

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

BULLETIN 1897

February 5, 1970

TABLE OF CONTENTSITEM

1. APPELLATE DECISIONS - POM BON, INC. v. CLIFFSIDE PARK.
2. APPELLATE DECISIONS - RAYMOND F. ANTON, ET ALS v. JERSEY CITY, ET ALS.
3. APPELLATE DECISIONS - MONROE BAR, INC. v. PASSAIC.
4. DISCIPLINARY PROCEEDINGS (Weymouth Township) - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
5. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1969 THROUGH DECEMBER 31, 1969.
6. DISCIPLINARY PROCEEDINGS (Harrison) - SALE DURING PROHIBITED HOURS - HINDERING - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Wayne) - PURCHASE FROM ANOTHER RETAILER - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

a screwdriver because "that's what she always drank" (an alcoholic drink containing orange juice and vodka). At about 12 p.m. that night Carol was seen ordering another screwdriver and ordered still another drink after that time. This witness left the premises at about 2 a.m., at which time Carol was still seated at the bar consuming alcoholic beverages. This was on the early morning of May 31. The witness added that she had heard Carol order these drinks from the bartender (identified as John M. Bigler) and she also saw several of the officers of the corporate appellant whom she identified as Gregory Brule, "Richie" and Frederick Wenisch.

With respect to May 23, the witness stated that she arrived at the premises at about 12 p.m. with Carol and remained there for about a half or three-quarters of an hour. They were accompanied by another girl friend named Janet Knapp, and either Fred or Richie was on duty at that time. They were seated together at the bar and ordered three drinks, one of which, a screwdriver, was served to Carol. On neither of these occasions was Carol ever asked to produce any identification with respect to her age or to make any written representation with respect thereto.

On redirect, the witness also testified to the occurrences on May 4. She entered the premises at that time with Carol and Carol ordered a screwdriver. The bartender told her that they were out of orange juice but that he could give her vodka and 7-Up and "that's what she drank that night." She explained that this drink contained alcoholic beverages because a white liquid which she assumed was vodka was poured from a bottle pursuant to the order by Carol for a screwdriver. She also heard the bartender say he would serve Carol vodka and 7-Up because he had no orange juice, and he did indeed mix the vodka with the 7-Up and serve her that mixed drink.

On the May 4 occasion she observed that Carol probably had four or five drinks of alcoholic beverages, and Carol was not requested to nor did she make any representation with respect to her age.

It appears that, after leaving the premises on May 30, 1969, with Wenisch (the bartender), Carol was involved in a tragic boating incident and drowned. Consequently, proof of her age was elicited at the hearing by Council through another witness. Joyce Rotundo (her sister) testified that Carol was nineteen years of age at the time of these incidents and was born on October 6, 1949. A birth certificate of Carol was admitted into evidence. The witness added that a certified autopsy report which she received on behalf of the family established that Carol had consumed alcoholic beverages on May 31, 1969.

Janet Knapp testified that she accompanied Carol to the aforementioned premises on May 23, 1969, heard Carol order a screwdriver, and saw her being served said drink. No one on that occasion asked her for any identification with respect to her age.

Frederick Wenisch (whom the attorney for the respondent characterized as a hostile witness because of his employment at a bartender at these premises) testified that he saw Carol at the premises at about 1:45 a.m. on May 31. At that time he stated that she was drinking orange juice and he ordered a drink for her. Questioned with respect to his conversation with Detective Scigliano of the harbor police, he admitted telling him that "I think it was a screwdriver, either that or orange juice." He did not recall telling the police officer that she had two screwdrivers

but said that he told the detective "I think. I did not specifically say she had screwdrivers." He further admitted that his wife and his mother, jointly, own fifty per cent. of the stock in the corporate appellant.

Detective Robert Scigliano (a member of the New York City Police Department, assigned to the Riverfront squad) testified with respect to his conversation with Wenisch shortly after the drowning incident above referred to. He stated that Wenisch executed a statement in which he told of meeting Carol on the early morning of May 31, at appellant's licensed premises; that he had four scotch and sodas before arriving at these premises and had another one after he arrived; and that Carol consumed two screwdrivers. Wenisch read the statement carefully before signing it. He noted that, at the time the statement was given at the North Bergen police station, Wenisch appeared to be dressed neatly and had a normal appearance.

Frank Pernice (a member of the Cliffside Park Police Department) testified with respect to the incident of August 10, 1969. He was on routine patrol and, in passing the premises, noted that two persons who appeared to him to be minors entered the premises. After reporting to police headquarters, he returned to the premises in the company of Sergeant Ornstein. Upon entering the premises he observed Frank --- and Peter ---, two minors, seated at the bar consuming alcoholic beverages. The drinks were confiscated and the two minors were arrested.

Detective Irwin Ornstein corroborated the testimony of Officer Pernice, and stated that he verified the ages of the two boys as being eighteen. Both minors admitted that they were eighteen and that they were not asked for any identification or required to give any written evidence of their age. Samples of the seized alcoholic beverages were submitted to the Division chemist for analysis and his report, certified by the Director, was admitted into evidence.

Frank --- testified that he was eighteen years of age at the time of the said incident and on August 10, 1969 ordered and was served a bottle of beer at the subject premises. He was not asked to furnish any written proof as to his age and was consuming the second bottle of beer when he was confronted by the police officers.

Peter --- testified similarly with respect to his activity at the licensed premises. He stated that he was eighteen years of age at the time of the occurrence and, upon entering the premises first, ordered and was served a double shot of Old Grand Dad whiskey. After that he ordered a beer and another whiskey before he was confronted by the police officers. He was not asked for any written evidence of his age.

Kenneth Smith testified that on August 10 he observed the two minors in the premises being served and consuming alcoholic beverages.

No witnesses were called to testify on behalf of the appellant, although it was quite apparent that they were present at the hearing before the Council.

On the basis of the evidence then presented, the subject resolution imposing revocation of the license was adopted.

At the plenary de novo hearing at this Division the

attorney for the appellant represented that the appellant did not contest the determination of the Council with respect to the offenses which occurred on August 10, 1969. It was also noted that there was no objection in the record below to the amendment of the dates of the alleged offenses from May 3 to May 4 and from May 30 to May 31, 1969.

Richard L. Locascio, called on behalf of the appellant at the de novo hearing, gave the following account: On May 3 and 4, 1969 he was employed as a bartender at the appellant's premises and recalls that Carol entered the premises with Mrs. Brennan. He refused to serve Carol any alcoholic beverages because she appeared to be a minor and had no identification. She asked for orange juice and he told her he was out of orange juice but could serve her 7-Up. She had two bottles of 7-Up that evening.

On cross examination, he recalled that Mrs. Brennan had testified before the Council that Carol had ordered a screwdriver which contains orange juice; that he told her that they were out of orange juice and that he, instead, served her vodka and 7-Up. He denied, however, the accuracy of Mrs. Brennan's testimony. He also admitted that he does not usually work on Sunday nights and that this was one of those unusual occasions.

John M. Bigler (also employed as a bartender at the subject premises) testified that he was not employed on the morning of May 4 but was merely present there. He asked Locascio whether he had checked the identification of Carol and Locascio said that he had. He further stated that he was actually engaged as a bartender on May 23 when Carol entered the premises. Carol had no proof of age and he did not serve her any alcoholic beverage on that occasion. He denied that Janet Knapp was with Carol and Mrs. Brennan, and insisted that he had never seen Miss Knapp prior to the hearing before the Council.

He was then questioned as to whether he actually served alcoholic beverages to these females on that occasion in view of the testimony of Mrs. Brennan that they were served by another bartender. His explanation, "I may have stepped out for air." He admitted that these girls, including Carol, had had about four or five drinks during the course of their visit to these premises on that occasion. He also admitted that he was working as a bartender on the evening of May 30 and the early morning of May 31, and recalled seeing Wenisch at the premises at that time. He further recalled that Wenisch ordered a drink for Carol in these words: "Give the girl what she was drinking." However, he maintained that she was only drinking orange juice. He then acknowledged hearing the testimony of Wenisch and the police officer to the effect that she had been served several screwdrivers. He explained that, when he left the bar for a few minutes, another employee named Greg would substitute for him.

I have carefully analyzed the testimony and have had an opportunity to observe the appellant's witnesses as they appeared at the de novo hearing. The sharp factual conflict presented by the evidence herein makes the issue of credibility of critical importance. Actions of this kind, which are civil in nature, 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). Testimony, to be believed, must not only proceed from the mouths of credible witnesses 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).

As I have pointed out hereinabove, no witnesses appeared in defense of these charges before the Council at the hearing below. It is, indeed, incomprehensible to me that these witnesses, who were present at the hearing before the Council, did not take the stand and testify in defense of these charges. Of course, appellant was guided by the advice given to it by its attorney and, accordingly, did not present testimony in defense of the charges.

Appellant's attorney argued before the respondent that there was no physical evidence of the alcoholic beverages which were allegedly served to the minor on May 4, 23 and 31. However, there was rebuttal testimony that she was served and consumed an alcoholic beverage known as a screwdriver and on one occasion was served a vodka and 7-Up. The applicable principle is that, even though no sample of the beverage served or sold was available for chemical analysis, testimony by the purchaser or any other person that the purchaser ordered an alcoholic beverage by name (screwdriver) and that a drink was served or sold pursuant to that order, creates permissible inference that the beverage ordered was actually served, and further warrants judicial notice of the fact such beverage had an alcoholic content of more than one-half of one per cent. by volume; and, hence, constitutes an "alcoholic beverage" within the statutory definition at R.S. 33:1-1(b). See State v. Marks, 65 N.J.L. 84, 87; Lewinsohn v. U.S., 278 F. 421, 425, 426; Holmes v. Cavicchia, 29 N.J. Super. 434.

There was also testimony before the Council that no written representation of age was requested or required of the minors as was imperative under Rule 1 of State Regulation No. 20. Of course, as hereinabove noted, the appellant admitted at the appeal hearing to the guilt of the appellant with respect to the sale and service to minors on August 10, 1969.

In order to meet the burden required by Rule 6 of State Regulation No. 15, appellant must show manifest error, and that the action of the Council was clearly against the logic and effect of the presented facts. Hudson Bergen Liquor Dealers Ass'n v. Hoboken, 135 N.J.L. 502. Although additional testimony was offered at the appeal hearing, I am persuaded, based on the whole of the record, that the account given by the witnesses on behalf of the Council was credible, forthright and truly reflected the actual occurrences on the dates herein charged. I do not believe that Carol visited these premises on these occasions and consumed only orange juice. There is much in the testimony of Council witnesses which, both directly and indirectly, supports the versions as testified by them. I, therefore, conclude that the Council has established the truth of the charges by a fair preponderance of the credible evidence; that it acted reasonably thereon in reaching a determination that appellant was guilty of the said charges.

Finally, the appellant advocates that the penalty of revocation imposed herein was unreasonable and excessive. R.S. 33:1-31 authorizes the local issuing authority to either suspend or revoke the license upon finding the licensee guilty of violation of the Alcoholic Beverage Law or the rules and regulations of this Division. It has been generally held by this Division that a suspension or revocation imposed in disciplinary proceedings rests in the first instance within the

sound discretion of the local issuing authority. The power of the Director to reduce or modify it will be sparingly exercised, and only with the greatest caution. Harrison Wine and Liquor Co., Inc. v. Harrison, Bulletin 1296, Item 2; Buckley v. Wallington, Bulletin 1772, Item 1. Penalties may vary in different municipalities and according to the circumstances surrounding each offense. The fact that a penalty may be considered relatively severe does not of itself justify reduction on appeal. The Ebony Corporation et al. v. Trenton, Bulletin 958, Item 1; DeLuccia v. Paterson, Bulletin 1781, Item 1.

In fixing the penalty herein, it is my impression that the Council took into consideration, in addition to the finding of guilt on the charges, that a pattern of conduct inimical to the best interests of the community was quite evident in this case. The fact that the appellant continued to serve minors on August 10, 1969, after it knew that it was in serious difficulty as a result of the prior incidents, convinced the Council that the appellant was acting in willful and deliberate disregard of the Alcoholic Beverage Law and the rules and regulations of this Division. The unfortunate and tragic death of Carol, shortly after her alleged consumption of alcoholic beverages in these premises and while in the company of one of appellant's employees, shocked the conscience of the Council as it apparently aroused the indignation of the community.

The prevention and sale of intoxicating liquor to minors not only justifies but necessitates the most rigid control. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, supra, In re Schneider, 12 N.J. Super. 449 (App.Div. 1951); Guill v. Hoboken, 21 N.J. 574 (1956). A liquor license is a mere privilege. Paul v. Gloucester County, 50 N.J.L. 585 (E. & A. 1888); Mazza v. Cavicchia, 15 N.J. 498 (1954). And, as Judge Jayne, speaking for the court in In re 17 Club, Inc., 26 N.J. Super. 43, 52 (App.Div. 1953), said:

"The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support."

The council, by its action in this matter, has emphasized with bell-like clarity that such flagrant violations of the Alcoholic Beverage Law will not be tolerated in the community. In view of the serious consequences resulting from the said proscribed activity, it appeared that the only proper penalty was outright revocation of the license. Therefore, I find that the penalty imposed under the totality of the circumstances herein was not so severe as to form a basis for modification on appeal.

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

Conclusions and Order

Written exceptions to the Hearer's report and argument thereto were filed by the attorney for appellant, pursuant to Rule 14 of State Regulation No. 15.

I have carefully considered the exceptions filed and find they have either been answered in the Hearer's report or are lacking in merit.

I have carefully considered the entire record herein, including the transcripts of testimony, the exhibits, the Hearer's report, and the exceptions filed by the attorney for appellant. I concur in the Hearer's findings and conclusions and adopt them as my conclusions herein. I find that appellant has failed to sustain the burden (Rule 6 of State Regulation No. 15) of establishing that the action of the respondent was erroneous and should be reversed.

Accordingly, it is, on this 5th day of January 1970,

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

ORDERED that Plenary Retail Consumption License C-31, issued by the Mayor and Council of the Borough of Cliffside Park to Pom Bon, Inc., t/a Poor Richard's Pub, for premises 661 Palisade Avenue, Cliffside Park, be and the same is hereby revoked, effective immediately.

JOSEPH M. KEEGAN
DIRECTOR

2. APPELLATE DECISIONS - RAYMOND F. ANTON, ET ALS v. JERSEY CITY, ET ALS.

RAYMOND F. ANTON AND BENJAMIN ANTON, t/a TWIN CITY LIQUORS,)

Appellants,)

v.)

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF JERSEY CITY, and DEL DUCA REALTY CO., INC.,)

Respondents.)

ON APPEAL
CONCLUSIONS
AND ORDER

Samuel J. Davidson, Esq., Attorney for Appellants.
James F. Ryan, Esq., by Louis P. Caroselli, Esq., Attorney for Respondent Board.
Alan Kraut, Esq., Attorney for Respondent Del Duca etc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal challenges the action of the Municipal Board of Alcoholic Beverage Control of the City of Jersey City (hereinafter Board) which by resolution dated September 9, 1969 granted the application by the respondent Del Duca Realty Co., Inc. for place-to-place transfer of its plenary retail consumption license from premises 3 Hague Street to 2 Garfield Avenue, Jersey City. Del Duca Realty Co., Inc. intends to operate the said premises in conjunction with its operation of a restaurant and pizza parlor; the premises

to which the said license was transferred are within seven hundred fifty feet of a plenary retail consumption licensee (Hudson Lanes, Ltd.) which operates a bowling alley in conjunction with its license at 1 Garfield Avenue, Jersey City, which license is in effect and active operation at the said premises.

Appellants in their petition of appeal alleged that the Board abused its discretion and acted unlawfully in granting the said transfer because its action was in violation of an ordinance entitled "An Ordinance to Further Amend an Ordinance Entitled 'An Ordinance to Limit the Number of Plenary Retail Distribution Licenses to Sell Alcoholic Beverages at Retail in the City of Jersey City' enacted October 1937", which in pertinent part provides the following:

"Section 4. From and after the passage of this ordinance, no Plenary Retail Consumption License shall be granted for or transferred to any premises the entrance of which is within the area of a circle having a radius of seven hundred fifty (750) feet and having as its central point the entrance of an existing licensed premises covered by a Plenary Retail Consumption License, provided, however, that if any licensee holding a Plenary Retail Consumption License (at the time of the passage of this ordinance) shall be compelled to vacate the licensed premises for any reason that in the opinion of the (Municipal Council of the City of Jersey City) Board of Alcoholic Beverage Control of Jersey City was not caused by any action on the part of the licensee, or if the landlord of said licensed premises shall consent to a vacation thereof, said licensee may, in the discretion of the (Municipal Council of the City of Jersey City) Board of Alcoholic Beverage Control of Jersey City be permitted to have such license transferred to another premises within a radius of five hundred (500) feet of the licensed premises so vacated. The provisions of this section relating to distances between licensed premises shall not apply to the issuance or transfer of any license to premises which will be operated by the licensee as a Bowling Academy. A premises shall be deemed to be operated as a Bowling Agency if it contains four or more pairs of bowling alleys."

Appellants contend that while a license operating in conjunction with a bowling alley may be transferred from place to place to within seven hundred fifty feet of an existing "C" license, the converse is not authorized.

Answers were filed by both the Board and Del Duca in which they defend that "by permitting a bowling alley with a 'C' license to locate within seven hundred and fifty feet of another 'C' license, the Board clearly manifested an intent and policy to allow a bowling alley with a 'C' license and a tavern, etc., to co-exist within seven hundred and fifty feet of each other." They maintain that there could be "no reasonable basis to allow to locate that close and not allow the reverse situation"; and that it would be unreasonable, arbitrary and capricious for the Board to prohibit the said transfer.

The petition of appeal sets up other grounds upon which respondent Board bottomed its action; however, it was stipulated at this plenary de novo hearing that the determination of this appeal would be grounded solely upon the aforementioned contention. In other words, the sole question to be determined is whether

under the imperative language of the ordinance the Board had the authority to grant the transfer and conversely whether it is prohibited by the language of the ordinance from taking such action.

This matter was heard upon the stipulation of facts as set forth hereinabove under the authority of Rule 8 of State Regulation No. 15, and no testimony was introduced at this plenary de novo hearing.

The general rule is that the language of an ordinance and the provisos and exceptions therein must be strictly construed where such language is clear and unambiguous. See Willner's Liquors v. Jersey City, Bulletin 1332, Item 3; New Jersey State Board of Optometrists v. S.S. Kresge Co., 113 N.J.L. 287, modified and affd. 115 N.J.L. 495 (E. & A. 1935). The respondent argues that the intent of the ordinance was to permit the reverse situation of that specifically set forth in the ordinance as amended. The touchstone in construing an ordinance is to discover and to effect the legislative intent; that intent must be found in the language used. See Brundage v. Randolph Township, 54 N.J. Super. 386, 396 (App. Div. 1959) affd. on Opinion 30 N.J. 555 (1959); Wright v. Vogt, 7 N.J. 1, 5 (1951).

Ordinances are to receive a reasonable construction and application to serve the apparent legislative purpose. However, we will not depart from the plain meaning of language which is free of ambiguity for an ordinance must be construed in accordance with the ordinary meaning of its words and phrases. In Willner's Liquors v. Jersey City, supra, the Director, after discussing the facts of that case, cited the opinion of the then Director in Jersey City Retail Liquor Dealers' Association v. Jersey City and Dal Roth, Inc., Bulletin 976, Item 4, as follows:

"Provisos and exceptions in an ordinance are to be strictly construed and in keeping with the measure's principal purpose. N.J. State Board of Optometrists v. S.S. Kresge Co., 113 N.J.L. 287 (Sup. Ct. 1934); modified in 115 N.J.L. 495 (E. & A. 1935); United States v. Dickson, 15 Pet. 141; 59 Corpus Juris, § 639 (2), notes 42, 43 and 44. Manifestly, the basic purpose of the ordinance in question is to effect a stricture against place-to-place transfers (Finbar et al. v. Municipal Board of Alcoholic Beverage Control of the City of Jersey City and Commuters Bar, Inc., et al., Bulletin 917, Item 1) and it would seem abundantly clear that the main provision and the exceptions therefrom relate to place-to-place transfers only.

"For the reasons hereinabove set forth, I find that the matter is not res judicata but that respondent Board either misinterpreted or disregarded the terms of the ordinance which it was its duty to observe and that the transfer was granted in violation of the ordinance. Its action granting the transfer will be reversed."

The effect of the amendment is discussed in 1 Sutherland, Statutory Construction (3rd ed. 1943), § 1930, p. 412 et seq.:

"*** [T]he courts have declared that the mere fact that the legislature enacts an amendment indicates that it thereby intended to change the original act by creating a new right or withdrawing an existing one. Therefore, any material change in the language of the original act is presumed to indicate a change in legal rights. The legislature is presumed to know the prior construction of terms in the original act, and an amendment substituting a new term or phrase for one previously construed indicates that the judicial or executive construction of the former term or phrase did not correspond with the legislative intent and a different interpretation should be given the new term or phrase." (at pages 412-413)

and

"Not only is this presumption of change used in construing the provisions of the amendatory act, but it is frequently resorted to in litigation arising after the amendment to determine rights accrued under the original act. Thus, it is presumed that the provisions added by amendment were not included in the original act." (at page 415)

A change of language in a statute or ordinance ordinarily implies a purposeful alteration in substance. See Nagy v. Ford Motor Co., 6 N.J. 341, 348 (1951). Administrative efforts to accommodate individual licensees must be accomplished within the framework of the existing legislation, construed in terms of the overriding public policy. Cf. Dal Roth v. Division of Alcoholic Beverage Control, 28 N.J. Super. 246 (App. Div. 1953).

It is clear that by this amendment the local governing body decided to favor the bowling alley for whatever reason it had in mind. It may very well be that in making bowling alleys an exception to the restrictions of this ordinance it felt that bowling alleys might add to the ratables of the municipality or have some other beneficent purpose. This may be compared to special exceptions given in favor of hotels by State legislation. Thus, a municipality under the State law may issue a plenary retail consumption license to a hotel which has over one hundred guest sleeping rooms under certain circumstances, even though it has exhausted the statutory limit in the issuance of such licenses within that municipality. R.S. 33:1-12.20.

Of course, the respondent does not allege that the provision in favor of bowling alleys is arbitrary and invalid because obviously such position would be equally fatal to its position. If the Board wanted to give all plenary retail consumption licensees the same privilege as it granted to bowling alleys with a "C" license, namely, the issuance or transfer of such license to a bowling alley, it could have specifically and clearly said so. Cf. Low's Liquors, Inc. v. West New York, Bulletin 1497, Item 2. Having in mind the stringent public policy of this State toward the tight control of the liquor business, the strict construction of the subject ordinance related to the liquor traffic is consistent with the philosophy and general intent of the administration. See No. Central Counties Retail Liquor, etc. v. Edison Tp., 68 N.J. Super 351. Thus, in the absence of express legislative authority, the said license cannot be lawfully transferred to the

proposed premises. Moschera v. Plumsted, Bulletin 1075, Item 8; Higgins v. Elizabeth, Bulletin 1081, Item 5.

I therefore conclude that the Board acted without statutory authority in granting the said application for transfer.

Accordingly, I recommend that an order be entered reversing its said action.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the attorney for respondent Del Duca Realty Co., Inc., pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibit, the Hearer's report and the exceptions to the Hearer's report which I find have either been answered in the said Hearer's report or are lacking in merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 8th day of January 1970,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City be and the same is hereby reversed.

JOSEPH M. KEEGAN
DIRECTOR

3. APPELLATE DECISIONS - MONROE BAR, INC. v. PASSAIC.

MONROE BAR, INC.,)	
t/a PEANUT BAR,)	
Appellant,)	ON APPEAL
)	ORDER
v.)	
)	
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF PASSAIC,)	
Respondent.)	

Louis Wasserstrum, Esq., Attorney for Appellant
August C. Michaelis, Esq., by Milton J. Pashman, Esq., Attorney
for Respondent

BY THE DIRECTOR:

Appellant appeals from respondent's denial of renewal of its plenary retail consumption license for premises 216 Monroe Street, Passaic, for the license year 1969-70.

Prior to the hearing, appellant's attorney advised me by letter dated January 5, 1970, that the respondent has purchased the license of appellant and that the attorneys have agreed that the said appeal be withdrawn and that an order of dismissal be entered.

Accordingly, it is, on this 7th day of January 1970,

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order entered on July 11, 1969, extending the term of appellant's license for the 1968-69 license year pending determination of the appeal, be and the same is hereby vacated, effective immediately.

JOSEPH M. KEEGAN
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)	
)	
BELCO LIQUOR STORE (A Corporation))	CONCLUSIONS
Rt. #50)	AND ORDER
Weymouth Township)	
PO Mays Landing, N. J.)	
Holder of Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Weymouth.)	

Licensee, by George A. Conover, President, Pro se.
Walter H. Cleaver, Esq., Appearing for the Division.

BY THE DIRECTOR:

Licensee pleads non vult to charge alleging that on November 6, 1969 it sold eighteen cans of beer to a minor, age 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Richard's Liquor Store, Inc., Bulletin 1855, Item 9; Re Holly Distributors, Inc. Bulletin 1720, Item 7.

Accordingly, it is, on this 24th day of December, 1969,

ORDERED that Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Weymouth to Belco Liquor Store (A Corporation), for premises Rt #50, Weymouth Township, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. Monday, January 5, 1970, and terminating at 9:00 a.m. Saturday, January 10, 1970.

JOSEPH M. KEEGAN
DIRECTOR

5. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1969 THROUGH DECEMBER 31, 1969

	1st Quarter July Aug., Sept.		2nd Quarter Oct., Nov., Dec.		Total
ARRESTS:					
Total number of persons arrested	55		33		88
Licensees and employees	19		22		41
Bootleggers	36		11		47
SEIZURES:					
Motor vehicles - cars	-		1		1
Stills - 50 gallons or under	2		-		2
Alcohol - gallons	3.11		8.10		11.21
Mash - gallons	104		-		104
Distilled alcoholic beverages - gallons	50.74		22.94		73.68
Wine - gallons	102.66		7.24		109.90
Brewed malt alcoholic beverages - gallons	78.50		53.16		131.66
RETAIL LICENSEES:					
Premises inspected	1,321		1,980		3,301
Premises where alcoholic beverages were gauged	1,126		1,604		2,730
Bottles gauged	18,010		24,288		42,298
Premises where violations were found	403		501		904
Violations found	659		691		1,350
No Form E-141-A on premises	251		225		476
Unqualified employees	181		127		308
Form E-141-A incomplete	57		109		166
Application copy not available	56		60		116
Other mercantile business	8		1		9
Disposal permit necessary	7		7		14
Prohibited signs & practice	5		3		8
Other violations	94		159		253
STATE LICENSEES:					
Premises inspected	22		48		70
License applications investigated	32		11		43
COMPLAINTS:					
Complaints assigned for investigation	1,249		1,195		2,444
Investigations completed	1,266		1,266		2,532
Investigations pending	(191)		(201)		(201)
LABORATORY:					
Analyses made	231		199		430
Refills from licensed premises - bottles	103		114		217
Bottles from unlicensed premises	73		31		104
IDENTIFICATION:					
Criminal fingerprint identifications made	32		13		45
Persons fingerprinted for non-criminal purposes	1,517		1,034		2,551
Ident. contacts made w/other enforcement agencies	1,079		738		1,817
MV identifications made via State Police teletype	4		-		4
DISCIPLINARY PROCEEDINGS:					
Cases transmitted to municipalities	7		16		23
Violations involved	9		19		28
Sale during prohibited hours	6		9		15
Sale to minors	1		5		6
Failure to close premises during prohibited hours	2		3		5
Single instance of other violations	-		2		2
Cases instituted at Division	70		78		148
Violations involved	90		94		184
Sale to minors	9		16		25
Sale during prohibited hours	11		12		23
Possessing liquor not truly labeled	11		11		22
Permitting lottery activity on premises	5		11		16
Purchase from improper source	12		-		12
Permitting immoral activity on premises	6		4		10
Beverage Tax Law non-compliance	-		9		9
Fraud in application	4		3		7
Failure to close premises during prohibited hours	3		4		7
Hindering investigation	5		2		7
Sale below filed price	4		2		6
Filing false tax reports	4		1		5
Permitting female impersonators on premises	4		-		4
Permitting hostess activity on premises	-		4		4
Permitting lottery & bookmaking on premises	2		1		3
Permitting bookmaking on premises	2		1		3
Permitting misc. gambling on premises	-		2		2
Unqualified employees	-		2		2
Retailer-to-retailer sales	2		-		2
Unauthorized transportation	2		-		2
Failure to keep true books of account	2		-		2
Permitting gambling apparatus on premises	-		2		2
Permitting lottery, bookmaking & cards on premises	-		1		1
Single instance of other violations	2		6		8

	1st Quarter		2nd Quarter		Total
	July	Aug., Sept.	Oct., Nov.	Dec.	
DISCIPLINARY PROCEEDINGS (CONTINUED)					
Cases brought by municipalities on own initiative and reported to Division	61		39		100
Violations involved	80		50		130
Sale to minors	28		10		38
Sale during prohibited hours	12		5		17
Failure to close premises during prohibited hours	4		9		13
Conducting business as a nuisance	6		6		12
Permitting gambling on premises	4		6		10
Permitting brawl, etc. on premises	6		3		9
Permitting premises to be used for illegal activity	3		2		5
Act of violence	3		1		4
Hindering investigation	2		2		4
Permitting immoral activity on premises	2		2		4
Failure to afford view into premises during prohibited hours	2		1		3
Employees without ID cards (local reg.)	2		1		3
Employing female bartender (local reg.)	2		-		2
Single instance of other violations	4		2		6
HEARINGS HELD AT DIVISION:					
Total number of hearings held	135		125		260
Appeals	22		34		56
Disciplinary proceedings	75		49		124
Eligibility	32		33		65
Seizures	4		5		9
Tax Revocations	-		4		4
Applications for License	1		-		1
On Petition	1		-		1
STATE LICENSES AND PERMITS ISSUED:					
Total number issued	6,087		5,221		11,308
Licenses	630		8		638
Solicitors' permits	123		248		371
Employment permits	1,538		929		2,467
Disposal permits	225		208		433
Social affair permits	1,320		1,295		2,615
Wine permits	57		675		732
Miscellaneous permits	1,004		941		1,945
Transit insignia	943		679		1,622
Transit certificates	247		238		485
OFFICE OF AMUSEMENT GAMES CONTROL:					
Licenses issued	9		40		49
State Fair licenses	154		-		154
Premises inspected	1,052		-		1,052
Premises where violations were found	60		-		60
Number of violations found	82		-		82
Enforcement files established	75		42		117

JOSEPH M. KEEGAN
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: January 14, 1970

6. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS -
HINDERING - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)	
Proceedings against)	
JOHN E. KELLY)	CONCLUSIONS
t/a KELLY'S)	AND ORDER
209 John Street)	
Harrison, N. J.)	
Holder of Plenary Retail Consumption)	
License C-1, issued by the Town)	
Council of the Town of Harrison)	

Licensee, Pro se.
Louis F. Treole, Esq., Appearing for the Division.

BY THE DIRECTOR:

Licensee pleads guilty to charges alleging that on Sunday, September 7, 1969 he (1) failed to have his licensed premises closed and sold alcoholic beverages after 2:00 a.m., during prohibited hours, in violation of a municipal ordinance, and (2) hindered the investigation then being conducted by Division agents by refusal to admit them to the licensed premises, in violation of Rule 35 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Mihursky, Bulletin 1820, Item 13.

Accordingly, it is, on this 30th day of December, 1969,

ORDERED that Plenary Retail Consumption License C-1, issued by the Town Council of the Town of Harrison to John E. Kelly, t/a Kelly's, for premises 209 John Street, Harrison, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Thursday, January 8, 1970, and terminating at 2:00 a.m. Wednesday, January 28, 1970.

JOSEPH M. KEEGAN
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - PURCHASE FROM ANOTHER RETAILER -
LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)
BRUNETTI'S LIGHTHOUSE, INC.)
120 Terhune Drive)
Wayne, N. J.)
Holder of Plenary Retail Consumption)
License C-37, issued by the Municipal)
Council of the Township of Wayne.)

CONCLUSIONS
AND ORDER

Joseph M. Levinsohn, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:


Licensee pleads non vult to a charge alleging that on
divers days between September 18, 1967 and July 30, 1969 it
purchased alcoholic beverages from other retail licensees, in
violation of Rule 15 of State Regulation No. 20.

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 Smith, Bulletin 1886,
Item 10.

Accordingly, it is, on this 14th day of January 1970,

ORDERED that Plenary Retail Consumption License C-37,
issued by the Municipal Council of the Township of Wayne to
Brunetti's Lighthouse, Inc., for premises 120 Terhune Drive,
Wayne, be and the same is hereby suspended for ten (10) days,
commencing at 3 a.m. Tuesday, January 20, 1970, and terminating
at 3 a.m. Friday, January 30, 1970.

JOSEPH M. KEEGAN
DIRECTOR

By: 
Richard C. McDonough
Director