STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 866 February 1, 1950

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 866 FEBRUARY 1, 1950.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 30 - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against PAUL H. LEVIN T/a BOND LIQUOR 2102 Atlantic Avenue Atlantic City, N. J., Holder of Plenary Retail Distribution License D-4, issued by the Board of Commissioners of the City of Atlantic City.	)	CONCLUSIONS AND ORDER

Paul H. Levin, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold alcoholic beverages below the minimum consumer price, in violation of Rule 5 of State Regulations No. 30.

On December 17, 1949, Herbert Abrams, a clerk in defendant's licensed premises, sold six 4/5 quart bottles of Seagram's Seven Crown Whiskey for the sum of $23.00 to a private detective in the presence of an ABC agent. Shortly after the agent identified himself, defendant entered the licensed premises and verbally admitted that on December 3, 1949, he had made a sale of six bottles of the same product for the sum of $23.00. The minimum consumer price effective October 1, 1949, of a 4/5 quart bottle of Seagram's Seven Crown Whiskey was $4.04.

In an attempt to explain the violation defendant states that, at the time he made the first sale, he granted a five per cent. discount because the customer promised to return and purchase six additional bottles of the same product. This explanation is of no avail because a discount of five per cent. was permitted only on case lot purchases and, in any event, the discount granted to the customer on both sales was more than five per cent. of the minimum consumer price.

Defendant has a prior record. On June 19, 1942, his license was suspended by the Commissioner for a net period of five days after he had pleaded guilty to a charge of selling wine below the Fair Trade price. See Bulletin 518, Item 7. Despite the fact that this occurred more than seven years ago, I shall take it into consideration in fixing the period of suspension herein because it was a violation of the same character as the violation committed herein. Under all the circumstances, I shall suspend defendant's license in this proceeding for a period of fifteen days. Five days will be remitted because of the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 12th day of January, 1950,

ORDERED that Plenary Retail Distribution License D-4, issued by the Board of Commissioners of the City of Atlantic City to Paul H. Levin, t/a Bond Liquor, for premises 2102 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m. January 23, 1950, and terminating at 9:00 a.m. February 2, 1950.

ERWIN B. HOCK

2. DISCIPLINARY PROCEEDINGS - ONE CHARGE OF PERMITTING BRAWL ON LICENSED PREMISES DISMISSED BUT NON VULT PLEA AS TO OTHER - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR THE PLEA.

In the Matter of Disciplinary Proceedings against DRAYMAN FAMILY CORP. T/a PIG'N WHISTLE INN W/S Lakehurst Road Pemberton Township P.O. Browns Mills, N. J., Holder of Plenary Retail Consumption License C-16, issued by the Township Committee of the Township of Pemberton.	CONCLUSIONS AND ORDER

John E. Dimon, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant was served with charges alleging that on two occasions, to wit, June 17, 1949 and July 2, 1949, it permitted a brawl on its licensed premises, in violation of Rule 5 of State Regulations No. 20. Defendant pleaded non vult to the charge involving the occurrence of June 17th and not guilty to the charge involving July 2d.

The testimony as to what occurred on July 2d indicates that an army sergeant, then stationed at Fort Dix, together with his wife, visited two licensed establishments, other than defendant's, where they had a few drinks. At the second of the two licensed establishments the wife insisted that she wished to visit the defendant's licensed premises because it was the only place where they could dance. The husband, according to the wife's testimony, did not wish to visit the defendant's premises -- apparently because on a prior visit to the premises he had been refused service of alcoholic beverages by a bartender who had told him he had "had enough". Despite the sergeant's expressed reluctance to do so, the couple entered the defendant's licensed premises and the sergeant was again refused service. Both the sergeant and his wife admitted that he was angered at this refusal and called a bartender names. The evidence as to what followed thereafter until the couple were picked up by two members of the Military Police from Fort Dix is conflicting.

According to the sergeant and his wife, the two decided to leave the premises and upon reaching a door the sergeant was "shoved" out of the door and off a porch to the ground by an officer of the defendant corporation. The sergeant testified that he did not remember what happened from this point until he was taken away from the premises by Military Police. He apparently suffered cuts and bruises as a result of an attack upon him. His wife testified that she was restrained by patrons during an attack upon her husband which allegedly took place on a lawn outside the licensed premises. Although she stated at one point that she saw an officer of the corporation kick her husband while he was on the ground, the wife, at another point, said, "I think" he kicked my husband. Her testimony in the matter is badly confused.

Defendant's witnesses admitted the bartender's refusal to serve the sergeant and defendant's abusive language after such refusal. They further testified that both the sergeant and his wife were disorderly in that they jostled several patrons as they were leaving the licensed premises. Employees of the defendant denied emphatically that they had

thrown the sergeant out of the licensed premises or had otherwise roughed or attacked the sergeant. They stated that whatever manhandling of the sergeant took place was on the part of patrons outside of the licensed premises.

From review of the record it is obvious that the sergeant was angered and became abusive upon the refusal of service of alcoholic beverages to him, and that he was roughly handled (by whom is not clear), outside of the licensed premises. The testimony of the two members of the Military Police contributes nothing probatively since at the time of their arrival, whatever disturbance had occurred had ended.

Although there appears to be no doubt that acts of violence took place on the lawn outside of the licensed premises, the evidence herein is insufficient, in view of the circumstances and conflicting testimony, to support a finding that the defendant allowed, permitted and suffered a disturbance and brawl in or upon its licensed premises as charged. I shall, therefore, dismiss so much of the charge as relates to the incident of July 2d.

The incident occurring on June 17th resulted from a fight among members of defendant corporation in and upon licensed premises. I shall suspend the license for fifteen days, but because of the plea with respect to this part of the charge I shall remit five days, leaving a net suspension of ten days.

Accordingly, it is, on this 16th day of January, 1950,

ORDERED that Plenary Retail Consumption License C-16, issued by the Township Committee of the Township of Pemberton to Drayman Family Corp., t/a Pig'n Whistle Inn, W/S Lakehurst Road, Pemberton Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. January 23, 1950, and terminating at 2:00 a.m. February 2, 1950.

ERWIN B. HOCK
Director.

3. DISCIPLINARY PROCEEDINGS - SUSPENSION REIMPOSED AFTER DENIAL OF STAY BY APPELLATE DIVISION.

In the Matter of Disciplinary Proceedings against	)	
JOSEPH BODNER 111 Washington Street Newark 2, N. J.,	)	O R D E R
Holder of Plenary Retail Consumption License C-897 for the 1948-49 and 1949-50 licensing years, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	)	

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BY THE DIRECTOR:

By order dated January 4, 1950 the defendant's license was suspended for a period of 20 days after he was found guilty of serving alcoholic beverages to a person apparently intoxicated, in violation of Rule 1 of State Regulations No. 20. Bulletin 864, Item 11. On January 10, 1950 an order was entered herein, upon authorization of a Judge of the Superior Court, Appellate Division, staying the effect of the suspension pending the defendant's application for an ad interim stay to that Court.

The aforesaid application for ad interim stay was denied by the Superior Court, Appellate Division, on January 16, 1950, and the suspension, therefore, will be reimposed to become effective on Monday, January 23, 1950.

Accordingly, it is, on this 18th day of January, 1950,

ORDERED that the suspension for a period of twenty (20) days heretofore imposed upon Plenary Retail Consumption License C-897 held by Joseph Bodner, for premises 111 Washington Street, Newark, is hereby reimposed to become effective at 2:00 a.m. January 23, 1950, and to terminate at 2:00 a.m. February 12, 1950.

ERWIN B. HOCK
Director.

4. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATE OF SUSPENSION.

In the Matter of Disciplinary Proceedings against	)	
	)	
PAUL H. LEVIN T/a BOND LIQUOR 2102 Atlantic Avenue Atlantic City, N. J.,	)	ON PETITION O R D E R
Holder of Plenary Retail Distribution License D-4, issued by the Board of Commissioners of the City of Atlantic City.	)	

Paul H. Levin, Petitioner, Pro Se.

BY THE DIRECTOR:

It appearing that by order dated January 12, 1950, the petitioner's license was suspended for a period of ten days, commencing at 9:00 a.m. January 23, 1950, and terminating at 9:00 a.m. February 2, 1950; and

It further appearing from the licensee's verified petition that, prior to the imposition of said suspension, he had received many orders for alcoholic beverages from persons who are coming from distant points to attend two conventions to be held in Atlantic City between January 22 and February 8; and

It further appearing to my satisfaction that many persons who are planning to attend these conventions will be seriously inconvenienced if, between January 22 and February 8, they are unable to obtain from petitioner the alcoholic beverages which they have already ordered from him,

It is, on this 17th day of January, 1950,

ORDERED that the suspension for a period of ten days heretofore imposed in these proceedings, instead of commencing at 9:00 a.m. January 23, 1950, shall, in lieu thereof, commence at 9:00 a.m. February 10, 1950, and terminate at 9:00 a.m. February 20, 1950.

ERWIN B. HOCK
Director.

5. APPELLATE DECISIONS - MALLOY v. RUMSON.

MARY HEARNEN MALLOY, trading as RUMSON HOTEL, Appellant,	)	
-vs-	)	ON APPEAL CONCLUSIONS AND ORDER
BOROUGH COUNCIL OF THE BOROUGH OF RUMSON, Respondent.	)	

Simmill & Mirne, Esqs., by Elvin R. Simmill, Esq., Attorneys for Appellant.
William R. Blair, Jr., Attorney for Respondent.
Quinn, Doremus, McCue & Russell, Esqs., by Vincent J. McCue, Attorneys for Objectors.

BY THE DIRECTOR:

This is an appeal from respondent Council's denial of appellant's application for a 1949-1950 renewal of a plenary retail consumption license for her hotel premises. Respondent denied the application after a hearing on objections to granting of the renewal. Upon the filing of the appeal the 1948-1949 license was extended, pursuant to R.S. 33:1-22.

On the appeal, thirteen persons resident near appellant's hotel testified that they were annoyed by noise from the hotel -- particularly by occasional loud singing and by loud talk among departing patrons -- and by the closing of automobile doors and the starting up of automobile motors. All of this testimony related especially to week-end occurrences. Several of the objecting witnesses testified that they had been annoyed on occasion by the playing of the "juke box" and, on one occasion, by the playing of the piano.

On the appeal, twenty-four persons testified that they had not heard any loud noises coming from or upon appellant's premises, or loud talk among departing patrons, or any unduly loud closing of automobile doors or starting of automobile motors. Five of these witnesses were resident close to appellant's hotel. The others were persons who had been rooming guests there or patrons of the bar, cocktail lounge or restaurant.

Respondent's Mayor, who was the only member of the governing body to appear at the appeal hearing, testified that the hearing on the objections below lasted about five hours. The Mayor testified that testimony of both sides was heard and that "It would seem to me, and the Council too, that with proper supervision they (noises) could have been under control."

The record indicates that only two of the objecting witnesses herein ever complained to appellant or any of her employees. One witness had complained once with respect to noise; another had complained once in connection with congested car parking.

Captain Zerr of the Rumson Police Department testified that, in response to a complaint regarding piano playing and noise in general, he called at appellant's hotel at about 1:20 a.m. on June 5, 1949; that, upon hearing loud talking when he was some 125 feet from the hotel, he went to the hotel entrance and spoke to appellant; that he remained approximately five minutes during which time the noise had quieted down and there was no piano playing.

Officer Perl of the Rumson Police Department testified that at about 1:30 a.m. on August 15, 1948, he drove to appellant's premises (in response to a noise complaint); that as he approached the premises he heard a group of people singing on the porch. He described the singing as being "Not in a boisterous manner; they were harmonizing." He testified that he told appellant's son to quiet the singers down and he did so. Officer Perl testified that, to investigate a complaint, he again visited appellant's premises at about 1:15 a.m. on June 19, 1949, at which time he observed three young men shouting to one another. One was standing in the driveway to appellant's hotel and the other two were at a car parked some 150 feet distant. The officer testified that he suggested to the young men that, in view of the lateness of the hour, they stop their loud conversation, and that they complied immediately.

Appellant has held a license for the premises in question since 1947. According to the record, no charges have ever been preferred against her. The licensee operated for a substantial period under the extension of her license and no complaints were called to my attention during that time regarding the manner in which the premises were conducted.

No licensee has a vested right to a renewal. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority, and unless there has been a clear abuse of discretion the action of the constituted authorities should not be interfered with. (Zicherman v. Driscoll, 133 N. J. L. 586, Sup. Ct. 1946). However, an issuing authority's action must be founded upon reasonable and substantial grounds; and where, as here, a license has been renewed, and where no disciplinary proceedings have been instituted for alleged misconduct and the licensee has been encouraged to make or maintain a substantial investment in the business, common fairness requires that the refusal to renew be supported by valid reasons. (See Vasto v. Atlantic Highlands, Bulletin 622, Item 4; cf. Weber v. Lakewood, Bulletin 657, Item 3, and Wright v. Gloucester, Bulletin 622, Item 5.)

My careful examination of the whole record before me results in my decision to reverse respondent Council's refusal to renew appellant's license. Appellant will, thus, be afforded a further opportunity to demonstrate her worthiness to hold a license. She must be fully mindful of her responsibility to conduct her business in a manner not causing any undue infringement of the peace and quiet of the neighborhood, and with particular thought to the residential character of that neighborhood.

My determination in this appeal relates, of course, only to the 1949-1950 renewal. Respondent Council will have full opportunity to observe the manner in which appellant's establishment is henceforth conducted and, in a proper case, to bring proceedings for violation of any provision of the Alcoholic Beverage Law, State Regulations or local ordinance (R.S. 33:1-24); and also, in due time, to consider anew the question of further renewal.

Accordingly, it is, on this 20th day of January, 1950,

ORDERED that the action of respondent be and the same is hereby reversed and respondent is directed to issue to appellant a renewal of her license for the current licensing year.

ERWIN B. HOCK
Director.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING CRIMINAL RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against ANGELO MUSUMECI S/S Irving Ave. 2 miles No. of Morton Ave. Deerfield Township P.O. Millville, RD 1, N. J., Holder of Plenary Retail Distribution License D-2, issued by the Township Committee of the Township of Deerfield.	CONCLUSIONS AND ORDER

Samuel Adler, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On Sunday, July 3, 1949, shortly after 12:00 o'clock Noon, you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., one quart bottle of Gold Medal Label Italian Swiss Colony California Sherry wine, one quart bottle of Veldt Brau beer and one quart bottle of Ruppert beer, at retail, in their original containers for consumption off the licensed premises, thereby violating Rule 1 of State Regulations No. 38, which prohibits any such sale or delivery on Sunday.

"2. In your application filed with the Township Committee of the Township of Deerfield and upon which you obtained your current plenary retail distribution license, you falsely stated 'No', in answer to Question 33 which asks: 'Have you or has any person mentioned in this application, ever been convicted of any crime?', and you also falsely stated 'No' in answer to Question 34 which asks: 'Have you or has any person mentioned in this application ever been convicted of or committed any violation of the Alcoholic Beverage Control Act (P.L. 1933, c. 436 as amended and supplemented) or R.S. Title 33, c. 1?', and you further falsely stated 'No' in answer to Question 35 which asks: 'Have you or has any person mentioned in this application ever been convicted of a violation of a Federal or State law concerning the manufacture, sale, possession, distribution or transportation of alcoholic beverages?', whereas, in truth and fact you had been convicted in the Court of Special Sessions of the County of Cumberland on April 2, 1937, of a crime, viz., a conviction for a violation of the Alcoholic Beverage Control Act; such false statement being in violation of R.S. 33:1-25."

As to Charge 1: Shortly after noon on Sunday, July 3, 1949, ABC agents observed defendant as he was delivering packages through a window of the licensed premises to persons on the outside. One of the agents approached the window and there purchased from defendant the bottle of wine and two bottles of beer described in the charge, paying to defendant the sum of $2.00. The other agent who had observed this transaction then approached the window and both agents identified themselves to the licensee.

As to Charge 2: On April 2, 1937, defendant pleaded non vult in a Court of Special Sessions for Cumberland County on a "charge of viol. A.B.C. Act", and was sentenced to pay a fine of $100.00. This conviction was not revealed by defendant in answering Questions 33, 34 and 35 in his application filed for the current licensing year and, hence, he is guilty as to Charge 2. However, I have reviewed a letter signed by the Township Clerk of Deerfield Township, wherein he says:

> "***I have checked back the records of the Township and find that the first application for a plenary retail distribution license Mr. Musumeci made was for a license to commence on July 1, 1943.
>
> "At that time, in answer to question number 33, whether he was convicted of any crime, he set forth that on April 2, 1937, he was convicted in the Cumberland County Special Sessions Court for the violation of the A.B.C. Act and was fined $100.00. The license was granted by the Township Committee with full knowledge of his previous conviction as set forth in his said first application for a license."

Since it appears that the defendant fully disclosed his conviction in his first application for license and that the then local issuing authority, being fully aware of said conviction, determined that the defendant was not disqualified by reason of such conviction, I cannot find, under the particular circumstances of this case, that such conclusion by the local issuing authority was unreasonable.

Defendant has no prior record. I shall suspend his license for a period of fifteen days because of the violation set forth in Charge 1, and for an additional period of ten days because of the violation set forth in Charge 2. Five days will be remitted because of the plea, leaving a net suspension of twenty days.

Accordingly, it is, on this 20th day of January, 1950,

ORDERED that Plenary Retail Distribution License No. D-2, issued by the Township Committee of the Township of Deerfield to Angelo Musumeci, for premises on S/S Irving Ave. 2 miles No. of Morton Ave., Deerfield Township, be and the same is hereby suspended for twenty (20) days, commencing at 9:00 a.m. January 27, 1950, and terminating at 9:00 a.m. February 16, 1950.

ERWIN B. HOCK
Director.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against SONS OF POLAND CAMP, INC. T/a S. S. P. CAMP Center Grove Road Randolph Township P.O. R.D. 1, Dover, N. J., Holder of Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Randolph.	)	CONCLUSIONS AND ORDER

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Matthew F. Czachorowski, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it possessed on its licensed premises alcoholic beverages in a bottle bearing a label which did not describe its contents, in violation of Rule 28 of State Regulations No. 20.

On November 18, 1949, an inspector employed by the Alcohol Tax Unit, Internal Revenue Service, Treasury Department, examined 20 bottles of alcoholic beverages on defendant's premises and seized a bottle of Blue Ribbon Straight Bourbon Whiskey when his field tests indicated that the contents thereof were not genuine as labeled. Subsequent analysis by a Federal chemist disclosed that the contents of the seized bottle were not genuine as labeled.

The manager in charge of defendant's licensed premises at the time denied tampering at any time with the contents of the seized bottle. Nevertheless, the licensee is strictly responsible for the condition of its stock of liquor.

Defendant has no previous adjudicated record. I shall, therefore, suspend defendant's license for the minimum period of fifteen days, less five days' remission for the plea entered herein, leaving a net suspension of ten days. Re Meehan, Bulletin 857, Item 7.

Accordingly, it is, on this 24th day of January, 1950,

ORDERED that Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Randolph to Sons of Poland Camp, Inc., t/a S. S. P. Camp, for premises Center Grove Road, Randolph Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. January 30, 1950, and terminating at 2:00 a.m. February 9, 1950.

ERWIN B. HOCK
Director.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
	)	
SIDNEY WOLFERT T/a CENTRAL TAVERN 40 North Sussex Street Dover, New Jersey,	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-6, issued by the Board of Aldermen of the Town of Dover.	)	
- - - - - - - - - - - - - - - - - - - -	)	

Sidney Wolfert, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he possessed on his licensed premises alcoholic beverages in a bottle bearing a label which did not describe its contents, in violation of Rule 28 of State Regulations No. 20.

On November 4, 1949, an inspector employed by the Alcohol Tax Unit, Internal Revenue Service, Treasury Department, examined 51 bottles of alcoholic beverages on defendant's premises and seized a bottle of Hiram Walker's Imperial Blended Whiskey when his field tests indicated that the contents thereof were not genuine as labeled. Subsequent analysis by a Federal chemist disclosed that the contents of the seized bottle were not genuine as labeled.

Defendant has no previous adjudicated record. Under the circumstances, I shall therefore suspend defendant's license for the minimum period of fifteen days, less five days' remission for the plea entered herein, leaving a net suspension of ten days. Re Meehan, Bulletin 857, Item 7.

Accordingly, it is, on this 24th day of January, 1950,

ORDERED that Plenary Retail Consumption License C-6, issued by the Board of Aldermen of the Town of Dover to Sidney Wolfert, t/a Central Tavern, for premises 40 North Sussex Street, Dover, be and the same is hereby suspended for a period of ten (10) days, commencing at 1:00 a.m. January 30, 1950, and terminating at 1:00 a.m. February 9, 1950.

ERWIN B. HOCK
Director.

9. APPELLATE DECISIONS - GRIPPEN v. LAKEWOOD AND COHEN ET ALS.

NELLIE GRIPPEN, Trustee of the real estate for the infants GLORIA GRIPPEN, JOSEPH JAMES GRIPPEN, JR., ALBERT DENNIS GRIPPEN and PATRICIA GRIPPEN, Appellant,	)	ON APPEAL CONCLUSIONS AND ORDER
-vs-	)	
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LAKEWOOD, and HARRY COHEN, SYLVIA COHEN, SADIE BREESKIN and ROLAND A. JACOBS, t/a CLARENDON HOTEL, Respondents.	)	

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Morton C. Steinberg, Esq., Attorney for Appellant.
James J. Myers, Esq., Attorney for Respondent Township Committee.
Michael P. Silverman, Esq., Attorney for Respondents Cohen et al.

BY THE DIRECTOR:

This is an appeal from the action of respondent Township Committee in issuing a plenary retail consumption license to respondents Harry Cohen, Sylvia Cohen, Sadie Breeskin and Roland A. Jacobs, t/a Clarendon Hotel, Seventh Street and Madison Avenue, Township of Lakewood.

The petition of appeal alleges (1) that the license was issued in violation of the zoning ordinance of the Township of Lakewood which was originally adopted in 1923, and (2) that the license served no public necessity or convenience.

As to Allegation (1): On May 11, 1923, respondent Township Committee adopted a building zone ordinance. Whatever its effect at the time of its adoption, the ordinance is fully effective at the present time because of the 1927 amendment to the Constitution of the State of New Jersey and R.S. 40:55-51 (P.L. 1928, c. 274). Section 14 of said building zone ordinance provides as follows:

"HOTEL 'A' AND HOTEL 'B' DISTRICT USE PROVISIONS
(a) Within any Hotel 'A' or Hotel 'B' District, as indicated on the Building Zone Map, no building or premises shall be used for other than one or more of the following three specified classes of purposes:
(1) Any use hereinbefore specified as permitted in Residence 'A' or Residence 'B' Districts.
(2) Hotels, club houses, lodge rooms and auditoriums (not theatres): apartment houses and tenement houses.
(3) Orphanages, old peoples' homes, charitable institutions not correctional, dispensaries, dormitories and boarding schools.
(b) Billboards and advertising signs, except for small identification signs placed against the principal building, are not permitted."

The evidence herein discloses that the Clarendon Hotel has been operated as a hotel for thirty or forty years, and was recently purchased by the individual respondents herein. The building is approximately 250 ft. by 150 ft.; has seventy-six sleeping rooms and, in addition, has a dining room, ballroom and barroom. The latter room is advertised as "La Rhum-Bar". On the evidence presented it clearly appears that the premises in question constitute a hotel within the meaning of that term as used in Section 14(2) of the Ordinance.

In Grippen v. Lakewood and Levin (Bulletin 862, Item 2) it was held that the issuance of a liquor license to a hotel which was necessarily unlicensed because of National Prohibition at the time of the adoption of the building zone ordinance did not constitute a violation of the ordinance, and that no question of nonconforming use was involved. In that case, as in the present case, the hotel was located in a zone where hotels are permitted under the terms of the Ordinance. The only possible distinction between the two cases is that the "La Rhum-Bar" is apparently open to the use of the public whereas in the cited case it did not appear whether the use of the bar was open to the public or restricted to the guests of the hotel. It appears clear to me that it is here immaterial as to whether the bar is open to the public or confined to the guests of the hotel. In the instant case the license covers the entire building, and the bar is operated as part of the hotel and not as a separate enterprise. The respondent Township Committee has construed the zoning ordinance as permitting issuance of the license thereunder, and I am unable to conclude or find that such construction of the Ordinance is unreasonable or otherwise improper.

As to Allegation (2): The appellant has not established that Respondent Township Committee abused its discretion in issuing the license and, hence, I shall affirm its action. See Grippen v. Lakewood and Levin, supra, and pertinent bulletin items cited therein.

Accordingly, it is, on this 25th day of January, 1950,

ORDERED that the action of respondent Township Committee, in issuing a plenary retail consumption license to respondents Harry Cohen, Sylvia Cohen, Sadie Breeskin and Roland A. Jacobs, t/a Clarendon Hotel, be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Director.

10. APPELLATE DECISIONS - GRIPPEN v. LAKEWOOD AND BLUMENKRANZ - ORDER DISMISSING APPEAL.

NELLIE GRIPPEN, Trustee of the real estate for the infants GLORIA GRIPPEN, JOSEPH JAMES GRIPPEN, JR., ALBERT DENNIS GRIPPEN and PATRICIA GRIPPEN, Appellant,	)	
-vs-	)	ON APPEAL O R D E R
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LAKEWOOD, and IGNATZ BLUMENKRANZ, t/a BLUMENKRANZ HOTEL, Respondents.	)	

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Morton C. Steinberg, Esq., Attorney for Appellant.
James J. Myers, Esq., Attorney for Respondent Township Committee.
Milton Miller, Esq., Attorney for Respondent Ignatz Blumenkranz.

BY THE DIRECTOR:

This is an appeal from the action of respondent Township Committee whereby it issued a plenary retail consumption license to respondent Ignatz Blumenkranz, t/a Blumenkranz Hotel, for premises at Seventh Street and Lexington Avenue, Lakewood.

At the hearing scheduled to be held herein, the attorney for appellant moved to dismiss the appeal, and the attorneys for the respondents stated that they had no objection to the dismissal.

No reason appearing to the contrary,

It is, on this 25th day of January, 1950,

ORDERED that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Director.

11. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - ALCOHOLIC BEVERAGES, RESTAURANT EQUIPMENT AND MERCHANDISE ORDERED FORFEITED - VARIOUS ARTICLES RETURNED TO INNOCENT OWNERS.

In the Matter of the Seizure on December 10, 1949 of a quantity of alcoholic beverages and various fixtures, furnishings, restaurant equipment and foodstuffs, at 237 Bloomfield Avenue, in the Town of Montclair, County of Essex and State of New Jersey.	Case No. 7550 ON HEARING CONCLUSIONS AND ORDER

Public Service Tobacco Company, by L.R. Albert, Sales Manager.
Joseph Lederman, t/a Stratford Merchandising Company, Pro Se.
Frank H. Saddler, Pro Se.
Harry Castelbaum, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic beverages and various fixtures, furnishings, restaurant equipment and foodstuffs, and $283.25 in cash, itemized in a schedule attached hereto, seized on December 10, 1949, at Ernest Sellers' restaurant, located at 237 Bloomfield Avenue, Montclair, N. J., constitute unlawful property and should be forfeited.

It appears that on complaint that alcoholic beverages were being sold unlawfully in Sellers' restaurant, an ABC agent visited such restaurant on December 3, 1949 and there purchased from Ernest Sellers a number of drinks of whiskey. Sellers did not hold any license authorizing him to sell or serve alcoholic beverages and the premises were not licensed for the sale of alcoholic beverages. On the basis of this sale, ABC agents obtained a search warrant for the premises which they executed on December 10th.

During the course of their search, the agents found and seized a case of beer in a refrigerator in the kitchen, a pint bottle of whiskey in a room near the kitchen, and a quart bottle of whiskey and three bottles of ale underneath the counter in the restaurant. The agents also seized the restaurant equipment and foodstuffs and cash receipts of the business.

The circumstances in the case support the conclusion that the seized alcoholic beverages were intended for unlawful sale and hence were illicit. R.S. 33:1-1(i). Such illicit alcoholic beverages and all of the fixtures, equipment and other personal property seized therewith in the restaurant constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

When the matter came on for hearing pursuant to R.S. 33:1-66, Ernest Sellers did not appear to oppose forfeiture of the seized property. Appearances were entered by Joseph Lederman who sought return of a music machine; by Frank H. Saddler who sought return of a radio; and by L.R.Albert, on behalf of Public Service Tobacco Company, which sought return of a cigarette vending machine.

I am authorized to return property subject to forfeiture to a person who has established to my satisfaction that he acted in good faith and had no knowledge of the unlawful use to which the property was put or of such facts as would have led a person of ordinary prudence to discover such use. R.S. 33:1-66(f).

The three above mentioned claimants presented evidence which established that they are the owners of the respective items claimed by them. Frank H. Saddler left his small radio with Sellers for temporary safekeeping. The other claimants placed their equipment in the restaurant in the usual course of their business. Sellers did not have any previous criminal record for violating any liquor laws. The claimants testified that they did not observe any sale of alcoholic beverages when they were in the restaurant; that no alcoholic beverages were visible; and that they had no reason to suspect that Sellers was selling alcoholic beverages. I am satisfied of the innocence of the claimants and, accordingly, I shall recognize their claims.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 7th day of February, 1950, the Public Service Tobacco Company, Joseph Lederman and Frank H. Saddler pay the costs of seizure and storage of the cigarette vending machine, music machine and radio, respectively, such articles will be returned to the respective claimants; and it is further

DETERMINED and ORDERED that the balance of the seized property, more fully described in Schedule "A" attached hereto, including $283.25 in cash, constitutes unlawful property and that the same be and hereby is forfeited, in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control.

ERWIN B. HOCK
Director.

Dated: January 27, 1950.

SCHEDULE "A"

24 - cans of beer
3 - bottles of ale
2 - bottles of whiskey
304 - assorted bottles of soda
7 - bottles of ginger ale
1 - Rowe cigarette vending machine #6688 and currency therein
1 - scale
2 - Venetian blinds
1 - Singers Towers Music Box and currency therein
1 - Dumont Television Set #158A, Serial #110104, Model RA103
1 - Majestic Radio Phonograph Machine
1 - National Cash Register #3514184-5226
5 - tables
2 - stoves
16 - chairs
1 - coffee urn and stand
1 - electric fan
3 - show cases
1 - Hamilton Beach #18 Malted Milk Shaker 18 M 760146
1 - General Electric radio #346802
1 - Schlicting coffee urn
3 - malted milk shakers
1 - Vaculator gas stove

1 - electric grill
13 - restaurant stools
1 - gum vending machine and currency therein
1 - coat rack
1 - electric toaster
1 - soda fountain
1 - lunch counter
1 - Hero fire extinguisher
2 - cake cases
2 - steam tables and pots
1 - console radio
2 - electric clocks
1 - sink
1 - couch
1 - Seegar refrigerator
1 - range hood
1 - compressor unit
$283.25 in silver and bills
Miscellaneous restaurant dishes, glasses, tableware, foodstuffs, and merchandise as itemized in an inventory made in the case.

12. STATE LICENSES - NEW APPLICATIONS FILED.

Fedele Burati, t/a F. B. Y. Haulage
125 Hammell Place, Maywood, N. J.
Application for Transportation License filed January 17, 1950.

Harry Dvorken
435 West Fifth Ave., Roselle, N. J.
Application for Warehouse Receipts License filed January 20, 1950.

Maramaldi Beverages
511-513-515 Madison St., Hoboken, N. J.
Application filed January 23, 1950 for transfer of State Beverage Distributor's License SBD-73 from Paul A. and William Maramaldi, t/a Paul A. Maramaldi.

Monarch Wine Company of Georgia
Sawtell Avenue, Atlanta, Georgia.
Application for Transportation License filed January 24, 1950.

Windsor Liquor Corp.
313 State St.
Perth Amboy, N. J.
Application for Warehouse Receipts License filed January 25, 1950.

Alexander Orris
T/a Wine Specialists Co.
763 Bergen St.
Newark, N. J.
Application for Wine Wholesale License filed January 30, 1950.

ERWIN B. HOCK
Director.

13. DISCIPLINARY PROCEEDINGS - SALE AND ADVERTISING OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 30 - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against WILLIAM V. MAKRIS & DRUSSILLA MAKRIS T/a VENDOME DELICATESSEN 177 W. Englewood Avenue Teaneck, N. J., Holders of Plenary Retail Distribution License D-10, issued by the Township Council of the Township of Teaneck.	CONCLUSIONS AND ORDER

William V. Makris & Drussilla Makris, Defendant-licensees, Pro Se.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to charges alleging that they sold alcoholic beverages at retail below the minimum consumer price and advertised alcoholic beverages for sale at retail at a price less than the said minimum consumer price, in violation of Rule 5 of State Regulations No. 30.

On December 15, 1949, defendants advertised in a local newspaper the sale at retail of 23-ounce bottles of Drambuie Prince Charles Edwards Scotch Liqueur for $8.80. The minimum retail price of this item was $8.95. Southern Comfort Liqueur was listed in said advertisement at $5.99, with a discount of 5% on case lot purchases. There is no discount allowed on case lot purchases of said brand.

On December 21, 1949, an ABC agent purchased eleven 4/5 quart bottles of Southern Comfort Liqueur for the sum of $62.60, which was the retail sales price of said alcoholic beverages after allowance of a discount of 5%. Thus, the price paid by the agent for the liqueur in question was $3.29 below the minimum consumer price for eleven bottles of said brand.

Defendants have no previous adjudicated record. I shall, therefore, suspend their license for a period of ten days, less five days' remission for the plea, leaving a net suspension of five days. Re Becker, Bulletin 865, Item 1.

Accordingly, it is, on this 31st day of January, 1950,

ORDERED that Plenary Retail Distribution License D-10, issued by the Township Council of the Township of Teaneck to William V. Makris & Drussilla Makris, t/a Vendome Delicatessen, for premises 177 W. Englewood Avenue, Teaneck, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. February 6, 1950, and terminating at 9:00 a.m. February 11, 1950.

Lewis B. Heck
Director.