

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

BULLETIN 1800

July 23, 1968

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

BULLETIN 1800

July 23, 1968

1. CHARMS LIQUOR, INC. v. LONG BRANCH - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-437-67

CHARMS LIQUOR, INC., t/a)
Mickey's Joline Bar & Grille,)
Appellant,)
-vs-)
CITY COUNCIL OF THE CITY OF)
LONG BRANCH,)
Respondent.)
-----)

Argued June 10, 1968 -- Decided June 13, 1968.

Before Judges Goldmann, Kilkenny and Carton.

On appeal from the Division of Alcoholic Beverage Control.

Mr. Daniel J. O'Hern argued the cause for appellant (Messrs. Abramoff, Apy & O'Hern, attorneys).

Mr. Robert I. Ansell argued the cause for respondent (Mr. Julius J. Golden, attorney).

Mr. Arthur J. Sills, Attorney General of New Jersey, filed a statement in lieu of brief on behalf of the Division of Alcoholic Beverage Control (Mr. Stephen Skillman, of counsel).

The opinion of the court was delivered

PER CURIAM

(Appeal from the Director's decision in Charms Liquor, Inc. v. Long Branch, Bulletin 1770, Item 1. Director affirmed. Opinion not approved for publication by the Court committee on opinions.)

2. STATE REGULATION NO. 34 - WARNING TO MANUFACTURERS, WHOLESALERS AND RETAILERS OF STRICT FUTURE ENFORCEMENT.

ADDRESS DELIVERED TO MANUFACTURERS AND WHOLESALERS AT THE DIVISION OFFICE.

May 28, 1968

I have asked you gentlemen to appear here this morning because I have been disillusioned.

When I was offered, and accepted, the position as Director of the Division of Alcoholic Beverage Control, 4 months and 13 days ago, I assumed that I would be supervising an industry that was well regulated, law abiding and economically sound. My short tenure in office has convinced me that you are rapidly drifting away from obedience to the law and from being well regulated. This may very soon affect your sound economic structure.

Let me first say I know very few of you personally and few of you know me other than by name and as a former legislator. As you get to know me better you will find I am a most determined individual, ready to fight at the drop of a hat and a stickler for seeing laws or rules and regulations obeyed to the nth degree. You may have noticed that I was Director for only a month or so when I revoked five retail licenses in Paterson, which is my own back yard. I would have no hesitancy in suspending or revoking any wholesale license if the situation so warranted. I have no axe to grind other than to perform my duties. I don't intend to address my remarks to any individual but to wholesalers and distillers' representatives collectively. So much for my introduction, and now to the point.

For more than 25 years a regulation has existed -- designed primarily to maintain an orderly market at the distiller to wholesaler and wholesaler to retail levels. I speak of State Regulation No. 34. It has always been the contention of the Division, and my predecessors, that an orderly market at your level will eliminate chaos and an unfair market at the retail to consumer level. I am of the same opinion and intend to prevent any disruption of the retailer to consumer market.

Since I have been Director I have, on many occasions, heard the expression "There are no secrets in the whiskey business", and you are well aware that it is true.

Because of this I have already become well acquainted with most all of the promotional gimmicks used by distillers' representatives and wholesale licensees and their salesmen to obtain additional sales of their products. I have listened to many stories of free goods, deals, premiums and cash kick-backs as high as six per cent. I have just about heard enough. You are here this morning because I have heard enough. Now it is your turn to hear. You had better listen well.

I know all about the pressures put on the wholesalers by the distillers. I also know that most of you wholesalers would rather do business in accordance with Regulation No. 34. But, unfortunately, one distiller or one wholesaler breaks through with a "deal" and everyone follows, using the excuse that they must do it to hold on to their business.

I don't intend to threaten you with the possible rescission of Regulation No. 34. I believe it is a good regulation and one that is needed in the industry. But I do intend to have you

people adhere to it or I will do my utmost to put you out of the whiskey business in the State of New Jersey.

At this moment I have only hearsay evidence and no specific plan for correcting the disorderly market that exists today. But I do have several people with the "know-how" and about 70 investigators that I can assign, full time, to do nothing but get the necessary evidence for me to proceed against your license. And, gentlemen, the brazen way you have been operating, a cop who could not find himself in a dark room with both hands free would arrest 90% of you in one day. I sincerely hope that it will not be necessary for me to assign this matter to competent and efficient members of my staff or others.

I would like to remind you people who hold solicitor's permits that I need not have irrefutable evidence in order to keep you out of the whiskey business in this state. You may have never noticed the terms of your solicitor's permit. If you take the time to read it you will see that I have the right to cancel it, in my sound discretion, at any time without notice or assignment or reason or cause. Sound discretion is a broad term and can be interpreted many different ways.

You wholesale licensees might remember that you are responsible and accountable for violations of the law and rules and regulations committed by your agents. It might be well to so advise your solicitors of both of these facts. Remember also, your licenses are renewable for July 1st -- but not automatically -- only after review and consideration by myself.

As I said before, I have no evidence at this time to proceed against anyone but I give you my word, gentlemen, that if the market is not cleaned up, and cleaned up instantly, I intend to start looking for that evidence and let the chips fall where they may.

I may sound blunt or even harsh, but let me assure you I will go to almost any length to perform my sworn duty to enforce the Alcoholic Beverage Law, the Rules and Regulations, and to maintain my ideals of justice and fairness.

I suggest, for the good of the industry, that all of you pay heed to my remarks today. Thank you.

If there are any questions, let he who is without sin cast the first stone.

* * * * *

June 20, 1968

TO ALL RETAIL LICENSEES:

On May 28, 1968, I addressed representatives of the manufacturers and wholesalers of the alcoholic beverage industry in this State with respect to the fact that there has not been an orderly market at the manufacturer to wholesaler and wholesaler to retailer levels. On June 10, 1968, I addressed representatives of the retailers with respect to the same subject.

However, the events of the past weeks lead me to the conclusion that I have not yet reached an adequate number of licensees to impress upon the industry my determination to enforce the provisions of the Alcoholic Beverage Law (R. S. 33:1-90-92) and State Regulation No. 34, which prohibit any "deals" in the sale of alcoholic beverages to retailers. Accordingly, I am having this notice sent to each retail licensee, setting forth the following pertinent excerpts from the two above addresses:

"For more than 25 years a regulation has existed -- designed primarily to maintain an orderly market at the distiller to wholesaler and wholesaler to retail levels. I speak of State Regulation No. 34. It has always been the contention of the Division, and my predecessors, that an orderly market at your level will eliminate chaos and an unfair market at the retail to consumer level. I am of the same opinion and intend to prevent any disruption of the retailer to consumer market.

"As I advised the wholesalers and distillers two weeks ago, I am a most determined individual and have no compunction in revoking or suspending any license if the situation so warrants. In fact, in the less than five months that I have been Director I have already revoked or affirmed revocations of seven licenses. More than half of such licenses were right in my own back yard.

"To be more specific, the Alcoholic Beverage Law prohibits, directly or indirectly, the granting of any free goods, cash kickbacks, premiums or any type of inducement by any wholesaler to any particular retailer. The Law also provides that the retailer who participates, directly or indirectly, in any such transaction, is acting in violation of the law. A violation of such law not only subjects the offender to possible suspension or revocation of license but is also punishable by a fine or imprisonment.

"I assured the distillers and the wholesalers that I intend to break up these practices and clean up our market even though it might require the services of every employee of this Division and no matter who I had to put out of the liquor business in this State.

"I want you men to carry back the message that this likewise holds true with retail licensees

"I know all about the deals which were offered by wholesalers and salesmen but I also know of the many, many instances of deals instigated by retailers. I am quite familiar with the method used by retailers of 'playing' one salesman against the other with stories of deals which were never actually offered. Unfortunately, these stories are sometimes effective. Many salesmen believe them and, in order to keep their business, they meet these fictitious offers out of their own pockets. The retailer then sits back, 'smug' and 'complacent', and considers himself an excellent business man.

"We don't want that kind of business man in our business!

"I feel confident that the wholesale level of the industry will exercise every possible means to do business in an orderly market. However, to maintain this orderly market I must have the cooperation of the retailer. Once you people urge a salesman to give you the slightest edge over your competitor you have opened the door to the disruption of the entire industry. I don't intend to sit back and allow this to happen.

"You should remember that information seeps into this office from thousands of sources. There is very little that goes on in the liquor business that we don't hear. I assure you that any information I receive which has the slightest intimation of a deal will receive my personal attention. The investigation will not be a cursory one.

It may involve weeks of examining all your records; interrogation of your employees; questioning salesmen who service you and who, to save their own skin, may tell us more than you would want them to; and perhaps, even questioning your customers. When the Division uncovers sufficient evidence you have my unqualified assurance that the evidence will be given to our Prosecution Section for immediate and vigorous action.

"Gentlemen, I have very little more to say. I intend to perform my sworn duty as Director and, to the best of my ability, enforce every law, rule or regulation over which I have jurisdiction."

I have now gone on record to every segment of the trade as to my position covering "deals". I enlist your cooperation in securing compliance with the hereinabove cited portions of the Alcoholic Beverage Law and Regulations but assure you that, in any event, strict enforcement will be effected to attain such compliance.

JOSEPH M. KEEGAN
Director.

3. APPELLATE DECISIONS - RUSTIC ACRE BAR, INC. v. DOVER AND RIVERVIEW HOTEL & RESTAURANT.

APPELLATE DECISIONS - CAYARD, INC. v. DOVER AND RIVERVIEW HOTEL & RESTAURANT.

RUSTIC ACRE BAR, INC., et al.,)
Appellants,)

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF DOVER, and RIVERVIEW HOTEL &)
RESTAURANT, t/a (RIVERVIEW HOTEL &)
RESTAURANT),)
Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
CAYARD INC., t/a TOMS RIVER HUB,)
and VIDELES INC., t/a THE KEG,)
Appellants,)

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF DOVER, and RIVERVIEW HOTEL &)
RESTAURANT, t/a (RIVERVIEW HOTEL &)
RESTAURANT),)
Respondents.)

-----)
Alan J. Pogarsky, Esq., Attorney for Appellants Rustic Acre)
Bar, Inc., et al.)
Citta and Gasser, Esqs., by Robert A. Gasser, Esq., Attorneys)
for Appellants Cayard Inc., et al.)
Lawrence L. McIver, Esq., Attorney for Respondent Township)
Committee.)
Robert J. Novins, Esq., Attorney for Respondent Riverview)
Hotel & Restaurant.)

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Two separate appeals were filed by appellants in this matter against the respondent Township Committee (hereinafter Committee) and Riverview Hotel & Restaurant (hereinafter licensee). By consent of the parties to the said appeals and in view of the fact that the issues are interrelated and involve common questions of law and fact, they were consolidated for hearing and will be the subject of a single report.

By resolution dated September 12, 1967, the Committee, by a four to one vote of its members, approved the application for the place-to-place transfer of licensee's license from 77 E. Water Street to the shopping center where the proposed site is located at 201 West Locust Street (Toms River), Township of Dover, with a provision that the license shall not be issued until the building which is to constitute the licensed premises has been constructed in accordance with filed plans and specifications and furthermore conforms to all provisions of applicable existing local ordinances.

The petitions of appeal filed by the respective appellants allege in substance that there is (1) no need for a liquor outlet at the proposed site, (2) that the parking requirements as contained in the ordinance have not been provided, (3) that there is a church and also an ice cream stand in close proximity to the proposed location, and (4) that the action of the Committee was arbitrary, capricious and unreasonable.

The answers filed by the respondents deny the aforesaid allegations and contend that, under the circumstances, the action of the Committee in approving the application for the place-to-place transfer constituted a proper exercise of its discretion.

The appeals were heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for all parties to present their testimony and cross-examine witnesses.

John A. Ernst (Dover Township engineer) testified that the proposed premises to be constructed in the shopping center are "in the highway business zone" and that "the surrounding areas are largely residential and industrial;" that thirty to fifty feet distant therefrom, and immediately east of the site of the proposed premises, is "a stand that sells, in addition to root beer, sandwiches and light lunches;" that two hundred or three hundred feet west of the proposed site is an ice cream custard stand, and that on the north side of Route 37 east of and across the road from the proposed site, at a distance of approximately three hundred feet, is a church.

Ernst further testified that the two existing buildings plus the proposed licensed premises will contain 25,319 square feet and thus, under the ordinance pertaining thereto, would require six spaces for every 1,000 square feet of floor area or 152 parking spaces and, when combined with the 28 spaces to be used for parking requirements for the two medical professional buildings, there will be a total of 180 parking spaces.

Ernst further concluded that, by using the correct method set forth in the zoning ordinance, he calculated that sufficient parking spaces will be provided to meet the requirements of the existing zoning ordinance.

Carl A. Post (a registered architect) testified that he prepared the design for the liquor premises in question and also plot plans of the Oakridge shopping center, the first thereof being prepared on September 11 and the final one on September 23, 1967. It appears from the testimony of Mr. Post that he had various conferences at the township engineer's offices and that, as a result, he had made changes in the plot plans until a final one was acceptable to the township engineer as complying with the zoning ordinance, especially with reference to the number of required parking spaces.

Edward Angster (land surveyor) testified that "I conducted a survey as far as I located the building and measured up the building and sidewalks. We did not run a complete survey, that is, set all the property corners, but we did the survey in order to come up with the requirements of the job." He further testified that, based upon the licensee's interpretation of parking for the various buildings in the shopping center, he figured that 209 parking spaces would be required.

On cross examination Angster said that he made a computation of the square footage of the buildings now in the shopping center by measuring the outside perimeter of the buildings and not the measurement of the interior floor spaces as the method to be used in accordance with the zoning ordinance. Angster said that the figures he used were from the application for permit to construct the building which is intended for the licensed premises, and including the overhang it comprised 5,600 square feet. Angster further testified that, although the ordinance relating to the shopping center refers to retail establishments, he included the medical buildings as part of the total area to determine the number of required parking spaces.

John J. Mount (a member of the Committee) testified that the sole reason he voted to deny the transfer of the license in question was because he considered it to be a restaurant license as it was formerly in a hotel before the latter was destroyed by fire.

Mayor Josovidz (an officer of the corporate licensee) testified that the hotel where the license was formerly located was never rebuilt after the fire on December 25, 1965, and he stated that it is the licensee's intention to operate a "bar and package goods" at the proposed location. Josovidz further testified that each of the two liquor outlets closest to the desired new location is approximately three-quarters of a mile distant.

John Ernst, recalled as a witness on behalf of the Committee, testified that there are 1,406 homes now located within the immediate vicinity of the proposed location in the shopping center, and it is his opinion that the section is one of the fastest growing areas in the Township. Furthermore, Ernst stated there have been considerable commercial enterprises constructed and operating along the highway.

John G. Woods (chairman of the Committee) testified that he voted to approve the transfer of the license because the area to which the licensee sought transfer has increased greatly in population during the past few years and that, in his opinion, there is a need for and a convenience to be served by the public

at the proposed site. Chairman Woods also stated that, in so far as traffic is concerned, such an operation as contemplated by the licensee will create less traffic than would many other types of retail establishments. Chairman Woods also said that it was "left up to our engineer to determine the amount of parking."

Joseph E. Wheeler (a member of the Committee) testified that he voted to approve transfer of the license because he believes that there is a need for the liquor license at the proposed location. Committeeman Wheeler also testified that he was in agreement with the testimony of Chairman Woods with reference to the large increase in population in the immediate area and that the license at the proposed site would serve the public need. He said that the required parking facilities was a question for the zoning officer and that the Township engineer informed the Committee that there were sufficient parking spaces in conformity with the provisions of the zoning ordinance.

Appellants contend that the licensee has not complied with the directive in the zoning ordinance with reference to available parking facilities in the shopping center. The Committee asserts that the licensee has complied with the provision of the ordinance in question. However, in a matter of transfer of a liquor license such as now under consideration, Judge Gaulkin, in Lublimer et al. v. Paterson et als., 59 N.J. Super. 419 (1960) stated that violation of a zoning ordinance, building code, health code and the like would not in itself prevent a local issuing authority from granting a license to a particular premises but, before the liquor licensee could operate the establishment, he must comply with all applicable statutes and ordinances. On appeal to the Supreme Court of New Jersey (33 N. J. 428), Justice Jacobs, speaking for the court with reference to an alleged zoning violation, said:

"... In dealing with that contention the Appellate Division properly pointed out that the grant of Mr. Hutchins' application would in nowise permit him to operate in contravention of any applicable zoning provisions; if he ever attempts to so operate, relief is readily available." See Carrou v. Teaneck Tryon Co., 11 N. J. 294 (1953).

In view of the above decision it becomes unnecessary to consider the question of available parking facilities so as to conform to the ordinance prior to transfer of the license. Cf. Piccirillo v. Lyndhurst, Bulletin 1578, Item 3; aff'd Moderelli and Board of Commissioners of the Township of Lyndhurst v. Piccirillo and Div. of Alcoholic Beverage Control (App. Div. 1966), not officially reported, reprinted in Bulletin 1662, Item 1. According to the testimony of Chairman Woods, in addition to the attorneys representing the appellant liquor licensees herein a minister and a woman spoke before the Committee in opposition to the transfer of the license. At the hearing herein no objectors were present. Committeeman Mount stated that his sole objection which prompted him to vote to deny the application of the licensee for transfer was that the license in question he considered a restaurant license because of its prior use. Committeemen Woods and Wheeler testified that in their opinion there was a need for and convenience to be served by the transfer of the license to the proposed location.

The burden of establishing that the action of the Committee in granting the transfer was erroneous and should be reversed rests with appellant. Rule 6 of State Regulation No. 15. It has been consistently ruled that no one has a right to

the issuance or transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N.J.L. 586; Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949). The decision as to whether or not a liquor license shall be transferred to a particular locality rests in the first instance within the sound discretion of the local issuing authority. Hudson-Bergen Retail Liquor Stores Association v. North Bergen et als., Bulletin 997, Item 2. Where there is an honest difference of opinion in the exercise of discretion for or against the transfer of a liquor license, the action of the issuing authority in approving the transfer should not be disturbed. Paul v. Brass Rail Liquors, 31 N. J. Super. 211 (App. Div. 1954). A local issuing authority has been held to possess wide discretion in the transfer of a liquor license subject, of course, to review by this Division in the event of any abuse thereof. Passarella v. Atlantic City et als., 1 N. J. Super. 313.

In Fanwood v. Rocco, 33 N. J. 404, 414, Justice Jacobs stated:

"Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for a tavern or package store license or the transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him. See Cino v. Driscoll, 130 N.J.L. 535 (Sup. Ct. 1943); Township Committee of Lakewood Tp. v. Brandt, 38 N.J. Super. 462, 467 (App. Div. 1955); Neiden Bar and Grill v. Municipal Board of Alcoholic Beverage Control of the City of Newark, 40 N. J. Super. 24, 28 (App. Div. 1956). Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable."

See also Essex County Retail Liquor Stores Assn. v. Newark et al., 77 N. J. Super. 70 (1962).

The Director's function on appeals of this kind 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. Larijon, Inc. v. Atlantic City, Bulletin 1306, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1.

In other words, the action of the municipal issuing authority may not be reversed by the Director unless he finds the act of the board was clearly against the logic and effect of the presented facts. Hudson-Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502; cf. Fanwood v. Rocco, supra.

In Fanwood the case of Ward v. Scott, 16 N.J. 16 (1954) was cited, wherein the Supreme Court dealt with an appeal from a zoning ordinance and set forth the following general principle:

"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)."

There is no dispute that the proposed area to which the licensee has requested transfer of its license is used for business purposes.

I am satisfied from the record that the members of the Committee were not improperly motivated and acted in accordance with their best judgment in the interest of the community.

The attorneys for the appellants contend that, since the plot plans with reference to the required parking facilities were revised subsequent to the hearing before the Committee, a rehearing should have been held in the matter in order to afford the opportunity for objectors to inspect said plans. However, at this de novo hearing, if objectors appeared, permission would have been granted to inspect the revised plans. As a matter of fact, objectors were conspicuous by their absence. Thus such argument carries no weight.

I have carefully considered all of the grounds mentioned in the petitions of appeal and which were expressed during the hearing, and conclude that there has been sufficient proof with reference thereto to warrant the approval of the application for transfer of the license in question. The evidence presented indicates that the action of the respondent was neither arbitrary, capricious, unreasonable nor did it constitute an abuse of discretion on its part.

Under the circumstances, after examination of all of the evidence presented it is apparent that the appellants herein failed to sustain the burden imposed upon them. Thus it is recommended that an order be entered affirming the action of the Committee and dismissing the appeals.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 10th day of May 1968,

ORDERED that the action of respondent Township Committee of the Township of Dover be and the same is hereby affirmed, and that the appeals herein be and the same are hereby dismissed.

JOSEPH M. KEEGAN
Director.

4. APPELLATE DECISIONS - THROUGH CORP. v. PATERSON.

THROUGH CORP.,)
 t/a Through Corp.,)
)
 Appellant,)
)
 --vs--)
)
 BOARD OF ALCOHOLIC BEVERAGE)
 CONTROL FOR THE CITY OF)
 PATERSON,)
)
 Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

 William J. Rosenberg, Esq., Attorney for Appellant.
 Robert P. Swartz, Esq., by A. Michael Rubin, Esq., Attorney for
 Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant, holder of a plenary retail consumption license for premises 279 Market Street and 10 Park Avenue, Paterson, was found guilty by respondent of violation of Rule 1 of State Regulation No. 20, in that it sold and delivered alcoholic beverages at its licensed premises to three minors, and its license was suspended for forty-five days effective October 23, 1967.

It filed this appeal challenging such action, and on October 19, 1967, an order was entered staying respondent's order of suspension until further order of the Director.

At the hearing herein, appellant's attorney abandoned certain allegations raised in the petition of appeal and contended mainly that the verdict was against the weight of the evidence. This allegation was denied by respondent.

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

Patrolman Emil Peri of the Paterson police force testified that he entered the licensed premises on July 6, 1967 at approximately 11:30 p.m. He was accompanied by his superior officer, Lieutenant Perrulli. A male identified as Frank Davino was tending bar. He observed Davino serving a beverage, later identified by him as beer, to three male youths (identified as Clifford ---, William --- and Richard ---) who were seated at the bar near the Park Avenue entrance. Upon confrontation by Peri, Davino admitted serving the youths.

Clifford testified that he was 17 years of age on the date alleged, entered appellant's licensed premises with Richard and William and sat at the bar. Davino was tending bar. When questioned by Davino as to what he wanted, Clifford replied that he wanted a shot of gin and a beer. He was served and consumed the beverages. Davino did not ask him to make any representation as to his age. He recalled being questioned in Davino's presence by Officer Peri as to his age.

On cross examination, Clifford testified that he first entered the tavern on the night in question with William about ten o'clock. They departed after "about twenty minutes." He returned with Richard and William at approximately 11:00 p. m.

Richard testified that he was 19 years of age, entered the tavern on July 6 with William and Clifford and, upon being asked by Davino as to what he wanted, he replied, "A shot of vodka or gin, vodka or gin, one of the two, I believe gin." He also ordered Budweiser beer. Although served the beverages, he did not consume any of them because he saw the officer questioning his companions as to their identification. Davino did not question Richard as to his age.

William was not produced as a witness, nor was any competent proof of his age adduced.

William W. Harris, secretary of the Board of Alcoholic Beverage Control, testified that the board found the licensee (appellant) guilty of serving the three minors and suspended its license for forty days, to which five days were added in consideration of the licensee's prior record.

In behalf of appellant, Frank A. Davino testified that he was employed as a bartender by the licensee corporation and on July 6, 1967, commenced tending bar at 6:00 p.m. He recalled that Clifford and Richard entered the tavern that night at approximately "a quarter of ten." He asked them to leave and "they went out." At approximately 11:20 p.m. he saw Officer Peri and a police lieutenant in the tavern speaking to the youths involved herein. He denied serving alcoholic beverages to either Clifford, Richard or William. Continuing, Davino testified as follows:

"Q Did any of the officers in the tavern ask you whether or not you had served these two boy?

A No, sir.

Q After you got down to the detective bureau were you questioned about serving these two boys?

A No, sir.

Q Were you asked to give a statement?

A Yes, sir.

Q What did you say?

A I told them, 'No.'

Q Did you hear these young boys in the tavern tell the police officers you had served them?

A No, sir, I did not hear that.

Q Did you see the young boys standing by the bar with three bottles of Budweiser beer and some shot glasses in front of them?

A At the end of the bar there I had some customers down there I already served nips and shots and things. There was a lot of glasses and beer glasses and nip bottles on the bar on that end.

Q Were those customers still in the bar when you saw the police officers with those two boys?

A I think they were up by the pinball machine."

Donald Rivers, who was employed as a part-time bartender by appellant, testified that he was in the tavern as a patron on the evening of July 6, drinking and playing the pinball machine. He observed Clifford and Richard enter the tavern "around 9:30, 10 o'clock" at which time Davino asked them to leave. He did not see the youths again until the officers arrived at approximately "11, 11:30" p.m. He observed the police officers conferring

with the youths. He did not hear the conversation. The youths were seated at the bar at the Park Avenue side. Davino was serving patrons at the Market Street side of the bar. Rivers did not see Davino serve the youths, nor did he see them drinking. However, he did not keep Davino under constant surveillance all evening and he did not know how long the youths were seated at the bar prior to the police officers' entry.

In the absence of competent proof as to William's age, I have no alternative except to recommend reversal of the action of respondent in so far as finding appellant guilty of sale of alcoholic beverages to him. Clarence's Music World, Inc. v. Newark, Bulletin 1681, Item 2.

My evaluation of the testimony inclines to the conviction that respondent's witnesses clearly portrayed the true factual circumstances and that it stands in better posture than that of the witnesses for appellant. I find that the testimony presented by Officer Peri and the two youths involved herein was forthright and credible. On the other hand, I find that the testimony presented by appellant's witnesses was uncertain, equivocal and engendered a feeling of doubt as to its veracity.

I am satisfied that respondent has proved its case by a fair preponderance of the credible evidence, indeed by substantial evidence. Thus, appellant has failed to meet the burden of establishing that the action of respondent herein was erroneous. Rule 6 of State Regulation No. 15.

In view of the absence of evidence concerning William's age, it is recommended that the respondent's finding of guilt concerning sale to and consumption of alcoholic beverages by him be reversed. However, it is recommended that the action of respondent with reference to its finding of guilt of sale and service to Clifford, a 17-year-old minor, and Richard, a 19-year-old minor, be sustained.

In view of my recommendations to reverse the action of respondent on the allegation of the charge relative to the sale and service of alcoholic beverages to William and to affirm its action as to the sale and service of alcoholic beverages to Clifford and Richard, I further recommend that the matter be remanded to respondent for its reconsideration and reimposition of the suspension to be imposed herein, considering the fact that there was proof of sale to two minors, rather than three. Cf. Clarence's Music World, Inc. v. Newark, supra.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, exceptions to the Hearer's Report were filed by the attorney for respondent and oral argument was heard thereon before me.

It appears that appellant was charged with sale of alcoholic beverages to three persons under the age of 21 years, namely, Clifford ---, William --- and Richard ---. By resolution and order dated October 11, 1967, respondent ordered appellant's license suspended for forty-five days upon the finding that Richard and Clifford were served alcoholic beverages. That part of the charge pertaining to William was dismissed. A copy of the aforesaid resolution and order was filed with the exceptions.

I concur in the findings and recommendations of the Hearer sustaining the finding of guilt of sale to Clifford and Richard.

However, not having had the benefit of reading a copy of the aforesaid resolution and order at the time of the hearing or prior to the making of his report, he erroneously recommended a reversal of the finding of guilt as to William and remand of the matter to respondent for reconsideration and reimposition of the penalty on the basis of sale to two minors rather than three.

Division records disclose that the licensee has a previous record of suspension of license by the Director for forty days effective April 13, 1967, for farming out its license, hindering investigation and failure to disclose existence of chattel mortgage (Re Through Corp., Bulletin 1732, Item 3) and by the municipal issuing authority for twenty days effective January 3, 1967, for sale to minors.

Considering all of the circumstances, including the ages of the minors and the previous record of the licensee, including as it does a recent suspension for similar violation, I find that the penalty imposed by respondent was not excessive or unreasonable.

Accordingly, it is, on this 14th day of May, 1968,

ORDERED that the action of respondent be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-135, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Through Corp., t/a Through Corp., for premises 279 Market Street and 10 Park Avenue, Paterson, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1968, commencing at 3:00 a.m. Tuesday, May 21, 1968; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3:00 a.m. Friday, July 5, 1968.

JOSEPH M. KEEGAN
Director.

5. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 20 DAYS - NO REMISSION FOR PLEA ENTERED AFTER HEARING.

In the Matter of Disciplinary Proceedings against)

LOUIS R. & SYLVIA POLINE)
t/a Squankum General Store)
W/S Monmouth County Highway No. 524)
Howell Township)
R.D. #4, Farmingdale, N. J.)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Distribution License D-1 issued by the Township Committee of the Township of Howell.)

Irving E. Keith, Esq., Attorney for Licensees.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

After full hearing, licensees pleaded non vult to a charge alleging that on January 15, 1968, they sold two pints of whiskey and a half pint of liqueur to a minor, age 17, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days (Re Kaczmar, Bulletin 1785, Item 6) without remission for the confressive plea entered after hearing (Re Neim, Bulletin 1772, Item 2).

Accordingly, it is, on this 21st day of May, 1968,

ORDERED that Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Howell to Louis R. and Sylvia Poline, t/a Squankum General Store, for premises on w/s Monmouth County Highway No. 524, Howell, be and the same is hereby suspended for twenty (20) days, commencing at 9:00 a.m. Thursday, May 23, 1968, and terminating at 9:00 a.m. Wednesday, June 12, 1968.

JOSEPH M. KEEGAN
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Y & H TAVERN, INC. t/a Old Mill Inn 373 Straight Street Paterson, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-20 issued by the Board of Alcoholic Beverage Control for the City of Paterson

Licensee, by Henry Hobbel, President, Pro se Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 3, 1968, it sold a half pint bottle of liqueur for off-premises consumption during hours prohibited by Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Kicey, Bulletin 1787, Item 4.

Accordingly, it is, on this 21st day of May, 1968,

ORDERED that Plenary Retail Consumption License C-20, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Y & H Tavern, Inc. t/a Old Mill Inn, for premises 373 Straight Street, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. Tuesday, May 28, 1968, and terminating at 3:00 a.m. Friday, June 7, 1968.

JOSEPH M. KEEGAN DIRECTOR

7. STATE LICENSES - NEW APPLICATIONS FILED.

Kinsey Distilling Sales Company 161 Frelinghuysen Avenue Newark, New Jersey Application filed July 16, 1968 for place-to-place transfer of Plenary Wholesale License W-27 from 169-171 Frelinghuysen Avenue, Newark, New Jersey.

Handwritten signature of Joseph M. Keegan and typed name: Joseph M. Keegan Director