STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Dr. Cranford, N. J. 07016

BULLETIN 2089 March 1, 1973

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STATE OF NEW JERSEY
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25 Commerce Dr. Cranford, N.J. 07016

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1. APPELLATE DECISIONS - WOODBINE INN, INC. v. CHERRY HILL.

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|---|---|
| Woodbine Inn, Inc., t/a "Woodbine Inn", Appellant, v. Township Council of the Township of Cherry Hill, Respondent. | On Appeal CONCLUSIONS and ORDER |

Novack and Trobman, Esqs., by David Novack, Esq., Attorneys for Appellant
Ralph J. Kmiec, Esq., Attorney for Respondent
Beck and Block, Esqs., by Robert C. Beck, Esq.,Attorneys for Objector-residents and Locustwood Civic Assn.
Michael N. Kouvatas, Esq., Attorney for Objector St. Thomas Greek Orthodox Church
Orlando, Hohweiler & Yampell, Esqs., by Robert J. Forgash, Esq., Attorneys for Objector Garden State Racing Assn.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Township Council of the Township of Cherry Hill (hereinafter Council) which by a vote of three-to-two denied the application for a place-to-place transfer of appellant's plenary retail consumption license from premises 400 Church Road to premises at Haddonfield Road and Martin Avenue, Cherry Hill.

In its resolution dated October 26, 1971 the Council stated the following reasons for its action:

> "... that said application be and the same is hereby denied since the public good and the common interest of the general public is not served by the transfer of said license since, among other reasons, there are six (6) other licenses located within the immediate vicinity of the proposed premises."

Appellant contends that the action of the Council was erroneous for the following reasons:

> "(a) The lands on which the proposed building was to be erected are situate in Zone B2 as defined by the Zoning Ordinance of the Township of Cherry Hill, said area is a business zone, Haddonfield Road is a business street, and the area is suitable for the conduct of a beverage business.
>
> "(b) The lands in question are situate on the opposite side of Haddonfield Road from the location of the Garden State Race Track and the land although zoned for business use is not suitable for ordinary retail businesses.

"(c) Cherry Hill Township has become well known for its food and beverage businesses, it attracts business from other areas, including the City of Philadelphia, and the presence of other licensees in the area has no relevancy to the application by Appellant.

"(d) The Township of Cherry Hill has adopted an ordinance providing that no license shall be located within one-thousand (1,000) feet from another licensed premises, and this location is more than 1,000 feet from any other license in the area.

"(e) The action by the Mayor and Township Council in denying the application to transfer was arbitrary and capricious."

The Council in its answer alleged that its action was a valid and proper exercise of its discretionary authority.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony and cross-examine witnesses. Additionally, the transcript of the hearing held before the Council was received in evidence in accordance with Rule 8 of said Regulation.

Prior to taking oral testimony, several aerial photographs, renderings, plans and petitions in favor of and opposed to the proposed transfer were received in evidence.

During the course of the hearing, it became apparent that the Council's action was predicated on an application and plans submitted to it for a transfer to the proposed location for use as a bar and cocktail lounge facility. Thereafter, as a result of a favorable ruling by the Superior Court of New Jersey which considered the issue of permitting the erection of a building on the proposed location for use as a restaurant with bar facilities, appellant requested this Division to consider amended plans calling for a full service restaurant facility accommodating a total of approximately 450 patrons, including a bar facility.

Inasmuch as the central issue involves the place-to-place transfer of a plenary retail consumption license, I have decided to base my findings as now presented at this de novo hearing instead of recommending the remand of the matter to the Council for its reconsideration.

In behalf of appellant, Henry A.Feinberg, who is engaged in the field of real estate development, brokerage and appraisal in the subject area, testified that the site of the proposed transfer is a vacant plot on the southeast corner of Martin Avenue and Haddonfield Road; that the easterly side of Haddonfield Road contains a mixture of light industrial and commercial businesses, and that there is located across the street the Garden State Racing Association complex including the race track, parking lots, stable area, walking area and entrances.

The witness asserted that the traffic on Haddonfield Road is congested immediately prior to and after the closing hours of the race track and during the busy retail season at the Cherry Hill Mall. Haddonfield Road consists of two lanes of traffic each way. It was his opinion that a restaurant serving liquor would only slightly increase the traffic at "off" hours. Upon examining the plans for the proposed restaurant with bar facilities he felt that sufficient provision had been made for off-street parking and that his facility would have a lesser impact upon traffic than other commercial uses.

Robert C. Thomas, a partner in an architectural firm, testified that he assisted in the preparation of plans for the bar and cocktail lounge which had been submitted to the Council for its action, and also assisted in the preparation of plans which, in addition to the said bar and cocktail lounge, provide for a restaurant and kitchen facility. The parking facilities would be in excess of the minimum Township requirements.

On cross examination Thomas asserted that, if a motorist proceeding in a southerly direction along Haddonfield Road desired to make a left turn in order to enter the driveway of the proposed licensed premises, he would be obliged to cross a double white line. Although the State statute relating to proximity of a licensed premises to a church was not violated, the rear of the St. Thomas Greek Orthodox Church is contiguous to the site of the proposed licensed premises.

John Nero, president and principal stockholder of the corporate appellant, testified that he seeks to transfer the subject license from 400 Church Road (where he now operates a full menu restaurant and bar) to the proposed location due to the inadequate parking facilities. He cannot accommodate the increased patronage and he is presently located in an area which has now been zoned residential. The proposed site has been approved in so far as zoning is concerned. The dining room would accommodate approximately 400 patrons and the bar approximately 50 patrons. He is not permitted to enlarge his present inadequate and antiquated facilities due to zoning restrictions.

On cross examination Nero testified that his original application to the Council was for a transfer to a proposed building to accommodate a tavern facility. He had heard that one or two complaints had been received by the Council from neighbors at his present location pertaining to noise in the parking lot between 2 and 3 a.m.

In behalf of the Council, Rev. Steven Vlahos (a priest at St. Thomas Greek Orthodox Church) testified that he was authorized to appear at the hearing by the Board of Trustees of the church in order to voice the objections of the parish council. He expressed an opinion that the addition of a bar and restaurant would "further congest the traffic" and make it more difficult for the parishioners who attend the various church-sponsored activities held throughout the week.

Conrad Markiewicz, who resides in the immediate vicinity of the proposed site and who is president of the Locustwood Civic Association, the members of which reside in the general area of the proposed site, testified that the Association recorded its opposition to the transfer because there are seventeen liquor outlets within a radius of five-eighths of a mile of the proposed site. He expressed a fear that he would be unable to sleep until the parking lot adjacent to the proposed building was emptied.

On cross examination the witness conceded that the seventeen liquor outlets he mentioned are within a more distant radius than five-eighths of a mile.

Five women residents of the neighborhood, all of whom with one exception are members of the Locustwood Civic Association, voiced opposition to the proposed transfer for various reasons. In sum, fear was expressed that the neighborhood may become noisy, particularly during the evening hours and, further, it would increase the flow of traffic with resultant hazards.

Frank Cifone, general superintendent of the Garden State Racing Association, testified that he is in charge of the entire physical structure of its complex. The Association is assigned sixty racing days. The barns, most of which are of frame construction, can house in excess of fourteen hundred horses and six hundred eighty persons. The accommodations are in operation approximately thirty days prior to each meet and closed approximately thirty days subsequent thereto. Around-the-clock fire security is furnished. No alcoholic beverages are served in the stable area. The stable area is located diagonally across the street from the site of the proposed transfer. He asserted that the proximity of the proposed site of the liquor outlet to the various stable hands would increase the fire hazards.

Joseph E. Whitcas (Deputy Mayor and a member of the Council) testified that he voted in opposition to the transfer for the following stated reasons:

"Number 1. I would say there were approximately nine or more liquor licenses in the area already. I felt it would have a detrimental effect to peripheral activities in St. Thomas Greek Orthodox Church. Haddonfield Road is a four-lane high speed highway with no road shoulders. It has lighting only on the track side, I believe, and there are no sidewalks, and I feel that with the stable entrance of the track being almost located across the street from the proposed Woodbine Inn, it would create a pedestrian and vehicular traffic flow that would create street hazards."

The witness then defined the phrase "in the area" as within a riding distance of a mile.

Additionally, the witness testified that he also considered that "There was a great deal of public sentiment against the proposal to transfer the liquor license. The Greek church members are opposed to it, the Locustwoods Civic Association is opposed to it, so is the Cherry Hill Civic Federation, which is composed of about 21 civic associations in the township." The Council considered plans for a tavern, whereas the plans presently submitted for consideration include a restaurant.

Additionally, Councilman Whitcas testified that his vote would have been the same had the application been for a transfer to a full-service restaurant that fully complied with the zoning requirements. He would have opposed the transfer of the liquor license to a full service restaurant and tavern for the same reasons as expressed hereinabove.

In rebuttal Stephen D. Morgan (a member of the Council) voted in favor of the proposed transfer for reasons which he expressed as follows:

"Well, there are many elements which went into the decision. The arguments which were made pro and con with respect to the transaction lasted for many hours, and my decision was primarily an on-balance decision. I felt that, although it was true that there might be some minor traffic problem on the affected road, that it was not such as to create any unnecessary hazard. I felt the location was a proper one, in view of the fact that this was a business zone, that the restaurants having tap room licenses or liquor licenses in the area are reasonably well spread out, although there are several within a half a mile or so. Another consideration was that the present location I think is such a terrible location, that anything would be by comparison superior to it. The present location

> is in a basically residential neighborhood. This would move the license to a highway business zone, where there are not houses in great numbers immediately proximate to the site. There are houses nearby which would be on a street adjacent."

On cross examination the councilman asserted that one of the factors he took into consideration was that there was a lesser density of residential housing in the proposed location than at the present site. His consideration was based on plans for a taproom and not for a full service restaurant facility.

William A. Schetter (a member of respondent Council) testified that he voted in favor of the transfer for reasons essentially similar to those expressed by Councilman Morgan and because he did not agree with the arguments propounded in opposition thereto.

The crucial issue to be determined is whether the Council acted reasonably and in the best interests of the community.

Preliminarily, I observe that it is a firmly established principle that a transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4; Zicherman v. Driscoll, 133 N.J.L. 586 (1946). As the court said in Fanwood v. Rocco, 59 N.J. Super. 306, 320 (App.Div. 1960), aff'd 33 N.J. 404 (1960): "No person is entitled to [the transfer of a license] as a matter of law" and "If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial."

In Fanwood, the court further articulated the principle that the Legislature has entrusted to municipal issuing authorities the initial authority in these matters, and charged them with the duty to approve or disapprove place-to-place transfers. The action of the Council in either approving or denying an application for such transfer 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." See also Hudson Bergen County Retail Liquor Storea Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947).

As was stated in Ward v. Scott, 16 N.J. 16, 23 (1954):

> "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)."

In the recent case of Lyons Farms Tavern Inc. v. Newark, 55 N.J. 292, 303 (1970), the court stated:

> "The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence

> of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record."

Appellant's contentions to the effect that (a) lands on which the proposed building is to be erected are compatible with the zoning ordinance, (b) the location is more suitable for the conduct of an alcoholic beverage business than other retail uses, (c) the Township attracts food and beverage business from residents of distant localities and the presence of other licenses is not relevant to appellant's application herein, and (d) the distance ordinance is not violated, are of no moment or relevance in arriving at a determination as to the reasonableness of the Council's action herein and, therefore, these contentions lack merit.

In this energetically contested proceeding appellant urges that the Council's action was arbitrary and unreasonable.

I find that the Council, in reaching its ultimate determination herein, considered and honored the expressed sentiments of the area residents and of the neighboring church. This approach has received the approbation of the Supreme Court in Lyons Farms Tavern, Inc. v. Newark, supra, at pp. 306, 307, wherein the court stated:

> "... Service of the public interest in licensing, in transferring of licenses and in controlling this exceptional business requires an attentive and sympathetic attitude toward the sentiments of substantial numbers of persons in the locality, whether they be residents, commercial operators, or representatives of a nearby church, school or hospital. When their views are hostile to a licensee's request for enlargement of his existing business, and the views are reasonably associated with dangers to the public health, safety, morals and general welfare commonly recognized as incidents of the sale and consumption of alcohol, the local regulatory body does not act arbitrarily in honoring them. In fact, in our view, the local board would be remiss in its duty if it failed to give such views serious consideration...."

Although appellant's attempt to transfer may be primarily dictated by reason of the fact that in its present location it lacks adequate parking facilities and it is prevented from the expansion thereof due to zoning restrictions, this factor does not render the Council's action unreasonable. The Council did consider and honor the hostile sentiments articulated by area residents and of the church in the proposed location. In my consideration of this matter I was not impressed with the alarm expressed by the race track official to the effect that the transfer would increase the likelihood of fires in the stable areas because this was merely based upon an assumption and no definite proof was offered to bolster this contention.

In conclusion I observe that, in matters involving transfers of liquor licenses, the responsibility of the municipal issuing authority is "high", its discretion "wide" and its guide the public interest. Lubliner v. Paterson, 33 N.J. 428 (1960). As noted hereinabove, the Director, in these matters, is governed by the principle that where reasonable men, acting reasonably, have arrived at a determination in the issuance or transfer of a license, such determination should be sustained

by the Director unless he finds that it was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, supra; cf. Fanwood v. Rocco, supra (59 N.J. Super. at p. 320); Lyons Farms Tavern v. Newark, supra.

As was so aptly stated in South Jersey Package Stores Assn. v. Cherry Hill, Bulletin 1952, Item 1, I find that the Council was in a position to weigh the competing interests of all the persons involved and determined in which direction the public interest predominated. At most, a difference of opinion was shown by appellant. However, it failed to show that the Council's action was unreasonable.

The Council has, in my opinion, understood its full responsibility and has acted circumspectly and in the reasonable exercise of its discretion in denying said transfer. Absent improper motivation, not alleged herein, the action of the Council, based upon such bona fide use of its lawful discretion, must be affirmed.

Therefore, upon consideration of all of the credible evidence herein, including transcript of the testimony, the exhibits and the argument of counsel, I conclude that appellant has failed to sustain the burden of establishing that the action of the Council was erroneous and should be reversed. Rule 6 of State Regulation No. 15. Hence I recommend that an order be entered affirming the action of the Council and dismissing the appeal.

## Conclusions and Order

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

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the memoranda of counsel, the Hearer's report and the written exceptions thereto which have either been considered in the Hearer's report or are lacking in merit, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 15th day of January 1973,

ORDERED that the action of respondent Township Council of the Township of Cherry Hill be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed.

Robert E. Bower
Director

2. SEIZURE - FORFEITURE PROCEEDINGS - UNLICENSED GROCERY STORE - CLAIM FOR RETURN OF SUM DEPOSITED BY OWNER OF VENDING MACHINES RECOGNIZED - CLAIM FOR RETURN OF SUM DEPOSITED BY STORE OWNER IN LIEU OF SEIZURE REJECTED - ALCOHOLIC BEVERAGES AND CASH ORDERED FORFEITED.

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| In the Matter of the Seizure on January 26, 1972 of a quantity of alcoholic beverages, fixtures, furnishings, equipment and a pinball machine, pool table, juke box and cigarette machine and $56.67 in cash at 51 North Main Street in the City of Paterson, County of Passaic and State of New Jersey. | : | Case No. 12,666<br>On Hearing<br>CONCLUSIONS and ORDER |

Joseph Cropanese, Secretary, Appearing for claimant, J.A.J. Vending Co., Inc., t/a Midtowne Amusements.
Harry D. Gross, Esq., Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of N.J.S.A. 33:1-66 and State Regulation No. 28 and further pursuant to a stipulation dated January 26, 1972, signed by Joseph Cropanese, Secretary on behalf of J.A.J. Vending Co., Inc., t/a Midtowne Amusements to determine whether a pool table, cigarette machine, juke box and pinball machine, alcoholic beverages and $56.67 cash, as set forth in inventory attached hereto and marked Schedule "A" seized on January 26, 1972 at the unlicensed premises of Acme Dorado Social Club, 51 North Main Street, Paterson, constitute unlawful property and should be forfeited; and further to determine whether the sum of $550.00 deposited with the Director, pursuant to a stipulation under protest by J.A.J. Vending Co., Inc., t/a Midtowne Amusements, representing the appraised value of a pool table, juke box, pinball machine and cigarette machine which were returned to claimant.

The seizure was made by ABC agents in cooperation with the officers of the Paterson Police Department.

At the hearing Joseph Cropanese, Secretary, appeared on behalf of J.A.J. Vending Company and sought return of the sum of $550.00 deposited representing the appraised value of articles hereinabove described as claimed.

No one appeared to claim other personal property seized herein.

Reports of ABC agents and the Division file were admitted into evidence with the consent of the parties present; the Division file contained the affidavit of mailing, affidavit of publication, notice of hearing, inventory and an analysis of the alcoholic content of the beverages seized. There was included a certification by the Director that no license or permit for the sale of alcoholic beverages was ever issued for said premises or to Estaban Villaneuva and/or Acme Dorado Social Club.

The reports of the ABC agents disclosed the following: On January 26, 1972 ABC Agent R entered the premises, consisting of one room with kitchen in rear, ordered a can of beer and paid for it with "marked" money. Agents D, De, B, P and C entered, seized the "marked" money and the alcoholic beverages in the premises, together with that ordered by Agent R. They arrested Estaban Villanueva, and charged him with the sale of alcoholic beverages, without a license. The items listed in Schedule "A", attached hereto, were also seized.

Joseph Cropanese, appearing on behalf of J.A.J. Vending Co., Inc., t/a Midtowne Amusements testified that, about five or six weeks prior to the seizure, Villanueva requested him to install a cigarette machine, pool table, juke box and pinball machine in the unlicensed premises. In that time, he visited twice but had made an investigation of Villanueva and a credit inquiry from which he determined that Villanueva was a responsible citizen. Visits and collections were made during the day only as the area had such a high crime rate that neither collections nor repairs would be made in the evening. His attempts to visit during daylight hours were aborted because the premises were not then open and during the period of installation only two visits were successful. In the visits that were made there were no evidence of alcoholic beverages present.

The seized alcoholic beverages are illicit because they were intended for sale without a license in violation of N.J.S.A. 33:1-1(i). Such illicit alcoholic beverages and the personal property and cash seized constitute unlawful property and are subject to forfeiture. N.J.S.A. 33:1-2, 66.

In furtherance of the claim made by vending equipment operators the Director has recently promulgated a policy imposing on such claimants the obligation of making personal, periodic and meaningful inspections and they may not rely on the presumed inspection of other persons or agencies, including those of law enforcement. See Seizure Case No. 12,252, Bulletin 1919, Item 5.

It is apparent that the machines were installed in the premises in good faith following an investigation of the character and credit of the operator, Villanueva. During the approximate three weeks of operation only two visits within the unlicensed premises could be accomplished on behalf of the claimant; no attempts at night visits being made because of the high crime incidence in the area. From the agents' description of the interior, there was no conventional bar installed, and the only fixtures of value therein were apparently those installed by the claimant. I find that the installation and service was done in good faith, and that the claimant was innocent of the knowledge of the illicit sales made by Villanueva. The paucity of visits was the natural result of the unlicensed premises being closed during business hours, and the obvious danger of visiting or servicing in darkness.

Considering all of the evidence and the circumstances, it is recommended that the claim of Joseph Cropanese on behalf of J.A.J. Vending Co., Inc., t/a Midtowne Amusements for return of $550.00 deposited under the aforesaid stipulation be recognized, and the sum of $550.00 as deposited be returned.

It is further recommended that the alcoholic beverages and the seized cash in the amount of $56.67, as listed in Schedule "A", be forfeited.

Conclusions and Order

No exceptions to the Hearer's Report were filed within the time permitted by Rule 4 of State Regulation No. 28.

After carefully considering the entire matter herein, including the transcript of testimony, the exhibits and the Hearer's Report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 15th day of January, 1973,

DETERMINED and ORDERED that the claim of J.A.J. Vending Co., Inc., t/a Midtowne Amusements be and the same is hereby recognized and the sum of $550.00, deposited by the said J.A.J. Vending Co., Inc., under the aforesaid stipulation, shall be returned to it; and it is further

DETERMINED and ORDERED that the balance of the seized property, including the alcoholic beverages and cash, as more fully set forth in Schedule "A" attached hereto, constitute unlawful property and the same be and is hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66; and the said alcoholic beverages shall be retained for the use of hospitals and State, county or municipal institutions or destroyed, in whole or in part, at the direction of the Director of Alcoholic Beverage Control.

Robert E. Bower,
Director

Schedule "A"

29 - containers of alcoholic beverages
1 - pinball machine; 1 pool table;
1 - juke box; 1 - cigarette machine
$56.67 - cash

3. SEIZURE - FORFEITURE PROCEEDINGS - UNLICENSED CLUB - CLAIM FOR RETURN OF SUM DEPOSITED BY VENDING MACHINE OWNER RECOGNIZED - ALCOHOLIC BEVERAGES AND CASH FORFEITED.

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| In the Matter of the Seizure on January 26, 1972 of a quantity of alcoholic beverages, fixtures, furnishings, equipment and miscellaneous personal property and $219.86 in cash at 182 Mill Street, in the City of Paterson, County of Passaic and State of New Jersey. | : | Case No. 12,665<br>On Hearing<br>CONCLUSIONS and ORDER |

J & R Distributors, claimant, by Peter A. Reda, partner.
Harry D. Gross, Esq., Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of N.J.S.A. 33:1-66 and State Regulation No. 28 to determine whether 47 containers of alcoholic beverages, personal property, furnishings and equipment and $219.82 in cash, more particularly described in an inventory hereinafter referred to as Schedule "A", seized on January 26, 1972, in unlicensed premises of a grocery store in a three-story dwelling located at 182 Mill Street, Paterson, New Jersey constitute unlawful property and should be forfeited; and further pursuant to a stipulation dated January 26, 1972, signed by Antonio Ruiz to determine whether the sum of $400.00, deposited with the Director, pursuant to said stipulation under protest by Antonio Ruiz, representing the appraised value of grocery items, canned food, candy display icebox, refrigerator, juke box, ice cream freezer, cash register, etc., as set forth in the aforesaid Schedule "A" should be forfeited or returned to him; and further to determine whether the sum of $300.00, deposited with the Director pursuant to a stipulation under protest by Peter A. Reda, partner, on behalf of J & R Distributors, representing the appraised value of a pool table and pinball machine as set forth in the aforesaid Schedule "A" should be forfeited or returned to it.

The seizure was made by ABC agents in cooperation with the officers of the Paterson Police Department.

At the hearing Peter A. Reda appeared on behalf of J & R Distributors and sought return of the sum of $300.00, deposited representing the appraised value of articles hereinabove described as claimant. No one appeared on behalf of claimant, Antonio Ruiz, to seek recognition of his claim.

Reports of ABC agents and the Division file were admitted into evidence with the consent of the parties present; the Division file contained the affidavit of mailing, affidavit of publication, notice of hearing, inventory and an analysis of the alcoholic content of the beverages seized. There was included a certification by the Director that no license or permit for the sale of alcoholic beverages was ever issued to Antonio Ruiz, or to any other person at or for the said premises.

The reports of the ABC agents disclosed the following: On January 26, 1972 Agent R entered a grocery store, managed by Antonio Ruiz, ordered and received a can of beer, paid with "marked" money. Other agents entered, seized the "marked" money, the can of beer served, a quantity of beer, a bottle of whiskey and the personal property within the grocery store. Ruiz deposited the sum of $400.00 and retained the personal property, other than the alcoholic beverages, cash and "marked" money. He was arrested and charged with sale of alcoholic beverages without a license.

Peter A. Reda, appearing on behalf of J & R Distributors testified that: A pool table and pinball machine has been located in the unlicensed premises for about two years prior to the time Ruiz bought the business. Reda had known Ruiz who had been a waiter in a local restaurant. Reda relied on his prior acquaintance, the police investigation and credit check in determining the responsibility of Ruiz. Weekly visits were made during midday hours to collect from the machines. These visits, made over a year period, consisted of an approximate fifteen minute stop. The business was described as a grocery business, where sandwiches, soda and ice cream were sold. Reda never saw any alcoholic beverages sold.

The seized alcoholic beverages are illicit because they were intended for sale without a license in violation of N.J.S.A. 33:1-1(i). Such illicit alcoholic beverages and the personal property with cash seized constitute unlawful property and are subject to forfeiture. N.J.S.A. 33:1-2, 66.

In furtherance of the claim made by vending equipment operators the Director has recently promulgated a policy imposing on such claimants the obligation of making personal, periodic and meaningful inspections and they may not rely on the presumed inspection of other persons or agencies, including those of law enforcement. See Seizure Case No. 12,252, Bulletin 1919, Item 5.

The reports of the ABC agents describe the premises as a tiny grocery and ice cream store. Apart from the merchandise counter there were no usual facilities for the service of on-premises consumption of alcoholic beverages. The claimant, J & R Distributors, by its partner, Peter A. Reda, had had its equipment in the premises for two years prior to Ruiz's ownership, without difficulty, and as Ruiz had been known for a year prior thereto, there was no reason to presume the illicit sale of alcoholic beverages. I find that J & R Distributors was bona fide in its business relationship with Ruiz and did not know or have reason to believe that there was unlawful liquor activity. I recommend that its claim for return of the sum deposited under the aforesaid stipulation be recognized. Seizure Case No. 11,821, Bulletin 1742, Item 5.

As to the deposit posted by Ruiz, the sale to the agents was patently illicit with no defense advanced. Therefore, I recommend that the deposit in the sum of $400.00 posted by him, together with the cash and alcoholic beverages, be forfeited.

## Conclusions and Order

No exceptions to the Hearer's Report were filed within the time permitted by Rule 4 of State Regulation No. 28.

After carefully considering the entire matter herein, including the transcript of testimony, the exhibits and the Hearer's Report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 10th day of January, 1973,

DETERMINED and ORDERED that the claim of J & R Distributors be and the same is hereby recognized; and the sum of $300.00 deposited by J & R Distributors under one of the aforesaid stipulations be returned to it; and it is further

DETERMINED and ORDERED that the sum of $400.00, representing the appraised retail value of certain personalty listed in Schedule "A", which said property was returned to claimant, Ruiz, paid under protest by Antonio Ruiz to the Director, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of N.J.S.A. 33:1-66, to be disposed of in accordance with law; and it is further

DETERMINED and ORDERED that the balance of the seized property including the alcoholic beverages and cash, as more fully set forth in Schedule "A", attached hereto, constitute unlawful property and the same be and is hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66; and the said alcoholic beverages be and the same shall be retained for the use of hospitals and State, county or municipal institutions or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

Robert E. Bower,
Director

SCHEDULE "A"

47 - containers of alcoholic beverages
1 - pool table; 1 - pinball machine;
1 - cash register; 1 - juke box;
1 - cooler; 2 - refrigerators;
2 - showcases; miscellaneous personal property;
$219.86 - cash

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - SALE TO INTOXICATED PERSONS - BRAWL - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against

Hillcrest, Inc.
t/a Hillcrest
189-A - 191 Avenel Street
Woodbridge
P.O. Avenel, N. J.,

Holder of Plenary Retail Consumption License C-68, issued by the Municipal Council of the Township of Woodbridge.

CONCLUSIONS and ORDER

Thomas W. Sharlow, Esq., Attorney for Licensee
Peter E. Rhatican, Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads not guilty to three charges alleging that on February 11 (amended to include February 12), 1972, it (1) sold alcoholic beverages to two minors, both age 18, in violation of Rule 1 of State Regulation No. 20; (2) it sold alcoholic beverages to an apparently intoxicated person, in violation of Rule 1 of State Regulation No. 20, and (3) it permitted a brawl or act of violence in the licensed premises, in violation of Rule 5 of State Regulation No. 20.

On behalf of the Division Agent M testified that he and Agent D entered the licensed premises about 11:30 p.m. on February 11, 1972, and seated themselves at the bar. Shortly thereafter an unidentified male approached him in an attempt at recognition, displayed glassy eyes and slurred speech. Failing positive recognition, that male staggered from them and to another part of the bar where a drink was served to him. That male, in an attempt to walk with the drink, stumbled and fell against persons and equipment while en route to a large room in the rear. The premises were crowded and one of the agents followed the apparently intoxicated male to the rear room where he observed that male embroiled in a fight. That fight was the apparent result when the intoxicated person broke a beer bottle in an attempt to attack or defend himself. Other patrons rushed to restrain him while others, in his defense, engaged in a melee. To all of this the principal owner of the stock of the corporate licensee stood by, swept up the broken glass and directed female patrons to leave. Agent D summoned the local police.

Immediately prior to the altercation, and during it, Agent M observed two females drinking beer, the arrest of one of whom was effected thereafter.

Agent D testified in substantial corroboration to that of Agent M. His account of their activities while in the premises indicated that their visit embraced about forty-five minutes to the time at which they made known their identity.

Vigorous cross examination of both agents resulted in minor and irrelevant discrepancies both between their testimony and that which had apparently been testified to in the municipal court. In substance, however, they were consistent in their testimony with respect to the said incidents.

The president of the licensee corporation, Joseph Asmonda, testified on behalf of the licensee that on the evening of February 11, 1972, the bar was crowded and numerous patrons filled the back room. He and another bartender tended bar, and he had another employee acting as a bouncer in the back room. He gave the following account: The apparently intoxicated male was not served and, on being refused, retreated to the rear room, attempted a commotion which was immediately forestalled by his being promptly ejected. While he was directing the ejection of the intruder, he was told that someone was behind the bar going into his papers. Upon hasty return to the bar he confronted that person who refused to identify himself and, upon arrival of the local police, learned that the person behind the bar was an ABC agent. He denied any sale of alcoholic beverages to the minors.

The Division produced Jane --- who testified that she resides in Beach Haven and was born on July 3, 1953. The only question in addition posed to her concerned the result of the charge against her in the municipal court, of which she was acquitted.

At the outset it is recommended that, in the absence of any substantial proofs whatever, the charge against the licensee relating to the alleged sale to minors be dismissed. The proofs adduced failed to reveal service to the minors or that the licensee knowingly permitted or suffered the minors to consume alcoholic beverages.

The second and third charges of the complaint relate directly to the observations of the agents who unequivocally described the speech, manner, actions and physical characteristics of the intoxicated person and confirmed his having been served. Those actions were not only sufficient to inculpate the licensee as to the second charge but led, in addition, to the succeeding events giving rise to the third charge.

A serious implication that the presence of the intoxicated persons in the licensed premises was implanted to create a violation, advanced in defense to the charges, was not supported by proofs. The further contention by the licensee that the agents arrived there with predetermined purpose to find the violations so charged is not supported by the evidence, and must be rejected.

The single issue here involved is one of credibility. It is not seriously controverted that the person apparently intoxicated was so; the defense is that no sale had been made to him. The licensee would have us believe that such person arrived in the premises in an intoxicated condition and was allowed to remain therein without being served until the altercation ensued. The agents' account is far more credible and logical.

The licensee further challenges the agents' account that the fracas consisted simply of the disorder occasioned when the intoxicated person was ejected. The principal witness in defense described the incident thusly:

> "Well, I had no indication of a fight until someone told me there was a trouble-maker in the back room. That is when I shot back there. I saw one guy yanking on the 'T' shirt of another guy. My bouncer was there. One guy threw a bottle. This guy knocked over a table. It was another big guy. I had the other guy in court before.... Steve had the guy in tow. Meantime, I got another yank from somebody, my patrons."

No call to the local police was made by the licensee's employees; the police were summoned by the ABC agents. By the time they arrived, some order having been restored, the agents were attempting to secure the necessary license information.

Within the context of our regulation, a brawl is defined as a clamorous or tumultuous quarrel in a public place to the disturbance of the public peace. A disturbance is an interruption of a state of peace and quiet; a public commotion synonymous with brawl. Snug Tavern, Inc. v. Orange, Bulletin 1425, Item 1.

"Violence" is defined as, "Unjust or unwarranted exercise of force usually with the accompaniment of vehemence, outrage or fury." Black's Law Dictionary, 4th Ed. 1968.

Applying the above definitions to the evidence adduced herein, I find that the conduct described comes within the prohibited activity. The presence of the inebriated patron, smashing of bottles, knocking over of furniture, punches and kicks all leading to the ejectment of the patron and the suggested removal of the female patrons, justify such determination. The testimony of the president of the licensee corporation, even if accepted as true, nonetheless supports such finding. Spontaneity of events does not here bolster the defense since no effort was made preventatively to forestall what should have been a reasonably anticipated occurrence.

As the Director articulated the central issue in Jackson v. Newark, Bulletin 1600, Item 2:

> "... The question involved here is whether the licensees could reasonably have taken steps to prevent the act of violence and disturbance that took place on their licensed premises, but failed to do so."

The licensee, not having taken stringent efforts to preclude the possibility of an incident like the one which did take place, must be held to have "allowed, permitted and suffered" the prohibited conduct. Cf. Essex Holding Corp. v. Hock, 136 N.J.L. 28 (1947).

After carefully considering and evaluating the testimony adduced and the applicable legal principles, I find that the Division has established the truth of the second and third charges herein by a fair preponderance of the credible evidence and I recommend that the licensee be found guilty of those charges and not guilty as to the first charge.

Absent prior record, it is recommended that the license be suspended on the second charge for twenty days (Re Newark Club Durand, Bulletin 1960, Item 6), and for fifteen days on the third charge (Re Happy Bootleggers Inn, Bulletin 2030, Item 6), making a total of thirty-five days.

## Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including transcript of the testimony, 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 11th day of January 1973,

ORDERED that Plenary Retail Consumption License C-68, issued by the Municipal Council of the Township of Woodbridge to Hillcrest, Inc., t/a Hillcrest, for premises 189-A - 191 Avenel Street, Woodbridge, be and the same is hereby suspended for thirty-five (35) days, commencing at 2 a.m. Tuesday, January 23, 1973, and terminating at 2 a.m. Tuesday, February 27, 1973.

Robert E. Bower,
Director.

5. APPELLATE DECISIONS - J. J. and SONS v. JERSEY CITY.

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|---|---|
| J. J. and Sons (corporation), t/a West Side Wine & Liq. Store, Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Jersey City, Respondent. | On Appeal SUPPLEMENTAL ORDER |

John W. Yengo, Esq., Attorney for Appellant
Samuel C. Scott, Esq., by Bernard Abrams, Esq., Attorney for Respondent

BY THE DIRECTOR:

On December 27, 1972 an Order was entered staying a suspension imposed by the respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City, of appellant's plenary retail distribution license pending consideration of appellant's application to pay a fine in lieu of suspension, in accordance with the provisions of Chapter 9 of the Laws of 1971. J. J. and Sons (corporation) v. Jersey City, Bulletin 2084, Item 1.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of $750.00 in lieu of the suspension of fifteen days imposed as aforesaid.

Accordingly, it is, on this 6th day of February 1973,

ORDERED that the payment of a fine of $750.00 by the licensee be and the same is hereby accepted in lieu of a suspension for fifteen days.

Robert E. Bower,
Director