Leonard

On appeal from Director, Division of Alcoholic  
Beverage Control

Mr. John A. Craner argued the cause for appellants  
(Messrs. Craner & Brennan, attorneys).

Mr. Michael T. Henchy, Deputy Attorney General,  
argued the cause for respondent (Mr. Arthur J.  
Sills, Attorney General of New Jersey, attorney;  
Mr. Stephen Skillman, Deputy Attorney General,  
of counsel).

The opinion of the court was delivered by

LABRECQUE, J. A. D.

(Appeal from the Director's decision in Re Craner & Pilon, Bulletin 1825, Item 6. Director affirmed. Opinion not approved for publication by the Court committee on opinions.)

2. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING SUSPENSION STAYED DURING APPEAL.

In the Matter of Disciplinary Proceedings against

JOHN A. CRANER & RAYMOND PILON  
t/a Muggsy's Friendly Tavern  
839 Main Street  
Paterson, New Jersey

SUPPLEMENTAL ORDER

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Holders of Plenary Retail Consumption License C-224 issued by the Board of Alcoholic Beverage Control for the City of Paterson

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Licensees, by John A. Craner, Pro se  
Edward F. Ambrose, Esq., Appearing for the Division

BY THE DIRECTOR:

On October 7, 1968, I entered an order herein suspending the license for forty-five days effective October 14, 1968, for possession of indecent photographs on the licensed premises. Re Craner & Pilon, Bulletin 1825, Item 6.

Prior to the effectuation of the suspension, upon appeal filed, the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal.

The court affirmed my action on September 18, 1969. Craner and Pilon v. Division of Alcoholic Beverage Control (App. Div. 1969), not officially reported, recorded in Bulletin 1877, Item 1.

Accordingly, it is, on this 23rd day of September, 1969,

ORDERED that the forty-five day suspension heretofore imposed and stayed during the pendency of proceedings on appeal be reinstated against Plenary Retail Consumption License C-224, issued by the Board of Alcoholic Beverage Control for the City of Paterson to John A. Craner and Raymond Pilon, t/a Muggsy's Friendly Tavern, for premises 839 Main Street, Paterson, commencing at 3:00 a.m. Tuesday, September 30, 1969, and terminating at 3:00 a.m. Friday, November 14, 1969.

JOSEPH M. KEEGAN  
DIRECTOR



Mr. Popapow, and her male companion paid for both drinks. This was about 11:30 we noticed her. Around 12 midnight, while watching the girl, at this time we also saw Mr. Popapow putting something in a bag at the end of the bar. He was giving this to 2 males who came in for it. As they departed I went after them, the 2 males who had the bag, and Investigator O went to the girl, to the apparent minor. I was satisfied that the bag contained containers of beer and that the males were over the age of 21, and I proceeded back to rejoin Investigator O."

The female was questioned as to her age and was informed that she would have to accompany the agents to police headquarters for further questioning as to her age. The agents identified themselves to Herman Schultz, the manager of the licensed premises; they also identified themselves to Popapow and Sloan and requested their identification. Popapow asserted in a loud voice that the burden of proof was on the agents and that he didn't have to show the agents anything.

The male patron at the bar with the female said he was "going out to see the female's husband" and left the barroom. Continuing, Agent B testified: "A short time later five males came storming in the place and brushed by me, almost pushing me down, and they went toward Investigator O. Then a red-headed male came, who was unidentified at the time, and took the girl around the waist, and I identified myself to this red-headed male and told him I wanted to check the girl's age. He said he didn't care what I wanted to do, he was going to take the girl out. All this time Mr. Popapow was hollering, 'You prove it! You prove it! The burden of proof is on you.'" Upon turning, he observed Agent O "being slammed against a pool table and falling down to his knees." Upon turning around again, he observed a "male trying to push me out of the way of the red-headed male and female. I seen him start to leave, the red-headed male, and as he was leaving he picked a bottle up and held it down below, and I tried to stop him. He said that he was going to leave and if I tried to stop him he was going to stick the bottle in my mouth. After this I observed Investigator O had been assaulted, I was fearing an assault myself, so I pulled my revolver. I held my revolver down by the butt, I didn't cock the revolver, and the red-headed male became less aggressive at this time."

Hearing another noise emanating from the rear, Agent B turned and observed Agent O arise from the floor. Agent O called out, "Look out, John" and swung at the red-headed male because the latter was still coming at him. He observed four males coming at the agents. The agents were attempting to protect themselves at this time. Popapow called out, "Get them! Get them! Get them!"

No one connected with the licensee interceded or tried to quell the melee. The red-haired male and the female left the premises. When the agents again identified themselves to Popapow, Popapow said, "I'm not going to show you. The burden of proof is on you. You will have to prove it."

The agents, Schultz and Harry Grinkowich (president of the corporate licensee) went to the rear room in order to pursue the investigation. Sloan and Popapow also entered the rear room. They were still reluctant about showing their identifications. After Grinkowich spoke to Popapow in a foreign language, Popapow showed his driver's license and in a loud voice said, "That is all you are getting. The burden of proof is on you. You prove it."

On cross examination, the agent asserted that he had a gun in his possession, but no blackjack or similar weapon. Prior to the disturbance, the agents sat at the bar and each consumed two glasses of beer. Prior to entering the said licensed premises, Agent B had consumed a bottle of beer at a licensed premises he had visited at approximately 9:30 that night.

It appeared to the agent that the incident extended over a period of fifteen to twenty minutes. The four or five males rushed in through the front entrance. He had informed Popapow that he was checking out the female's age because she appeared to be a minor. During the fracas, no one intervened in behalf of the agents. Agent B then testified as follows:

"Q What led you to believe you were going to be assaulted?

A I saw my partner slammed against the pool table and fall to the floor; two males pushed me coming in, another male pushed me when I was talking to the girl.

Q Everything happened in a split second?

A I wouldn't say that, no. It took quite a while; a lot of argument with Mr. Popapow.

\* \* \*

Q How many times did you identify yourself to Mr. Popapow?

A Twice.

Q When did you first identify yourself to him?

A When we were checking the girl, first started checking the girl."

It was stipulated that the direct testimony of Agent O, who had accompanied Agent B in the investigation, would be similar to the testimony offered by Agent B.

On cross examination, Agent O testified that he had consumed one bottle of beer prior to entering the licensed premises and had consumed two glasses of beer during his stay in the licensed premises. He carried a service revolver and a blackjack but did not draw either. At the time that the agents were checking the female's age and Popapow had come to that area to inquire "what the trouble was", both agents identified themselves by showing their credentials. Five unidentified males rushed into the premises to assault the agents. Agent O identified himself to both Popapow and Sloan. Neither of them identified themselves at the request of the agent. He could not estimate how long the fracas lasted because "it seemed to start up and quiet down and start up several different times." His primary concern was "self-defense." When asked, "Is it your testimony nobody came to your assistance?", the agent replied, "No, sir. Mr. Schultz was standing right next to me. In fact, I had the license application from the premises in my hand at the time, and I was writing it down when these men entered the bar and the commotion started, and I had the license application in my hand when I was assaulted, and when I got off the floor the license application was wrinkled up in my hand in a small ball."

In defense of the charge, Alex Popapow, employed as a bartender by the corporate licensee on August 30, 1968,

testified that he recalled the Division agents entering the licensed premises on that night at "8:30, 9 o'clock", remaining there "about an hour, hour and a half", leaving the premises and returning after "about a half-hour." Approximately thirty patrons were at the bar. During the period of their first entry, each agent consumed "a few glasses" of draft beer and upon their return to the premises "a couple of glasses." Referring to Agent B, he testified that he "seemed to stagger or stumble as he went through the lobby out to the porch."

Popapow served the female referred to by Agent B a glass of beer. At Popapow's request the female showed him a New Jersey driver's license which indicated she was of statutory maturity. Approximately five or ten minutes later, Agent B went to the female's position and began questioning her in a loud voice, shouting "I am the law", and Popapow walked to where they were positioned. Agent B "showed me his ABC card, which he shoved right in my face two feet away. He said, 'I want you.' I didn't know what he meant. It seemed some confusion." Popapow then resumed serving patrons. Agent O was in the telephone booth. Upon being asked what happened next, the witness replied, "A lot of noise, lot of shouting, people running out the door, stampeding. At that time I seen a blackjack go through the air. The other fellow had a gun--not the other fellow, just him. Mr. Schultz jumped in to break it up. They told him who they were." Agent B did not ask him for identification until later when they were in the restaurant section. Agent B "seemed to be he had a few beers too many, probably slightly intoxicated." He estimated that approximately one half hour elapsed from the time Agent B announced to Popapow "I am the law" to the time the commotion subsided.

On cross examination, the witness testified that he recalled that there was a female at the bar who showed him a license containing "1946" as the year of her birth. He did not recall her name. He admitted hearing Agent B ask the female for identification. He knew that Agent B was connected with the ABC and was there for an investigation. He did not inform the agent that the female had presented identification due to Agent B's attitude; "nobody could go near him. He screamed out loud, 'I am the law' and shoved the card in my face."

Popapow asserted that he did not have time to assist the agent in obtaining identification of the female because the commotion or fracas started immediately. Concerning the commotion, Popapow testified:

"Q Your testimony was you heard something going on?

A That is right.

Q What was your demeanor during this time? Did you pass it off? The people running out.

A No, no. I said there was so much confusion, excitement, people running out. Mr. Schultz was there. He was telling them, 'Let's break it up. These are ABC agents, ABC men. Take it easy.' It was in his hands.

Q You didn't think it was necessary to come down?

A Mr. Schultz was there.

Q What did Mr. Schultz do?

A He told the people they were ABC agents, 'Calm yourselves. Everything is all right.'"

He did not see either of the agents being assaulted nor did he see one of the agents lying on the floor. At the confrontation in the restaurant, Agent B told Popapow, "I want that girl. You go get her." Popapow responded, "The burden of proof is on you to find the girl; not me."

On redirect examination, the witness testified that the flare-up was of four or five minutes duration, "maybe less."

Ivan Sulomenko testified that on the night of August 30 he visited the licensed premises accompanied by his wife. While in the dining room, he observed Agent B standing next to his wife who was then seated at the bar. As she was about to get up, Agent B put a hand on his wife's shoulder "like she should stop." He went to his wife and took her by the hand and said in Russian (she understood little English), "What happened?" She responded, "I don't know." Agent B asked Sulomenko, "Who the hell are you?" and he replied, "Who the hell are you?" At this point, Agent B "reach for the--for the pistol here and pull this thing out and put it in my chest three times. He said, 'That's who the hell me.'" The witness' brother Alexander and Agent O came to the scene. Ivan implored the agent to put away his gun. Agent O struck Alexander with a blackjack causing him to fall down against the pool table. Neither of the agents identified themselves to him. Schultz hid behind the bar. After he came out "he says ABC men." Popapow remained behind the bar. Agent B did not say that he wished to detain Sulomenko's wife.

On cross examination, the witness asserted that both he and his wife were in the United States since the year 1950; that his wife was born in 1946; that he had been married seven years and did not know his wife's birthday. He observed his wife show her driver's license to Agent B.

Alexander Sulomenko, a brother of the previous witness, testified that he patronized the licensed premises on the night in question. While in the vicinity of the pool table, he observed his brother "walk to his wife, they were talking like [to] these two guys." He then testified as follows:

"Q Were you able to hear what they were saying?

A Not then. I proceeded to go in there, I came to see what was going on, and next thing this guy pulled a gun. He says, 'This is who the hell I am.' When he pull the gun I try to come over. I says, 'Listen, put gun away. You are going to kill somebody.' I got shook up. This is my brother. Somebody come up behind, somebody push me. I look up and see blackjack on me."

\* \* \*

Q How quickly did all this happen?

A I say it wouldn't take a minute; two minutes, tops. When I got my blow that was it. I was stunned. I said, 'One got gun, the other got blackjack. I might as well leave as best I can.'

Q Did you then leave?

A Yes, sir."

He did not leave the premises with Ivan's wife. He identified Agent O as the individual who struck him with the blackjack.

On redirect examination, the witness testified that neither of the ABC men identified themselves to him. From the time he "came in and went out", "a minute or two" elapsed. On recross examination, the witness testified:

"Q ...From the time you entered and saw your brother's wife and the other things that happened how much time would you say elapsed? From the time you entered and saw these happenings, you got hit, and the time you left, how much time?

A Maybe ten or fifteen minutes."

Albert R. Dragun testified that he patronized the licensed premises on the night in question to "see a few friends I knew there" and sat at the far end of a U-shaped bar. His attention was directed to a commotion at the front end of the bar. He observed Agent B "hold a pistol on Mr. Sulomenko's chest" and Agent O "standing with a blackjack in his hand." He did not observe the agents show any identification. The witness then testified as follows:

"Q Up until this time had you overheard any conversation between them and anybody else in the bar?

A The conversation was scattered around, simmered down, one of the agents telling Alex Popapow, 'I want you,' and Popapow retorting back by saying to the effect, 'You have to show the burden of proof.' This I can hear because it was loud conversation.

Q Did this occur at the bar?

A Yes, it occurred at the bar, around it. Mr. Schultz was trying to interfere with the commotion by settling the people down. I don't think any one really knew these were two agents at the time.

Q How quickly did all this occur?

A This occurred, I would say, in about a 2 or 3 minute period, until finally and totally, I would say the over-all picture because it kept flaring up, about 5 to 10 minutes."

Dragun entered the telephone booth to call the State Police. After emerging from the telephone booth, he tried "to help simmer this thing down." One of the agents approached the other bartender, Bruce, and after some conversation, the agent pulled out his identification card. Dragun saw the card. He informed the bartender, "Those men are ABC agents. No question about it." This was after the commotion had occurred. Referring to Agent O, it was his opinion that he was speaking loudly; however, he had no difficulty in speaking. He did not observe either agent "walking any different than any other person at the time."

In rebuttal, Agent B testified, "I pulled the gun out of my holster and held it at all times by the grip. I did not point it at any one's chest. It was not cocked and my finger was not on the trigger."

Agent O testified that he had a blackjack in his possession, removed it from his pocket and held it in his left hand. He struck Alexander Sulomenko with his right fist and not with the blackjack.

The licensee argues that the Division failed to sustain the burden of proving the charge.

Preliminarily, it should be observed that in matters of this nature, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super 242 (App. Div. 1960); Howard Tavern, Inc. v. Div. of Alcoholic Beverage Control (App. Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

In appraising the factual picture presented herein, the credibility of witnesses must be weighed. Testimony, to be believed, must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

Applying these principles, I am strongly persuaded that the more probable version and the truth lie in the testimony of the Division agents. I am convinced that Agent B's testimony that the agents identified themselves to Herman Schultz (the manager of the licensed premises) and to Alex Popapow and Bruce Sloan (the bartenders) at the time the youthful appearing female was being questioned as to her age was factual and credible. I am also convinced that Popapow was well aware that Agent B was interrogating the female concerning her age in pursuance of his duty as an ABC agent and that Popapow repeatedly used the words "prove it" and "burden of proof." That Popapow used the phrase "burden of proof" was confirmed by one of the licensee's witnesses, Dragun, although Dragun testified that Popapow used that phrase in a different context. Additionally, I am of the opinion that the employees of the corporate licensee were aware of the identity of the agents prior to the commencement of the fracas or brawl and that the chain of incidents was at least of ten minutes duration, during which time none of the employees intervened in behalf of the agents.

It is apparent that Popapow's failure to disclose his identity when requested to do so by Agent B, his failure to cooperate with Agent B when he was investigating the female patron's age, and the failure of any of the corporate licensee's employees to assist the agents in quelling the disturbance was tantamount to an abdication of their duties to facilitate, and not delay or hinder, an investigation being carried on by the

agents. Thus, they were thereby in violation of the applicable rule set forth in the charge. It is worthy of note that Schultz (the licensee's manager) failed to testify.

An additional basic principle is worthy of emphasis. In disciplinary proceedings, the licensee is fully accountable for all violations committed or permitted by his servants, agents or employees. Rule 33 of State Regulation No. 20. Cf. In re Schneider, 12 N.J.Super. 449 (App. Div. 1951).

I conclude that a fair evaluation of the evidence clearly and reasonably preponderates in favor of a finding of guilt of the charge alleged.

Licensee has no prior adjudicated record. I further recommend that the license be suspended for twenty days. Re Colonel Cooper, Inc., Bulletin 1491, Item 8.

#### Conclusions and Order

Written exceptions to the Hearer's report and argument thereto were filed by the licensee, pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions have either been considered in detail by the Hearer in his report or are without merit.

Consequently, having considered the entire record herein, including the transcript of the testimony, the exhibit, the Hearer's report and the exceptions and argument filed with reference thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 7th day of August, 1969,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Jackson to Rova Farms Resort, Inc., for premises Cassville and Trenton Road, Jackson, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Thursday, August 14, 1969, and terminating at 3:00 a.m. Wednesday, September 3, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN LICENSE APPLICATION - FRONT - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

Tunnel Hill Corporation )  
t/a Tunnel Hill Tavern )  
Oxford-Karrsville Road )  
Mansfield Township )  
PO Oxford, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-6 issued by the Township Committee of the Township of Mansfield, Warren County )  
- - - - - )

Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys for Licensee  
Louis F. Treole, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that by false statements in its application for 1968-69 license, it concealed (1) and (2) the fact that Edgar Darringer and Maude Darringer were the real and beneficial owners of the licensed business and (3) from on or about June 7, 1961 to June 12, 1969, it aided and abetted the Darringers to exercise the rights and privileges of the license, in violation of R.S. 33:1-25 and 52.

During the pendency of this proceeding, the unlawful situation was corrected by stock transfer from Joseph Dackow, Mary Dackow and Olga M. Berry to Edgar Darringer and Maude Darringer.

Licensee has a previous record of suspension of license by the Director for twenty days effective February 17, 1965, for sale during prohibited hours and false statement in license application (Re Tunnel Hill Corporation, Bulletin 1607, Item 5) and by the municipal issuing authority for twenty days effective December 1, 1966, for sale during prohibited hours. In addition, the license for the same premises then held by the said Joseph Dackow was suspended by the municipal issuing authority for five days (with operation of penalty suspended) on October 9, 1946, for local hours violation, and by the Director for ten days effective July 6, 1959, for sale to minors.

The prior record of suspensions in 1946 and 1959 for dissimilar violations by Joseph Dackow is disregarded but the record of suspensions in 1965 and 1966 for violations dissimilar to those presently charged is considered since the Darringers, while not listed as corporate stockholders at the time of those violations, nevertheless were admittedly the real and beneficial owners of the licensed business. Moreover, it appears that one or both of them actually participated in those violations. The license will be suspended for twenty days (Re Pappanastasiou, Bulletin 1826, Item 4; cf. Re DeOrio, Bulletin 1859, Item 5), to which will be added ten days by reason of the record of two suspensions of license within the past five years (Re Nazario, Bulletin 1840, Item 5), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 4th day of August, 1969,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Mansfield, Warren County, to Tunnel Hill Corporation, t/a Tunnel Hill Tavern, for premises on the Oxford-Karrsville Road, Mansfield Township, be and the same is hereby suspended\* for twenty-five (25) days, commencing at 3:00 a.m. Monday, August 11, 1969, and terminating at 3:00 a.m. Friday, September 5, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

\*By order dated August 8, 1969, the suspension imposed was lifted for one day, viz., August 24, 1969, and the termination date extended one day until 3:00 a.m. Saturday, September 6, 1969.

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
Burdell Clark  
t/a Birdie's Lounge  
50-52 Spring Street  
Paterson, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-189 issued by the Board of Alcoholic Beverage Control for the City of Paterson

Licensee, Pro se  
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 22, 1969, he sold a pint bottle of gin for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the municipal issuing authority (1) for ten days effective September 14, 1964, for permitting a brawl on the premises, (2) for thirty days effective May 1, 1965, for failure to employ a constable during certain hours in violation of local ordinance and conducting the business as a nuisance, and (3) for ten days effective July 18, 1966, for sale to minors.

The license will be suspended for fifteen days (Re Rosenfield & Carlson, Bulletin 1864, Item 3), to which will be added fifteen days by reason of the prior record of three suspensions for dissimilar violations occurring within the past five years (Re Sandford, Bulletin 1788, Item 4), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 11th day of August, 1969,

ORDERED that Plenary Retail Consumption License C-189,

issued by the Board of Alcoholic Beverage Control for the City of Paterson to Burdell Clark, t/a Birdie's Lounge, for premises 50-52 Spring Street, Paterson, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. Monday, August 18, 1969, and terminating at 3:00 a.m. Friday, September 12, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

6. STATE LICENSES - OBJECTIONS TO TRANSFER OF STATE BEVERAGE DISTRIBUTOR'S LICENSE - TRANSFER APPROVED.

In the Matter of Objections to the )  
Transfer of State Beverage Distrib- )  
utor's License SBD-74 issued to )

Bohl Beverage Company, Inc. )  
260 Crystal Street )  
North Arlington, N. J. )

CONCLUSIONS

to premises )

2321 Route 22 )  
Union, N. J. )

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Lillian Forman-Neubauer, Esq., Attorney for Applicant  
Julius R. Pollatschek, Esq., Attorney for Objector Union County  
Package Stores Association

No appearance on behalf of Objector Union Township Committee

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an application for a place-to-place transfer of a state beverage distributor's license from premises 260 Crystal Street, North Arlington, to premises 2321 Route 22, Union. Written objections were filed on behalf of the Township Committee of Union and the Union County Package Stores Association. A certified copy of a resolution dated May 27, 1969, objecting to the transfer of the license in question, was marked as an exhibit in evidence in this matter.

David S. Dancy, president of the corporate licensee seeking the transfer, testified that accommodations in the premises to which the license is presently issued are inadequate. He further testified that three trucks are used for deliveries of soda and beer on Tuesdays and Saturdays, which vehicles leave the premises on the days in question between 10:00 and 10:30 a. m. and return at approximately 3:30 p. m. On other weekdays, two trucks are operated. Dancy further testified that the nearest liquor outlet to the proposed site is located about "a quarter-mile to a half-mile" away. He further stated that the premises to be used also contains a wholesale bread establishment but will be fully separated from the licensed premises and the latter will have a separate entrance.

Josephine Norwood, a resident of Union, testified that she is a beer and soda customer of the applicant. By stipulation, it was agreed that three other women residing in the Township of Union purchase beer and soda from the applicant.

William L. O'Rourke, a police sergeant produced on behalf of the township, testified that as part of his duties, he is in charge of traffic in the township and is familiar with the location of the proposed licensed premises. He stated that the traffic at said location "is congested...because there is a large quantity of businesses congested together at that point" and, in his opinion, the transfer of the license to that area would have an adverse effect on the highway.

On cross examination, Sgt. O'Rourke testified that "the big hour is from 5 to 6" p. m. but "in non-peak hours traffic will drop down but it isn't going to drop that much because of the retail businesses that are there." In further explanation of the reduction in traffic on the highway, Sgt. O'Rourke said that between 10:00 a. m. and 4:00 p. m. "they wouldn't drop any more than 50 percent, which would still give approximately 2,000 vehicles passing that location in an hour." Sgt. O'Rourke agreed, however, that 50 percent drop in traffic is considerable.

James C. Conlon, a member of the Township Committee, testified that in view of the number of liquor outlets of all types in the township, there is no need for the license in question.

Meyer Trachtenberg testified that he is the proprietor of two liquor establishments, one located in another municipality and one situated in Union about three quarters of a mile from the proposed premises. He stated that he appeared at the hearing herein as an individual objector and also as vice-president of the Union County Package Stores Association. Mr. Trachtenberg said there are sixteen package stores and six holding warm beer licenses which make deliveries and, in addition thereto, other liquor licensees in surrounding communities do likewise.

The customary investigation in matters of this kind disclosed that the officers of the licensee are persons of good character and the premises are not within 200 feet of any schools or churches.

In view of the off hours that trucks will leave and return to the proposed licensed premises, an increase in traffic conditions appears comparatively slight indeed. No matter what type of business is operated at the premises would, to some degree, have an impact on the traffic conditions.

I am convinced that the objections raised at the instant hearing are not sufficient to prevent the place-to-place transfer to the premises in question from being granted. Re Kalb, Bulletin 1721, Item 2.

Thus it is recommended that the pending application for place-to-place transfer of the license under consideration be granted, but no operation pursuant thereto be conducted at the proposed premises until there is compliance with all other necessary legal requirements.

#### Conclusions

No exceptions to the Hearer's report were filed in this matter.

I have given careful consideration to the evidence presented and to the Hearer's report. I concur in the conclusions

and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, the pending application is approved and the appropriate endorsement on the license certificate may be made, subject to the completion of all statutory requirements.

JOSEPH M. KEEGAN  
DIRECTOR

Dated: August 11, 1969

7. DISCIPLINARY PROCEEDINGS - SALE BELOW FILED PRICE - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
	)	
403 Myrtle Avenue Corp.	)	CONCLUSIONS
t/a Acme Delicatessen	)	AND ORDER
403 Myrtle Avenue	)	
Irvington, N. J.	)	

Holder of Plenary Retail Distribution License D-22 issued by the Municipal Council of the Town of Irvington	)
	)

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Licensee, by Joan Davidson, President  
Louis F. Treole, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on July 3, 1969, it sold two bottles of whiskey below filed price, in violation of Rule 5 of State Regulation No. 30.

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 Sallar, Inc., Bulletin 1844, Item 6.

Accordingly, it is, on this 11th day of August, 1969,

ORDERED that Plenary Retail Distribution License D-22, issued by the Municipal Council of the Town of Irvington to 403 Myrtle Avenue Corp., t/a Acme Delicatessen, for premises 403 Myrtle Avenue, Irvington, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. Monday, August 18, 1969, and terminating at 9:00 a.m. Saturday, August 23, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

8. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto.Susp. #321	)	
In the Matter of a Petition to Lift	)	
the Automatic Suspension of Plenary	)	
Retail Consumption License C-72,	)	On Petition
issued by the Board of Alcoholic	)	
Beverage Control of the City of	)	O R D E R
Clifton to	)	
 R & L Club, Inc.	)	
18 River Road	)	
Clifton, N. J.	)	

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Louis Wasserstrum, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on August 12, 1969 Joseph R. Monia, vice president of the licensee-petitioner, was fined \$100 and \$5 costs in the Clifton Municipal Court after being found guilty of a charge of sale of alcoholic beverages to minors on May 16, 1969, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioner's license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that an appeal has been taken from the criminal conviction and that in disciplinary proceedings conducted by the municipal issuing authority the licensee was found not guilty of charges alleging the same sale to the minors. In fairness to petitioner I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Slaff, Bulletin 1768, Item 4.

Accordingly, it is, on this 2nd day of September 1969,

ORDERED that the aforesaid automatic suspension of License C-72 be stayed pending the entry of a further order herein.

  
 Joseph M. Keegan  
 Director