

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

BULLETIN 1635

September 20, 1965

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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 1635

September 20, 1965

1. APPELLATE DECISIONS - TWIN LEE, INC. v. MIDDLETOWN.

TWIN LEE, INC., )

Appellant, )

v. )

TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF MIDDLETOWN )

Respondent.

ON APPEAL  
CONCLUSIONS  
AND ORDER

-----  
Klatsky & Himelman, Esqs., by William Himelman, Esq.,  
Attorneys for Appellant.

Vincent C. DeMaio, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the unanimous action of respondent whereby it denied an application for person-to-person and place-to-place transfer of a plenary retail consumption license from Daniel P. Osip to appellant and from premises 61 Monmouth Avenue, Leonardo, to premises on State Highway Route 35, Middletown.

Appellant alleges in its petition of appeal that the action of respondent was erroneous in that "The appellant's application in all ways fell within the rules and regulations required for transfer."

Respondent's answer takes issue with appellant that the denial of the transfer in question was erroneous and contends that "its action was taken in accordance with the best judgment of all of the members thereof as to the best interests and needs of the community in view of the circumstances and conditions existing at the time. Particular consideration was given to the concentration of licenses in the area to which the transfer was sought, the traffic conditions there prevailing, as well as the character of the clientele presently frequenting the proposed new location."

Leo P. Grazides, president of appellant corporation, testified that a liquor license is necessary "for the successful operation of this business" as appellant cannot compete with "many hamburger and hot-dog establishments permitted in the area" and "we will be in financial difficulty"; that in contemplation of the transfer, "the place was remodeled and refurbished"; that "there are two entrances or two openings on Route 35"; that Cooper Road is on the southerly part of the property and on the northerly side it runs into Chapel Hill Road; that the main entrance is at the front of the building; that "there is a cocktail service bar in the southerly side in a dining room"; that the dining room has a seating capacity of 110 people and both the lounge and dining room can accommodate 166 people; that the nearest liquor outlet to appellant's premises

is a plenary retail distribution license 216 feet distant and the closest restaurant having a liquor license is 1205 feet away; that a survey made by waitresses employed by appellant discloses that between March 16 and April 3, 1965, inclusive, the number of adults waited on in the dining room far exceeded the number of children; that many of the adult diners request alcoholic beverages with their meals.

On redirect examination, Mr. Grazides stated he would be willing to discontinue the sale of ice cream from the outside section located on the northerly side of the building; that the premises where the license is presently located is approximately five miles distant from the proposed premises.

Ensley R. Bennett, Jr. (a traffic consultant employed since 1952 by the Division of Motor Vehicles, Traffic Safety Service) testified that he is familiar with the area where the proposed premises are located; that Chapel Hill Road and Route 35 is a signalized intersection and, in his opinion, appellant's proposed method of operation with a liquor license does not constitute a traffic hazard; that he recommended to appellant that "if the driveways serving the Oasis which front on the highway itself were to be made entrances only and signed as such and from the interior signed 'No exit' this would have further emphasis on the desirability of patrons using Cooper road toward Chapel Hill road. I think this would be a definite asset." Mr. Bennett agreed that a car traveling in a southerly direction on Route 35, whose driver wished to patronize appellant's premises, would be compelled to make a left turn at the entrance to appellant's parking area, which entrance is located 25 feet from the intersection of the highway and Chapel Hill Road. He stated, however, entrances other than the entrance on Route 35 from Cooper or Chapel Hill roads are available. Mr. Bennett further agreed that when a car is stopped to make a left turn from Route 35 into the driveway of the premises in question, a dangerous situation arises, but added such condition presently exists.

John Salatino, a witness produced by appellant, testified that he lives "a half-mile, I guess a little less" from the proposed premises and that he has no objection to the transfer. When asked by appellant's attorney if any person in the area of his home, to his knowledge, objected, Mr. Salatino said, "The people I have spoken to, I would say some in favor and some said they didn't care whether it went in or not and some said, 'No.'"

Daniel Osip, holder of the license for premises 61 Monmouth Avenue, Leonardo, testified that he entered into an agreement with appellant for the transfer of the license contingent upon approval of the transfer thereof; that if the license transfer is approved, no liquor outlet will exist in the area of his licensed premises; that although he does not regularly serve food to patrons, he does occasionally have picnics in conjunction with his licensed premises.

Elizabeth Hubbs, assistant township clerk, testified that in the Township there are twenty-four plenary retail consumption licenses, ten of them on Route 35; that of the seven plenary retail distribution licenses, two are on Route 35; and that of the seven club licenses issued and outstanding, two are on Route 35. In addition, one of the four limited retail distribution licenses is on Route 35.

Douglas R. Burke, a member of respondent Committee,

testified that he opposed the application for transfer of the license to the proposed premises. He stated that "I personally consider that particular corner to be a problem traffic-wise. It happens I live near by and frequent the place myself, so I feel reasonably confident to judge that particular point myself. As the previous expert testified, Chapel Hill Road and Cooper are heavily travelled, and a good deal of traffic comes behind the Oasis, and based on the traffic conditions as I see it, cars zipping around corners in opposing directions, any traffic increase which involved people who might have been drinking with the children in the neighborhood, children that frequent the place itself, I personally consider this would become a greater hazard. This was the way it was presented to us during the hearing." Moreover, Committeeman Burke stated, "We (respondent Committee) discussed following the hearing before the determination locations of the other establishments on 35 and 36 and concentration. Howard Johnson's, for instance, I would personally assume the clientele would be a similar type, other liquor stores and other establishments on 35, and we did not feel there was any real public necessity for change. Disregarding the fact it might be to the benefit to the owner, we felt from a public standpoint there was no need for another lounge or liquor establishment in the area."

Cross examination of Committeeman Burke by the attorney for appellant failed in any way to change the opinion which he had expressed with reference to the transfer.

Jean Hays, residing at 7 Frances Court, Middletown, testified that her home is on the second street as you enter Cooper Road; that she objects to the transfer because of the many young people patronizing the establishment at the present time and she is of the opinion that there should not be a license to sell alcoholic beverages at those premises.

At the outset, I might state that it is regrettable that appellant, in anticipation of a favorable determination by respondent on its application for the transfer in question, has spent a considerable amount of money to remodel and refurbish the premises. However, in a conflict between private interests and the interests of the community at large, the latter must prevail. Pasquale v. Tenafly, Bulletin 1012, Item 1; Moraitis v. Lower Penns Neck, Bulletin 839, Item 11.

In order that appellant be successful in this appeal, it is necessary that it show that respondent had abused its discretion in denying the application for transfer. To meet this burden, appellant must show manifest error or an abuse of discretion on the part of respondent. Nordco, Inc. v. State, 43 N.J. Super. 277 (App.Div. 1957); Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598 (App.Div. 1955).

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, in its exercise of reasonable discretion, either grant or deny a transfer. If denied on reasonable grounds, its action will be affirmed. Gentes v. Middletown, Bulletin 1327, Item 1; Biscamp and Hess v. Teaneck, Bulletin 821, Item 8. See also Biscamp and Hess v. Teaneck et al., 5 N.J. Super. 172 (App.Div. 1949), where, as in the present case, the issuing authority denied the transfer of a liquor license because it was of the opinion that no need or necessity existed for a liquor outlet in that particular location in the community.

Although the proposed site of the premises in question is on a busily traveled highway, it does not necessarily follow that a transfer to said location must be granted. Each case stands solely upon its individual merits, depending on the facts presented therein. It has long been established that 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. In Fanwood v. Rocco, 59 N.J. Super. 306, 323 (App. Div. 1960), aff'd 33 N.J. 404 (1960), Judge Galkin, among other things, stated:

"The Director may not compel a municipality to transfer licensed premises to an area in which the municipality does not want them, because there more people would be able to buy liquor more easily. Such 'convenience' may in a proper case be a reason for a municipality's granting a transfer but it is rarely, if ever, a valid basis upon which the Director may compel the municipality to do so."

I have carefully examined the various points emphasized by appellant and respondent in this matter. After a consideration of all of the evidence, including the exhibits, I conclude that appellant has failed to sustain the burden that the action of respondent was erroneous, arbitrary, capricious, 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.

#### Conclusions and Order

The aforesaid matter was heard on April 5, 1965, and a copy of the Hearer's Report dated June 24, 1965, was received on June 25, 1965 by the attorneys for appellant.

Thereafter a request, dated July 1, 1965, made by appellant, for a re-hearing in this case was received at this Division on July 6, 1965. I denied said request because there was nothing contained therein with request to any details concerning the evidence proposed to be offered, or how it might materially affect the Hearer's findings.

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

Having carefully considered the entire record herein, including the exhibits, the oral argument in summation by the attorneys for the respective parties, and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

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

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

JOSEPH P. LORDI  
DIRECTOR

2. APPELLATE DECISIONS - ST. PATRICK'S CHURCH v. NEWARK and KADISH & SILIDKER.

ST. PATRICK'S CHURCH,	)	
Appellant,	)	
v.	)	ON APPEAL
	)	CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC	)	AND ORDER
BEVERAGE CONTROL OF THE CITY	)	
OF NEWARK, and MINNIE SILIDKER	)	
KADISH & NATHAN SILIDKER,	)	
t/a JAKE'S TAVERN,	)	
Respondents.	)	

-----  
Gassert, Murphy & Gassert, Esqs., by Thomas S. Murphy, Esq.,  
and Frederick J. Gassert, Esq., Attorneys for Appellant.  
Norman N. Schiff, Esq., by Paul E. Parker, Esq., Attorney for  
Respondent Municipal Board.  
Joseph A. D'Alessio, Esq., Attorney for Respondent Licensees.  
Pitney, Hardin & Kipp, Esqs., by Clyde A. Szuch, Esq., Attorneys  
for Objector.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the unanimous action of respondent Board (hereinafter Board) whereby it approved an application for place-to-place transfer of a plenary retail consumption license from premises 166 Plane Street to premises 154 Plane Street, Newark. The distance from 166 to 154 Plane Street is 198 feet.

Appellant's allegations, set forth in its petition of appeal, contending that the action of the Board was erroneous and should be reversed, may be summarized as follows:

- (a) The premises is within 200 feet of "a building which is used for educational and catechetical classes as part of the parochial school";
- (b) The surrounding area "is being developed as a future cultural and educational center by the City of Newark";
- (c) There are three taverns and one package store in the neighboring area, one tavern being within 160 feet of the proposed site;
- (d) There is no need or necessity for another liquor outlet;

(e) Students under 21 years of age attend institutions of higher learning located in the area;

(f) Ample restaurant facilities for students will be provided by the said institutions of higher learning;

(g) Another liquor outlet will detrimentally affect a religious organization performing "rehabilitation work";

(h) Respondent licensees are subject to complaints in the operation of their former premises at 166 Plane Street and "the anticipated operation" at the proposed location would constitute a nuisance;

(i) The proposed premises is located "in the Saint Michael's Hospital Urban Renewal Project as planned"; and

(j) Although the entrance to the proposed premises is in excess of 200 feet from appellant's school playground, the rear of said building is within 200 feet of said playground.

The answers filed by respondents deny the allegations in the petition of appeal and allege that the Board's action was reasonable, lawful and in a proper exercise of discretion.

At the outset, I shall discuss the question whether the building on the southeast corner of Plane Street and Central Avenue used for educational and religious purposes, whose entrance is within 200 feet of the entrance to the proposed licensed premises, is a church or school within the meaning of the Alcoholic Beverage Law. R.S. 33:1-76.

Over the entrance of the alleged church school building, hanging from a bracket at right angles to the building and extending partly over the sidewalk is a sign which reads "St. Patrick's Club Hispano del Santo Nombre". Translated this means St. Patrick's Spanish Club of the Holy Name. The term "church" as used in the Alcoholic Beverage Law has been definitely established from the early days of this Division to mean a recognized edifice devoted permanently to the worship of God. Parisi v. Jersey City et al., Bulletin 1201, Item 1.

In Manning v. Trenton, Bulletin 247, Item 1, the late Commissioner Burnett stated:

"The word 'church' may designate either a religious congregation or an edifice of worship, according to the context. See Trustees, etc. vs. Fisher, 18 N.J.L. 254, 257 (Sup. Ct. 1841); Newark Athletic Club vs. Board of Adjustment, 7 N.J. Misc. 55, 59 (Sup. Ct. 1929). As used in the Alcoholic Beverage Control Act, it means a 'recognized edifice devoted permanently to the worship of God'. Bulletin 5, Item 3. That an edifice is what is meant appears from the fact that the yardstick in the statute is a distance of 200 feet, to be measured between 'the nearest entrance of said church' and 'the nearest entrance of the premises sought to be licensed.' Hence, being a religious body is not of itself sufficient to invoke the benefit of the statute. Cf. George vs. Board of Excise, 73 N.J.L. 366 (Sup. Ct. 1906) aff'd 74 N.J.L. 816 (E. & A. 1907), where the Court said: 'The Legislature clearly did not intend that wherever religiously inclined persons meet together for Bible study and the like, a church existed within the meaning of this excise regulation.'



The mere fact, therefore, that a religious organization calls itself a 'church' does not make it a church within the meaning of Section 76 of the Control Act. R.S. 33:1-76."

I am satisfied that although religious services and instructions are conducted at various times in the building in question, the said structure cannot be considered either a church or school within the meaning of the Alcoholic Beverage Law.

Augustine J. Kelly, chief counsel of the Housing Authority of the City of Newark, testified that on August 12, 1964, approval had been obtained by the Housing Authority from the Urban Renewal Administration to acquire the property on the east side of Plane Street between Bleecker Street and Central Avenue (which includes the property in question) in connection with a college expansion program; that he was of the opinion that such acquisition would occur "within a six-month period."

On cross examination, Kelly stated that no money had been appropriated for the purchase of the property. He disclaimed knowledge of a letter from the Housing Authority to respondent Board dated May 20, 1964 (Exhibit R-6) wherein it was stated that "At the present time the premises located at 154 Plane Street, Newark, New Jersey, is not in an existing or contemplated urban renewal area."

Alfred J. Walker, director of urban renewal, Housing Authority, testified that he was given verbal assurance by the regional director for the federal government that the area, including the site of the proposed premises, was approved for acquisition and that the money would be forthcoming to acquire the same within six months.

Mgr. Joseph A. Dooling, diocesan director of the Mt. Carmel Guild, testified that the office of the Guild is at 99 Central Avenue; that in addition to the executive offices in the building, there is an educational program for normal girls 16 years of age or older and a vocational program for "dull, normal girls" which includes training in sectional garment making, home economics, nursing; that there is "a program for the handicapped children and adults" and training together with recreational programs for the blind; that although the said distance of the building from respondent licensees' proposed premises is in excess of 200 feet, the objection is not to the licensed premises itself but to the atmosphere created by a tavern.

Mgr. John J. Kiely, director of the social service center at 101 Plane Street, testified that the organization's function is to assist "homeless men" by providing shelter, food and clothing for them and to help "furnishing of homes of people, furniture, clothing, things like that"; that he opposes a tavern in the area because it presents a source of temptation to men who have "an alcoholic problem."

Rev. Joseph Quinlan, curate and assistant pastor of St. Patrick's Pro-Cathedral in Newark, testified that he objects to the license transfer to the proposed site because the catechetical school building, also used "for instruction for the Spanish speaking people", is approximately 82 feet from the entrance to the tavern, although the entrance to the said building is on Central Avenue; and that his objection is also to the concentration of liquor outlets in the area.



Also testifying against transfer of the license were Irving Pawa, Dean of Students, Rutgers University in Newark; Edward Yarosz, Assistant Dean of Students, Newark College of Engineering; Cynthia Souvers, who lives in the area; H. Louisa Shockley, Assistant Administrator, Newark Eye and Ear Infirmary, 77 Central Avenue; and William Cornetta, Assistant Administrator, St. Michael's Hospital, High Street and Central Avenue. All of the said witnesses expressed objections to the transfer of the license to the premises in question because of the trouble to students, nurses, and others employed in the various educational and medical institutions, respectively, which might arise now and after construction of various other institutions in the area.

At the hearing before the Board, Nathan Silidker, one of respondent licensees, stated that it was the intention of respondent licensees "to erect a new place, which will be complementary to the trend of improving the neighborhood, to have a fine restaurant and a bar there."

Rev. Quinlan then appeared on behalf of St. Patrick's Cathedral (appellant herein) and opposed the transfer of the license because, in his opinion, "this section of the city is supposed to be, according to the plans, a cultural and educational center" and "we don't think that this type of licensed business would add to this proposed cultural and educational center." When asked by William S. MacDonald, a member of the Board, if he would have any objection were the place to be strictly a restaurant with a service bar, the witness replied, "I think there are enough places in the area, now, that sell alcoholic beverages, so there is no need for another one, period."

The fact is that approval of respondent licensees' application for transfer of their license to the proposed premises 198 feet from their former premises could not be considered an additional license in the area. The former premises were established as a liquor outlet when Prohibition was repealed and had existed at its then location until compelled to vacate because the property was taken over by a governmental authority. Nothing appears in the record which in any way indicates that approval of the license transfer to the new premises is in violation of any municipal ordinance.

The guiding principles on applications of this nature have been stated time and again. In the language of DeCicco and Rula v. Manville, Bulletin 467, Item 1:

"This Department has repeatedly held that, in accordance with the principle of 'home rule,' determination as to the geographic distribution of retail liquor licenses in a municipality and as to the number of licenses to be permitted in any area lies within the sound and bona fide discretion of the local issuing authority. See Rosenvinge v. Metuchen, Bulletin 249, Item 6, and Raynor v. West Deptford, Bulletin 462, Item 5, and cases there cited."

Similarly, in O'Bertz v. Perth Amboy, Bulletin 1011, Item 1, it was said:

"While it is true that, generally, the question of public necessity and convenience is paramount in determining whether a license should be granted for a particular location, the instant case involves not the issu-

ance of a new or additional license but the place-to-place transfer of a license which has been in existence for many years within this same business area. In such cases it has been held that the mere fact that other licensees also serve the same neighborhood is not a valid reason for denying a place-to-place transfer from one location in a neighborhood to another location in the same neighborhood, since no increase in concentration of licenses results from such transfer. Kupay v. Passaic, Bulletin 803, Item 9; Grower v. Hackensack, Bulletin 789, Item 1; Costa v. Verona; Bulletin 501, Item 2."

See also Geltzeiler v. Newark, Bulletin 1171, Item 1, to like effect; and Klein and Tucker v. Fair Lawn, Bulletin 1175, Item 3, where it was said:

"The question as to whether licensed premises shall be permitted in a particular section of the municipality is a matter confided to the sound discretion of the issuing authority. Carriell v. Newark et als., Bulletin 1043, Item 2. On appeal the burden of showing that the municipal issuing authority abused its discretion rests with the appellant. Rule 6 of State Regulation No. 15."

Augustine Kelly and also Alfred Walker, both associated with the Newark Housing Authority aforesaid, testified that the site of the proposed premises was in process of being acquired by the Redevelopment Corporation. However, up to the present date, I have been unable to ascertain the exact status of the acquisition of said property.

The objections voiced were merely conjectural in nature as to what may occur if respondent licensees operate their business at the proposed site. It is readily understandable that persons connected with religious, educational and medical institutions would express concern in a matter of this kind. If the premises are conducted in a law-abiding manner (and it must be assumed that such will be the case), the students, employees or other persons who may have occasion to be in the area should have nothing to fear. Moreover, if the licensed premises are permitted to be operated in violation of the Alcoholic Beverage Law, respondent licensees will subject their license to suspension or revocation.

It must be understood that it is not the function of the Director on appeal to substitute his opinion for that of the members of the Board who voted for approval of the transfer. DeStefano et als. v. Jersey City et al., Bulletin 1289, Item 4, and cases cited therein. Cf. Fanwood v. Rocco and Division of Alcoholic Beverage Control, 59 N.J. Super. 306 (App. Div. 1960), aff'd 33 N.J. 404 (Sup. Ct. 1960). The burden of proof to establish that the action of The Board was erroneous rests with appellant. Rule 6 of State Regulation No. 15.

The evidence presented does not indicate any improper motivation on the part of any member of the Board in granting the transfer and approval of the transfer appears to be a reasonable exercise of discretion. I have considered all of the other objections and find that they are not sufficiently meritorious to warrant a reversal of the Board in this matter. In my opinion, appellant has failed to sustain the burden of proof which is necessary in order to reverse the action of the Board. Under the circumstances and after full examination of the entire record, it is recommended that the action of the Board be affirmed and that the appeal herein be dismissed.

Conclusions and Order

Pursuant to the provisions of Rule 14, State Regulation No. 15, written exceptions to the Hearer's Report were filed with me in behalf of the appellant and, thereafter, oral argument in the matter was heard before me.

Having carefully considered the entire record, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Following the date of oral argument I received a letter from the attorney for the respondent-licensees stating, in behalf of his clients, that notice has been given that the property at 154 Plane Street is to be taken by the Newark Housing Authority in the very near future; that there is no intention of doing any work on the building; that there will be no operation whatsoever under the license at the premises in question; and that the license transfer thereto was sought only for the purpose of having a situs from which to transfer to some other appropriate location in the city. The letter is made a part of the record herein.

All parties stand content.

Accordingly, it is, on this 29th day of July 1965,

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

JOSEPH P. LORDI,  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

Harold Sachs )  
t/a M & S Tavern )  
35 Essex Street )  
Paterson, New Jersey, )

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption)  
License C-195, issued by the Board )  
of Alcoholic Beverage Control for )  
the City of Paterson. )

Robert I. Goodman, Esq., Attorney for Licensee  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Saturday, March 6, 1965, at about 12:10 a.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic bev-

erage, viz., a pint bottle of Gallo Twister Wine, at retail, 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."

Four agents of this Division participated in the investigation which culminated in preferring the aforementioned charge.

Agent M testified that he and Agents Mc, G and D arrived at the vicinity of the licensed premises on Saturday, March 6, 1965, at 12:05 a.m., at which time he entered the tavern alone. Tending bar was William Wragg. There were two or three patrons at the bar, and five or six patrons seated at tables. Agent M asked Wragg for a pint bottle of Twister wine. Wragg took down a bottle of Twister wine from a shelf and, as he placed the bottle across the bar, the agent said, "I want to take this out." Wragg said, "First pop the top." The agent turned the top and Wragg said, "That is better." Thereupon the agent placed a dollar-bill on the bar, opened up his coat, placed the bottle inside his coat; the bartender turned to the cash register to make change (he charged 65¢ for the pint bottle), picked up the change, told Wragg "I will be seeing you" and departed from the premises and rejoined the other three agents a half-block away.

The agent further testified that, at the time he put the bottle inside his coat, Wragg was standing directly in front of him, looking in his direction.

On cross examination the witness' version of the material and essential facts did not vary. Additionally he stated that he was wearing an army-type field jacket which buttons in front; there was no discussion about glasses; the tavern was not noisy; the bartender did hear him when he said he wanted to take the bottle out and he reiterated that the bartender responded, "First pop the top." The bottle was placed on the bar in an upright position.

On redirect the agent stated that Wragg did not serve any other patrons from the time he ordered the bottle of wine to the time he left the licensed premises.

Agent Mc testified that he waited in an automobile with Agents D and G while Agent M entered the licensed premises on the date and time in question. When Agent M returned to the car he displayed the pint bottle of Twister wine which he had purchased in the tavern. Thereupon all four agents entered the licensed premises and Agent Mc displayed the pint bottle of wine to Wragg (who was tending bar) and asked him as to whether or not he had sold the bottle to Agent M. Wragg replied, "He wanted a bottle of wine to go. I gave him the bottle of wine for sixty-five cents and told him to break the seal." Agent Mc asked Wragg, "Don't you know you can't sell a bottle of wine to go after ten p.m. with the seal broken or not?" Wragg replied, "No, I didn't." Wragg further stated that he charged 50¢ up to 10 p.m. and 65¢ thereafter.

The testimony of Agents G and D corroborated the testimony of Agent Mc in the material aspects of the investigation.

In behalf of the licensee, William Wragg testified that he was employed as a part-time bartender; that, after Agent M asked for the bottle of Twister wine, he broke the seal, laid the

bottle flat on the bar, and gave the agent 35¢ change from a dollar-bill. At that time he went to serve another patron who had called to him for service and, while so doing, he yelled to the agent "Do you want any glasses?" He heard no response and, while taking care of the other customer, the agent walked out. Shortly thereafter he and the other agents returned. Wragg admitted on direct examination that, in response to an inquiry put to him by one of the agents as to whether or not he knew it was against the law to sell a bottle of wine after ten o'clock, he said, "No, I didn't."

It is a 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. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956). This principle was restated in the case of Howard Tavern, Inc. v. Division of Alcoholic Beverage Control, (App. Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1, where the court said:

"The truth of charges in a proceeding before an administrative agency need be established only by a preponderance of the believable evidence, not beyond a reasonable doubt. Atkinson v. Parsekian, 37 N.J. 143, 149, (1962)."

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.

I have carefully weighed, evaluated and considered all of the material testimony presented in this proceeding. I am strongly of the opinion that Agent M's testimony presented a true picture of the occurrence in question. I am convinced that the agent made known to the bartender (Wragg) and that Wragg fully understood that the bottle of wine was purchased for off-premises consumption. It is a fundamental principle that a licensee is responsible for the misconduct of his employees and is fully responsible for their activities on the licensed premises. Kravis v. Hock, 137 N.J.L. 252 (Sup.Ct. 1948); In re Schneider, 12 N.J. Super. 449 (App.Div. 1951); Rule 33 of State Regulation No. 20.

I conclude and I find that the Division has established the truth of the charge by a fair preponderance of the credible evidence, and I recommend that the licensee be found guilty of said charge.

Licensee has a previous record of suspension of license by the Director for fifteen days effective May 14, 1962, for permitting a brawl. Re Sachs, Bulletin 1457, Item 2.

It is, therefore, further recommended that, the prior record of suspension of license for dissimilar violation within the past five years considered, the license be suspended for twenty days. Re L. & S. Corp., Bulletin 1603, Item 9.

#### Conclusions and Order

Written exceptions to the Hearer's Report and argument thereto were filed by the licensee's attorney, pursuant to Rule 6

of State Regulation No. 16.

The licensee argues that "the facts as found by the Hearer constitutes entrapment of the Licensee." This defense is raised for the first time in the matter sub judice. A full consideration of the evidence impels me to reject this defense. See State v. Rosenberg, 37 N.J. Super. 197 (App. Div. 1955), cert. denied 20 N.J. 303 (1956). See also Highlander Hotel Corp. v. Div. of Alcoholic Beverage Control (App. Div. 1963), not officially reported, reprinted in Bulletin 1533, Item 1.

The licensee further contends that the penalty recommended by the Hearer is excessive. I find that the recommended penalty is fully consonant with the established practice of this Division and is the minimum penalty imposed for such violation.

Having considered the entire record herein, including the exceptions filed, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions. I shall, therefore, impose the penalty recommended by the Hearer, namely, a license suspension of twenty days.

Accordingly, it is, on this 22nd day of July, 1965,

ORDERED that Plenary Retail Consumption License C-195, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Harold Sachs, t/a M & S Tavern, for premises 35 Essex Street, Paterson, he and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. Thursday, July 29, 1965, and terminating at 3:00 a.m. Wednesday, August 18, 1965.

JOSEPH P. LORDI,  
DIRECTOR

4.

## ACTIVITY REPORT FOR JULY 1965

## ARRESTS:

Total number of persons arrested - - - - -		12
Licensees and employees - - - - -	5	
Bootleggers - - - - -	7	

## SEIZURES:

Motor vehicles - trucks - - - - -		1
Stillis - over 50 gallons - - - - -		1
Alcohol - gallons - - - - -		6
Distilled alcoholic beverages - gallons - - - - -		10.09
Wine - gallons - - - - -		62
Brewed malt alcoholic beverages - gallons - - - - -		10.10

## RETAIL LICENSEES:

Premises inspected - - - - -		533
Premises where alcoholic beverages were gauged - - - - -		462
Bottles gauged - - - - -		7,034
Premises where violations were found - - - - -		50
Violations found - - - - -		57
Unqualified employees - - - - -	20	Prohibited sign - - - - - 1
Application copy not available - - - - -	12	Improper beer taps - - - - - 1
Reg. #38 sign not posted - - - - -	4	Other violations - - - - - 16
Disposal permit necessary - - - - -	3	

## STATE LICENSEES:

Premises inspected - - - - -		21
License applications investigated - - - - -		14

## COMPLAINTS:

Complaints assigned for investigation - - - - -		393
Investigations completed - - - - -		338
Investigations pending - - - - -		267

## LABORATORY:

Analyses made - - - - -		86
Refills from licensed premises - bottles - - - - -		35
Bottles from unlicensed premises - - - - -		12

## IDENTIFICATION:

Criminal fingerprint identifications made - - - - -		5
Persons fingerprinted for non-criminal purposes - - - - -		516
Identification contacts made with other enforcement agencies - - - - -		329

## DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - -		8
Violations involved - - - - -		8
Sale during prohibited hours - - - - -	6	
Sale to minors - - - - -	2	

Cases instituted at Division - - - - -		22*
Violations involved - - - - -		29

Sale during prohibited hours - - - - -	10	Failure to file notice of change in application - - - - -	11
Sale to minors - - - - -	5	Sale to intoxicated person - - - - -	1
Possessing liquor not truly labeled - - - - -	4	Sale below filed price - - - - -	1
Permitting gambling on premises - - - - -	1	Hindering investigation - - - - -	1
Permitting lottery activity on prem. - - - - -	1	Permitting foul language on premises - - - - -	1
Failure to close prem. during proh. hours - - - - -	1	Permitting hostesses on premises - - - - -	1
Fraud in application - - - - -	1		

Cases brought by municipalities on own initiative and reported to Division - - - - -		23
Violations involved - - - - -		29

Sale to minors - - - - -	12	Permitting lottery activity on prem. - - - - -	1
Permitting brawl on premises - - - - -	4	Permitting unlawful activity on prem. - - - - -	1
Sale during prohibited hours - - - - -	3	Fraud in application - - - - -	1
Failure to close premises during prohibited hours - - - - -	2	Unqualified employees - - - - -	1
Permitting gambling on premises - - - - -	2	Hindering investigation - - - - -	1
		Licensee working while intoxicated - - - - -	1

## HEARINGS HELD AT DIVISION:

Total number of hearings held - - - - -		37	
Appeals - - - - -	9	Seizures - - - - -	5
Disciplinary proceedings - - - - -	15	On petitions - - - - -	1
Eligibility - - - - -	7		

## STATE LICENSES AND PERMITS ISSUED:

Total number issued - - - - -		2,395	
Licenses - - - - -	685	Social affair permits - - - - -	427
Solicitors' permits - - - - -	44	Miscellaneous permits - - - - -	297
Employment permits - - - - -	559	Transit insignia - - - - -	247
Disposal permits - - - - -	93	Transit certificates - - - - -	43

## OFFICE OF AMUSEMENT GAMES CONTROL:

Licenses issued - - - - -	19	Disciplinary proceedings - - - - -	8
Premises inspected - - - - -	437	Violations involved - - - - -	12
Enforcement files established - - - - -	126	Operating controlled game - - - - -	8
Premises where violations found - - - - -	110	Non-registered employees - - - - -	3
Number of violations found - - - - -	125	Deceptive practices - - - - -	1

JOSEPH P. LORDI  
Director of Alcoholic Beverage Control  
Commissioner of Amusement Games Control

\*Includes one cancellation proceeding - licensee convicted of crime involving moral turpitude.

Dated: August 6, 1965



5. STATE LICENSEES - RESPONSIBILITY FOR ACTS OF EMPLOYEES -WARNING  
RE FUTURE ACCOUNTABILITY.

July 27, 1965

TO ALL MANUFACTURERS AND WHOLESALERS:

I am concerned over what appears to be a marked increase in the number of violations of the Alcoholic Beverage Law and Regulations committed by solicitors employed by state licensees.

Rule 33 of State Regulation No. 20, promulgated July 1, 1950 as Rule 31 of State Regulation No. 20, provides that:

"In disciplinary proceedings brought pursuant to the Alcoholic Beverage Law, it shall be sufficient, in order to establish the guilt of the licensee, to show that the violation was committed by an agent, servant or employee of the licensee. The fact that the licensee did not participate in the violation or that his agent, servant or employee acted contrary to instructions given to him by the licensee or that the violation did not occur in the licensee's presence shall constitute no defense to the charges preferred in such disciplinary proceedings."

Despite the above quoted Rule, it has been the practice of the Division, where it appears from the available evidence that the state licensee was not actually involved in or had no knowledge of a particular violation, to proceed only against the employee. It would appear that such practice may have had the effect of lessening the degree of supervision which should have been exercised by the licensee and may also have resulted in less than fully effective enforcement.

In some instances, by the use of devious means, the violator may have avoided the penalty which he should have suffered. In other instances, because of the lack of proper supervision or control by the licensee, employees may have unwittingly committed violations and the employer, shirking responsibility, has suffered no penalty.

As a deterrent and with a view eventually to decrease the number of violations, I have instructed my staff that, effective immediately, Rule 33 of State Regulation No. 20 is to be rigidly applied.

Accordingly, state licensees are on notice that, hereafter, they will be held accountable for violations of the Law or Regulations committed by their agents or employees whether or not the licensee participated in or had knowledge of such violation.

Licensees would do well to heed this warning and to take the necessary steps to prevent the possible imposition of any penalty due to the lack of diligence on their part or defiance on the part of their employees.

JOSEPH P. LORDI  
DIRECTOR

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

In the Matter of Disciplinary )  
 Proceedings against )

Pasquale F. Cullaro and Mary Cullaro )  
 t/a Pat's Tavern )  
 408 N. Clinton Ave., )  
 Trenton, N. J., )

CONCLUSIONS  
 and  
 ORDER

Holders of Plenary Retail Consumption )  
 License C-199, issued by the City )  
 Council of the City of Trenton. )

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 Licensees, Pro se  
 Morton B. Zemel, Esq., Appearing for Division of Alcoholic  
 Beverage Control

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that  
 on June 22, 1965, they 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 en-  
 tered, leaving a net suspension of five days. Re Commodore  
of Hackensack, Inc., Bulletin 1622, Item 8.

Accordingly, it is, on this 26th day of July 1965,

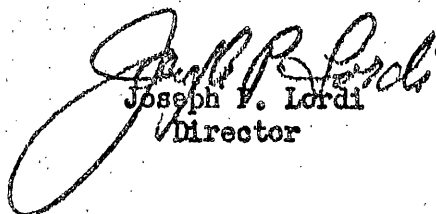
ORDERED that Plenary Retail Consumption License C-199,  
 issued by the City Council of the City of Trenton to Pasquale  
 F. Cullaro and Mary Cullaro, t/a Pat's Tavern, for premises  
 408 N. Clinton Ave., Trenton, be and the same is hereby sus-  
 pended for five (5) days, commencing at 2 a.m. Monday, August  
 2, 1965, and terminating at 2 a.m. Saturday, August 7, 1965.

JOSEPH P. LORDI,  
 DIRECTOR

7. STATE LICENSES - NEW APPLICATION FILED.

Theodore J. Leitereg,  
 Leitereg Beer & Soda Distributing Co.  
 rear 106 Matawan Road  
 Laurence Harbor, Madison Township, N. J.

Application filed September 20, 1965 for person-to-person  
 and place to place transfer of State Beverage Distributor's  
 License SBD 112 from Keansburg Beverage Co., 158-162 Main St.  
 Keansburg, N. J.

  
 Joseph P. Lordi  
 Director