

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

BULLETIN 1668

April 13, 1966

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

BULLETIN 1668

April 13, 1966

1. APPELLATE DECISIONS - THE CHANDELIER v. LINDENWOLD.

The Chandelier, Corp., t/a )  
Flanagan's Place, )

Appellant )

On Appeal

v. )

CONCLUSIONS  
and  
ORDER

Mayor and Borough Council of )  
the Borough of Lindenwold, )

Respondent. )

-----  
Cahill, Wilinski & Mohrfeld, Esqs., by Robert Wilinski, Esq.,  
Attorneys for Appellant  
Keown & Daniels, Esqs., by Phillip C. Daniels, Jr., Esq.,  
Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the action of respondent whereby on August 26, 1965, it denied an application for renewal of a plenary retail consumption license to appellant for the 1965-66 licensing period for premises to be constructed in accordance with plans and specifications at 125 White Horse Pike, Lindenwold.

Four of the six councilmen voted to deny, whereas two members voted in favor of the renewal application.

Appellant's petition of appeal alleges that the action of respondent was based on "an inaccurate understanding of the law, was arbitrary and capricious, and was not based on any facts or evidence presented to Council, and the action taken was unreasonable under the facts and circumstances."

Respondent's answer contends that the respondent "was within its rights not to renew the Plenary Retail Consumption License to appellant."

It might be well to set forth in chronological form various events which occurred with reference to the matter now under consideration. It appears that on November 29, 1962, the respondent approved a transfer of a plenary retail consumption license from Samuel L. Supnick, Receiver for N.K.S. Corp., to appellant for premises 125 White Horse Pike. Appellant's license was renewed by respondent for the 1963-64 licensing period. On July 3, 1963, the licensed premises was completely destroyed by fire. Appellant failed, within the statutory time period, to renew its license for the 1964-65 licensing year. Appellant then filed a verified petition setting forth reasons why it did not apply for renewal, and the State Director determined that such

failure to apply for renewal of the license for 1964-65 was due to circumstances beyond appellant's control. R.S. 33:1-12.18. On December 14, 1964, appellant's application for a new plenary retail consumption license was approved by resolution of respondent, the pertinent parts of which are as follows:

"WHEREAS, Chandelier Corp., trading as Flanagan Place have marked their application for a new plenary retail consumption license and have filed plans and specifications for the new building to be located at 125 White Horse Pike, Lindenwold, New Jersey;

"NOW, THEREFORE, BE IT RESOLVED by the Mayor and Members of Borough Council of the Borough of Lindenwold that a new plenary retail consumption license be awarded to Chandelier Corp., trading as Flanagan Place, and

"BE IT FURTHER RESOLVED, that the license shall not actually issue unless and until the premises as described in the plans and specifications prepared, submitted to, and found acceptable by the issuing authority, shall first be completed."

William G. Kranich (secretary of the corporate owner of the land whereon the licensed premises is to be constructed) testified that in December 1964 plans were submitted to the building inspector who refused to issue the required building permit and suggested that application for approval of the plans be made before the planning board. Kranich testified that there were "three or four" meetings with the planning board and each time, pursuant to the board's requests, the plans were revised by the architect. Moreover, in April 1965 he (Kranich) and others, together with members of the planning board, met at the site of the proposed premises, but at no time has the board given written notice of its decision in the matter.

Mayor Ernst testified that he attended the hearing on December 14, 1964, when approval of the appellant's application for a new license was given by respondent Council. He further said that he knows of no reason why the renewal of the license should not be granted. He confirmed the fact that Kranich appeared before the planning board at "numerous times" with plans in order to begin construction of the building. Mayor Ernst further testified that Police Chief O'Keefe made a survey concerning traffic conditions in the area of the proposed location of the license in question and was of the opinion that no traffic problem would develop there.

Donald Gess (a councilman and Director of Public Safety), testified that he has a copy of a letter from Chief O'Keefe who:

"made a survey of entrance and exit where it would be put on the pike and according to the plans submitted to the planning board which shows this exit was a reasonable amount of distance from the curve and at that particular time presented no traffic hazard. He also showed the width of the driveway. This also presented no traffic hazard. As far as he was concerned, in his humble opinion, there was nothing objectionable to the location, and he felt also and he stated in the letter this would be forwarded to the State Highway Department, and he felt they would not have any objection to it either."

Furthermore, Councilman Gess said that only Carlton Rouh objected to the renewal of the license. Councilman Gess also stated that, after inspection of the plans and specifications filed by appellant, he was satisfied that the renewal of the license should be granted and thus he voted in favor of the application.

Councilman Bowman testified that he voted to deny the renewal of the license. He stated that:

"My reasons for voting 'No' was based on two factors: One was the action of the Chandelier Corporation. They were given a year's grace to salvage this license and allowed it to expire. The second was based on the fact of the planning board's hearings and meetings with Mr. Kranich and Mr. Wilinski concerning this cocktail lounge."

Councilman Bowman further said that he is a member of the planning board and, according to his recollection, the first time that plans for a cocktail lounge were submitted was in April 1965. He read the minutes of the meetings of the planning board as follows:

April 26, 1965:

"Pertaining to Chandelier Corporation under new business, White Horse pike and formerly Myrtle avenue, showed plans for a cocktail lounge. The plans were questioned on the following points: No. 1, entrance to parking lot and number of units. No. 2, size of building."

April 27, 1965:

"We visited the site of Lindenwold Arms Apartments to see the site of the Chandelier Corporation site for a lounge."

May 3, 1965:

"Discussion was held on the plans for the Chandelier Corporation on the White Horse pike. Motion was made by Joe Hoagardy and seconded by Joe Shalleck to reject the plans by the Chandelier Corporation."

May 24, 1965:

"Under old business, second paragraph, Chandelier Corporation. We received a letter from Chief O'Keefe discussing the entrance to the property. Motion was made by Ed McCarry to lay this plan over to a special meeting. New plan 5 14 65 was received and held."

The minutes of the May 24, 1965 meeting of the planning board were the last to be recorded with reference to appellant's proposed premises. Councilman Bowman agreed that there "could have been informal discussions but I could not say yes or no. My position on the planning board is as a councilmanic member and inconsequential functions rather than primary."

Councilman Bowman further testified that he examined the plans marked as an exhibit herein and objected to them because in his opinion "the present plans show for ingress to this proposed cocktail lounge from the White Horse Pike and exiting through a parking lot of proposed Building No. 6 apartment. As a member of the planning board, too, I do not consider this a good plan for good use of the land." Moreover, he stated that Myrtle Avenue was vacated "in the interest of safety and at the request of Overbrook Arms Apartments so they might better locate their apartments, and this was done as a matter of safety, which is a matter for the planning board to consider, and now we are put in a posi-

tion where we are going to have entrance and perhaps illegally used exit closer to the curve of the White Horse Pike, which we were trying to eliminate." He said that he had seen a letter from Police Chief O'Keefe concerning his traffic survey which indicated that the Chief "did not reject the location." In referring to one of his objections Councilman Bowman asserted that, after the former premises were destroyed by fire in 1963, the appellant indicated to him that it had no "real interest" in the property because of its reluctance to clear the site whereon the former licensed premises had been located. Asked whether prior to the fire he had any objection to the manner in which the establishment had been operated, he replied, "No. I believe it was run in orderly manner. I was in the premises three or four times, once to a banquet, and I thought it was very nice." Furthermore, he remarked that he had no objection to the personnel or stockholders of the appellant corporation.

Councilman Lamb testified that he opposed the renewal of the license because, in his opinion, the proposed new building would be constructed at a location other than that of its former location and there was lack of sufficient parking facilities. He said that he was aware that Police Chief O'Keefe had made a traffic survey but had no knowledge what it covered. Councilman Lamb further testified that, at the time of the hearing before respondent on the question of renewal of the license, he said nothing concerning the lack of parking facilities.

Councilman Madon testified that his vote to deny the application in question was because of the safety factor "in getting in and out of the White Horse Pike from the proposed cocktail lounge, and this leads us back to when we vacated Myrtle Avenue. It was a safety feature involved in that if we did vacate Myrtle Avenue in order to move the street further away from the curve, and the plan submitted shows another entrance closer to the curve which, in my opinion, would create a worse hazard than when we started. That was one of my objections." The councilman said that he was first aware of the Police Chief's traffic survey at the hearing on the renewal of the license and he was neither asked nor did he state any reason for his vote on the application.

Councilman Van Art testified that he knew of no proceedings involving appellant held before the planning board. He stated his reasons for opposing the renewal of appellant's license to be:

"No. 1, I believe the advertisement in the paper to be false. No. 2, I believe the application itself was false. I believe also it was filled out improperly. Also, I had conversation with Harold J. Saum and, in effect, I believe the license to be non-existent."

In explanation of his contention that appellant's application contained an untrue statement with reference to the address given for the proposed licensed premises, he said that 125 White Horse Pike presently has another building erected thereon. He also stated that there was a church located on the White Horse Pike across the street from the proposed licensed premises and, being less than two hundred feet away, the answer "no" in appellant's application was false. Councilman Van Art stated that, although he was not a member of respondent Council on December 14, 1964, when the resolution was approved to issue the new license to appellant, he knew about the resolution. He also answered, when asked if he had advised Mr. Saum on July 29, 1965 about the resolution:

"I know in one conversation, I don't recall whether the first conversation or last conversation, I advised him to the effect that there had been action taken by the borough council on it, and to the best of my knowledge there was some kind of resolution, although I had not at that time seen it."

However, Councilman Van Art previously had testified:

"When I had spoken to him and when we made this tape recording with his permission he said he had never received the resolution. He said he had received nothing."

Carlton R. Rouh, an objector, testified that he was at one time Mayor of the municipality and, in his opinion, the notice of application for the renewal of the license in question is not specific as to the exact location of the proposed premises. Moreover, he said that there were no approved plans on file. Rouh further stated that, at the time Councilman Van Art spoke to Mr. Saum on the telephone, he "sat and heard him make this phone call, and I heard him record it."

A certified copy of the resolution dated December 14, 1964, approving the application for a new license was not received at this Division until August 9, 1965. Thus on July 29, 1965, when Deputy Director Saum spoke to Councilman Van Art, he had no knowledge that an application for a new plenary retail consumption license had theretofore been approved by respondent. Consequently the information given at the time by Mr. Saum was proper in so far as the records at this Division pertaining to the status of the license were concerned. Thereafter, when a copy of said resolution was received, the attorney for respondent was notified in writing as to the form of necessary amended resolution to be prepared if the license application were approved for renewal of the license for the current licensing period.

I have carefully considered all the facts and circumstances involved in the instant matter. I am satisfied from the testimony of Mr. Kranich that various appearances were made before the planning board beginning in December 1964. I am further satisfied that the plans were revised by the architect in so far as the proposed premises was concerned on December 21, 1964, January 6, 1965 and May 14, 1965. It is agreed that no written notice was given by the planning board with reference to the approval or disapproval of the plans and specifications pertaining to the proposed building and the site whereon it was to have been constructed. According to the minutes of the meeting of May 3, 1965, the plans submitted by the appellant were rejected. Thereafter, on May 24, 1965, according to the minutes of the regular meeting of the planning board, a motion was adopted to defer the matter of the entrance to the property suggested by Police Chief O'Keefe. There appears to be lack of cooperation on the part of the planning board with reference to the proposed construction of the appellant's licensed premises, as the record indicates that the appellant was most cooperative in the matter. Under the circumstances appearing herein, it would be unfair to deprive appellant of its liquor license.

I have considered the other objections given in this case and find them lacking sufficient merit to deny appellant's application for renewal. In the first place, the license is new and thus it is not required to locate it at the same site as the former license. There appear on the plans marked as an exhibit in this case ample parking facilities. The Police Chief was of the opinion that the proposed location would not constitute a traffic problem.

Comment relative to the church across the way on White Horse Pike might be in order. Granting for the sake of argument that the air line measurement between the church and proposed premises might be under two hundred feet, the statutory measurement contemplates a reasonable and sensible solution concerning the normal way a pedestrian would properly walk. A pedestrian should not jaywalk and his crossing of streets or thoroughfares must be at the crosswalks. McQueen v. Newark, Bulletin 1525, Item 1, and cases cited therein. In the absence of a survey outlining the proper measurements between the church and proposed licensed premises, I must assume that the statute regarding the distance between the respective premises has not been violated. Further, there has been no objection made by or on behalf of the church authorities.

It is therefore recommended that the action of respondent be reversed, and that it be directed to grant the application filed by appellant for the renewal of its license for the 1965-66 licensing period subject, of course, to the provision that the license should not actually be issued until the premises, as described in the plans and specifications submitted herein, be completed and found acceptable by respondent.

#### Conclusions and Order

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

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

Accordingly, it is, on this 3rd day of March 1966,

ORDERED that the action of the respondent be and the same is hereby reversed, and the respondent is hereby directed to grant the appellant's application for 1965-66 license renewal subject to the special condition that the license shall not be issued unless and until the proposed premises shall have been duly completed in keeping with the filed plans and specifications.

JOSEPH P. LORDI,  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary  
Proceedings against

Joseph Macciocca  
t/a Genova Cafe  
304-306 Arch St. and 305 Federal St.  
Camden, N. J.

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption  
License C-1112, issued by the Municipal  
Board of Alcoholic Beverage Control of  
the City of Camden.

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

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Friday, October 1, 1965, at about 8:00 a.m., you allowed, permitted and suffered the removal from your licensed premises of an alcoholic beverage in an opened container, viz., an alcoholic beverage in an opened pint bottle labeled Eleven Cellars Port Wine; in violation of Rule 1 of State Regulation No. 38."

Two agents of this Division participated in the investigation leading to the charge preferred herein.

Agent J testified that pursuant to specific assignment, he and Agent C arrived at the vicinity of the licensed premises on Friday, October 1, 1965, at approximately 7:45 a.m. He noted a number of males enter the premises and exit shortly thereafter. Agent J entered the licensed premises (a tavern) alone at approximately 8:00 a.m. and went to the bar. Seated at the bar was a male consuming something from a coffee cup. In a matter of seconds a person identified as Joseph Macciocca (the licensee) went behind the bar and served the agent a glass of wine. Another patron entered the premises, whereupon Macciocca went into the package goods area and returned with seven pint bottles of Eleven Cellars wine.

The agent continued his testimony as follows: "He (Macciocca) placed this wine on a shelf, and then handed --put 1 pint bottle on the bar in front of this patron who entered. He then opened--unscrewed the top off the wine and poured a shot and put the top back on the wine. The patron put the wine in his pocket, consumed the glass of wine and paid 50 cents and departed.

"Q Did you see how the patron got the bottle of wine?

A Yes, sir. Mr. Macciocca handed it to him.

Q What was the next step in your investigation after that?

A As he was about to depart from the bar area I called to him, and as he approached--



Q You say, 'he.' Who?

A Mr. Macciocca. I told him I wanted a pint of wine to take with me. He then obtained a pint bottle of Eleven Cellars wine.

Q What was the condition of it when he obtained it:

A It was cold and sealed. As he was about to unscrew the top I reminded him I wanted to take it with me. He said, 'Yes, I know but I have to do this first.' He then unscrewed the top off and poured some wine into the glass I had used and then put the top back on and handed the bottle to me. I then put the bottle in my right-hand pocket.

Q Where was Mr. 'M' while you were doing that?

A Directly in front of me.

Q Looking in what direction?

A Looking at me. I put the wine in my pocket and handed him fifty cents. He then rang up fifty cents, and I departed."

Agent J rejoined Agent C, advised him of the occurrence and both agents entered the licensed premises and went to the bar and identified themselves. Upon being questioned by Agent C, Macciocca admitted that he sold the pint bottle of wine to Agent J. In response to the inquiry as to whether or not he was aware that the sale constituted a violation, Macciocca responded, "I poured a drink from it first." Finally, the agent testified that the bottle of wine was purchased at 8:05 a.m.

Agent C corroborated the testimony of Agent J as to the arrival at the vicinity of the licensed premises and seeing several males entering the licensed premises and exiting shortly thereafter. The witness testified that upon Agent J's return from the licensed premises shortly after 8:00 a.m. with the pint bottle of wine, both he and Agent J entered the licensed premises. Upon questioning, Macciocca admitted to Agent C that he sold the bottle of wine to Agent J.

In defense of the charge, John Podwacitnik testified that he entered the licensed premises on the day in question some time between 7:30 and 8:00 a.m. and proceeded to the bar and had a drink of beer served to him by the licensee. He testified that to the left of him there were three or four people and another three or four people sitting at a table. He saw a patron (a tall man) obtain a quarter from another patron and ask for a pint. After Macciocca poured a drink into a glass, and while Macciocca was ringing up the cash register, the man disappeared.

On cross examination the witness identified the person who borrowed the quarter and walk out of the premises while the licensee was ringing up the sale as Agent J, who was in the hearing room at the time. On further cross examination the witness testified that he had no specific recollection of anything that happened in the tavern on the morning of October 1st and he had no knowledge as to whether or not Agent J purchased a bottle. Upon questioning by the Hearer, the witness responded that he did not see Agent J re-enter the tavern that morning and that he saw Agent C in the tavern on a previous occasion, not on the same day he saw Agent J.

Clarence Adams testified that he entered the licensed premises at about 7:45 a.m. on October 1, 1965, and saw three persons at the bar, including Agent J. When he walked in, he observed Agent J drinking a glass of wine and then order a bottle of port wine. Macciocca opened the bottle, poured out a drink into a glass and went to the cash register to ring up the sale. Agent J picked up the bottle and walked out with it while the sale was being rung up and Macciocca's back was towards the bar.

On cross examination the witness testified he did not know nor had he ever met Agent J prior to October 1, 1965. He did hear Agent J ask for a bottle of wine. He observed the licensee pour the wine from the bottle into the glass, place the bottle on the bar and receive payment of two quarters from Agent J. While the licensee was ringing up the sale on the cash register, Agent J departed from the premises. The licensee did not attempt to pursue Agent J; however, he remarked to the witness, "It must be an ABC man." Thereafter, he saw the two agents enter the tavern. He did not see or hear anything because he had to go to the men's room.

On re-cross examination this witness testified as follows:

"Q Didn't the licensee say when he said that, 'Boy!

I'm caught. That was an ABC guy'?

A That is right.

Q Is that what he said?

A That is right."

The licensee (Joseph Macciocca) testified that he was tending bar on Friday, October 1, 1965, at approximately 8:00 a.m., at which time he had two patrons in the premises and Agent J entered with a group of three or four additional patrons. Agent J and a patron whom he identified as "Herbert Brown" were together at the bar. He served Agent J a glass of wine. Thereafter, both Brown and Agent J asked for a pint bottle of wine. There were two quarters on the bar in payment of the wine. Macciocca turned to the cash register, rang up the sale and, when he turned around, Agent J was gone with the pint bottle of wine. He declared that Agent J said nothing about wanting to take out the pint bottle. It was his impression that Agent J and Brown were going to consume the pint of wine in the tavern as is customary. Brown was not available as a witness because he was in Virginia on vacation.

On cross examination the witness mainly reiterated the version he recited on direct examination. Additionally, he testified that at about the time of the occurrence of the incident in question, he did sell a pint bottle of wine to another patron. The wine was consumed at a table with two other patrons.

In rebuttal Agent J testified that the patron next to him was drinking what appeared to be coffee from a cup, and not wine. He had no conversation with this other patron about buying wine. He entered the tavern alone, and not with a group. He stated that he had known Clarence Adams (the witness who had testified at this hearing) for many years and that Adams was not in the licensed premises during the time he was in the tavern on the morning of October 1, 1965.

The major inquiry presented herein is factual.

It is a firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956). This principle was restated in the case of Howard Tavern, Inc. v. Division of Alcoholic Beverage Control (App. Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1, where the court said:

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

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

I have carefully weighed, evaluated and considered all of the material testimony presented in this proceeding.

I am conclusively persuaded that Agent J's testimony (buttressed by the testimony of Agent C) presented a true account of the occurrence in question. I am convinced that the agent made known to the licensee, and that the licensee fully understood, that the bottle of wine was purchased for off-premises consumption. On the other hand, the testimony presented by and in behalf of the licensee was totally unimpressive and unworthy of credence.

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

Licensee has a previous record of suspension of license by the Director for similar violation (1) for ten days effective July 24, 1961 (Re Macciocca, Bulletin 1409, Item 7) and (2) for twenty-five days effective August 3, 1964 (Re Macciocca, Bulletin 1578, Item 7).

It is, therefore, further recommended that, the prior record of suspension of license for two similar violations within the past five years considered, the license be suspended for forty-five days. Re Meyer's Tavern, Bulletin 1665, Item 8; Re Hubby's Inn, Inc., Bulletin 1664, Item 9; Re Costantino's Bar, Inc., Bulletin 1636, Item 3.

#### 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 the transcript of the testimony and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 1st day of March, 1966,

ORDERED that Plenary Retail Consumption License C-112, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Joseph Macciocca, t/a Genova Cafe, for premises 304-306 Arch Street and 305 Federal Street, Camden, be and the same is hereby suspended for forty-five (45) days, commencing at 2:00 a.m. Tuesday, March 8, 1966, and terminating at 2:00 a.m. Friday, April 22, 1966.

Joseph P. Lordi,  
Director

3. DISCIPLINARY PROCEEDINGS - HOSTESS ACTIVITY - FOUL LANGUAGE -  
 FALSE STATEMENT IN LICENSE APPLICATION - AGGRAVATING CIRCUMSTANCE  
 - PRIOR DISSIMILAR RECORD OF STOCKHOLDERS AS INDIVIDUALS - LICENSE  
 SUSPENDED FOR 55 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
 Proceedings against

Golden Boy's Bar, Inc.  
 t/a Golden Boy's Bar  
 3-5 Central Avenue  
 Passaic, N. J.

CONCLUSIONS  
 and  
 ORDER

Holder of Plenary Retail Consumption )  
 License C-42, issued by the Board of )  
 Commissioners of the City of Passaic )

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 Giordano and Miller, Esqs., by Dominick Giordano, Esq.,  
 Attorneys for Licensee.  
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
 Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on January 13, 1966, it (1) permitted a barmaid to accept drinks at the expense of male patrons, in violation of Rule 22 of State Regulation No. 20, (2) permitted a nuisance on the licensed premises (solicitation of male patrons to purchase drinks for unescorted female patrons), in violation of Rule 5 of State Regulation No. 20, and (3) permitted foul, filthy and obscene language to be used by a barmaid, in violation of Rule 5 of State Regulation No. 20, and (4) in its current application for license, failed to disclose previous suspensions of license of Leonard Schaefer and Theodore Breure (officers, directors and stockholders of the licensee corporation), in violation of R.S. 33:1-25.

With respect to the first and second charges, reports of investigation disclose that within the short space of two hours, the barmaid promoted the investigating agents to purchase numerous drinks for herself and several unescorted female patrons involving the charging of the price of drinks at \$1 each (when other patrons were charged 50 and 60 cents for the same type of drinks), resulting in a total expenditure of \$37.

Although the licensee has no previous record of suspension of license, the license then held by Leonard Schaefer and Theodore Breure (officers, directors and stockholders of the licensee corporation) for premises 287 Clifton Avenue, Clifton, was suspended by the municipal issuing authority for ten days effective March 9, 1959 and for fifteen days effective March 30, 1960, both for sale to minors, non-disclosure of which being the subject of the fourth charge.

The prior record of 1959 suspension of license for dissimilar violation disregarded for penalty purposes because occurring more than five years ago, the license will be suspended on the first and second charges (considering the aggravating circumstances above indicated) for thirty days (cf. Re Jamaica Room, Inc., Bulletin 1584, Item 3), on the third charge for ten days (Re Hauge, Bulletin 1629, Item 3) and on the fourth charge for ten days (Re Talk of the Town, Inc., Bulletin 1614, Item 3), to which will be added five days by

reason of the record of suspension of license of Schaefer and Breure (Re Anton's Wines & Liquors, Inc., Bulletin 1655, Item 1) for dissimilar violation in 1964 within the past five years (Re Moore, Bulletin 1659, Item 4), or a total of fifty-five days, with remission of five days for the plea entered, leaving a net suspension of fifty days.

Accordingly, it is, on this 3d day of March, 1966,

ORDERED that Plenary Retail Consumption License C-42, issued by the Board of Commissioners of the City of Passaic to Golden Boy's Bar, Inc., t/a Golden Boy's Bar, for premises 3-5 Central Avenue, Passaic, be and the same is hereby suspended for fifty (50) days, commencing at 3:00 a.m. Thursday, March 10, 1966, and terminating at 3:00 a.m. Friday, April 29, 1966.

JOSEPH P. LORDI,  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - HINDERING INVESTIGATION - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

Harold Sachs  
t/a M & S Tavern  
35 Essex Street  
Paterson, N. J.

CONCLUSIONS  
AND  
ORDER

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

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Goodman and Rothenberg, Esqs., by Robert I. Goodman, Esq.,  
Attorneys for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on Sunday, February 6, 1966, he (1) sold a pint bottle of gin for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, and (2) hindered investigation being conducted by Division agents (refusal to permit inspection of the back bar), in violation of R.S. 33:1-35.

Licensee has a previous record of suspension of license (1) by the municipal issuing authority for fifteen days for permitting a brawl on the licensed premises, affirmed by the Director effective May 14, 1962 (Sachs v. Paterson, Bulletin 1457, Item 2) and (2) by the Director for twenty days effective July 29, 1965, for sale in violation of State Regulation No. 38 (Re Sachs, Bulletin 1635, Item 3).

The prior record of 1965 suspension of license for similar violation occurring within the past five years considered, the license will be suspended on the first charge for thirty days (Re Club Ali-Baba, Inc., Bulletin 1654, Item 4) and on the second charge for ten days (Re Villa Rosa, Bulletin 1563, Item 2), to

which will be added five days by reason of the record of 1962 suspension of license for dissimilar violation occurring within the past five years (Re Moore, Bulletin 1659, Item 4), or a total of forty-five days, with remission of five days for the plea entered, leaving a net suspension of forty days.

Accordingly, it is, on this 3d day of March, 1966,

ORDERED that Plenary Retail Consumption License C-195, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Harold Sachs, t/a M & S Tavern, for premises 35 Essex Street, Paterson, be and the same is hereby suspended for forty (40) days, commencing at 3:00 a.m. Thursday, March 10, 1966, and terminating at 3:00 a.m. Tuesday, April 19, 1966.

JOSEPH P. LORDI,  
DIRECTOR

5. STATE LICENSES - OBJECTIONS TO APPLICATION FOR PLENARY WHOLESALE LICENSE - APPLICATION GRANTED.

In the Matter of Objections to )  
the Issuance of a Plenary )  
Wholesale License to )

Western Grape Products (a corp.) )  
t/a International Wine Co., )  
841 Clinton Avenue )  
Kenilworth, N. J. )

CONCLUSIONS

----- )  
Applicant, by Joseph F. Besser, Manager, Pro se  
Milton H. Cooper, Esq., Attorney for N.J. Wine & Spirit  
Wholesalers Association, Objector

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

The applicant has filed an application for a plenary wholesale license for its premises at 841 Clinton Avenue, in the Borough of Kenilworth. A written objection to the issuance thereof having been filed by the objector herein, a hearing was held thereon pursuant to Rule 12 of State Regulation No. 1.

At the hearing the attorney for N.J. Wine & Spirit Wholesalers Association, who is also its Executive Director, appeared on its behalf. No witnesses were called by the objector herein.

The objection, as set forth in a letter addressed to this Division by the said Association and repeated orally at the hearing, is grounded on the contention that there is "no definite public need or necessity for the issuance of a Plenary Wholesale License to this applicant."

The applicant now holds, and has held for a number of years, a wine wholesale license issued by the Director. The applicant intends to surrender the said license if and when it obtains a plenary wholesale license.

Joseph F. Besser (manager of the applicant's New Jersey branch) testified that this applicant is part of "a farmers' co-op" established over twenty-five years, with its headquarters at Kingsburg, California, and branches in leading cities throughout the country. At the present time it is a distributor of wine products and seeks a plenary wholesale license to distribute its private label brand of brandy and other liquor products.

The witness stated that, because of keen competition in the industry, it has been unable to keep its salesmen to market wine exclusively because they have been attracted by competitors who offer them higher salaries to promote and sell a more diversified line of alcoholic beverages than the restrictive wine products handled by the applicant. This has caused a serious financial situation which threatens the existence of its business. In fact, he stated that the limitation of its present license has caused his company to lose money and may necessitate its removal from the State. He added that the applicant has been unable to obtain distribution through other liquor wholesalers because it distributes private label brands. Also it has found difficulty in keeping its customers who prefer dealing with a company which sells diversified alcoholic beverage products. The applicant presently employs about twenty salesmen, and asserts that it serves a real convenience to the public and is an asset to the liquor industry in New Jersey.

Counsel for the objector argued that this application should be denied because there was no express showing of a definite need and necessity for the issuance of the license. In this connection it should be pointed out that the applicant is not seeking a new license; it has held a license for the past six years and is merely seeking the privilege of selling other alcoholic beverages in addition to the wines which it now sells.

While a license is not generally issuable merely to rescue a financially troubled private or individual interest, I believe the evidence herein is sufficient to establish a public need for the license applied for by the applicant. Re Admiral Wine Co., Inc., Bulletin 1460, Item 7; Re Joeli Wine Distributors, Inc., Bulletin 1390, Item 10; Re Duggan's Distillers Products Corporation, Bulletin 1244, Item 9.

With further respect to the question of public need and necessity, this Division has recently stated that it is not prepared to conclude that there is no public need or necessity, based on the present market, for the issuance of any such license. Re Admiral Wine Co., Inc., supra.

As pointed out hereinabove, grant of this application would merely extend an existing license issued to an experienced and reputable distributor. There has been no evidence introduced nor is there any suggestion that this applicant is undesirable or would not be an asset to the industry.

Under the facts and circumstances in this case, I am persuaded that the issuance of a plenary wholesale license, to permit this applicant to operate competitively with products geared to a receptive market, would be in the public interest. Cf. Mauriello v. Driscoll, 135 N.J.L. 220 (Sup.Ct. 1947).

The preponderance of the evidence is sufficient to establish a public need for the license applied for by the applicant, and that its issuance under the circumstances would not be detrimental to the public interest or welfare. Re Joeli Wine Distributors, Inc., supra.



It is recommended, therefore, that the application be granted and the license be issued upon compliance with all procedural requirements.

### Conclusions

Exceptions to the Hearer's Report, which included a request for oral argument, were filed by the objector. No answer thereto was filed by the applicant. Pursuant to the request, I heard oral argument.

The objector argued that the applicant was organized and formed in the State of California as a cooperative association and the law in that State authorizes said applicant to deal only in grapes or grape products. Therefore the applicant cannot "enlarge upon those rights."

In answer to this exception I have before me a letter dated February 21, 1966 from the applicant which states that the California Agricultural Code, SEC 25507 permits wine growers to hold general licenses, and the applicant's certificate of incorporation authorizes it to "manufacture, store, treat, process and sell and market wine and alcoholic liquors and other products and/or by products."

Finally, the objector argues that the applicant has failed to establish public need and necessity for such issuance. My examination of the facts and circumstances in this case satisfies me that the issuance of a Plenary Wholesale License to the applicant herein would be in and not detrimental to the public interest or welfare.

Accordingly, I shall grant this application if and when all procedural requirements are completed and upon the surrender of the applicant's Wine Wholesale License.

Joseph P. Lordi,  
Director

Dated: March 4, 1966



6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against )

Norwood Restaurant & Lounge, Inc.  
t/a Norwood Restaurant & Lounge )  
171 South Main Street )  
Lodi, New Jersey )

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Consumption )  
License C-30, issued by the Municipal )  
Council of the Borough of Lodi )

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Licensee, by Paul Ciliento, Manager, Pro se.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

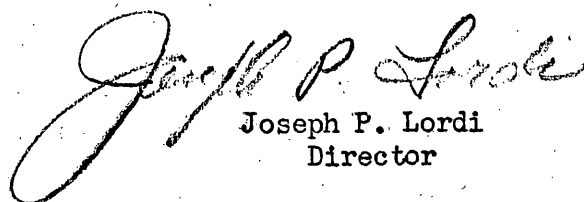
BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 4, 1966, it sold drinks of alcoholic beverages to four minors, three age 18 and one age 19, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Cf. Re Amadeo, Bulletin 1415, Item 2; Re Stratford Inn, Inc., Bulletin 1641, Item 7.

Accordingly, it is, on this 3d day of March, 1966,

ORDERED that Plenary Retail Consumption License C-30, issued by the Municipal Council of the Borough of Lodi to Norwood Restaurant & Lounge, Inc., t/a Norwood Restaurant & Lounge, for premises 171 South Main Street, Lodi, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. Thursday, March 10, 1966, and terminating at 3:00 a.m. Friday, March 25, 1966.

  
Joseph P. Lordi  
Director

New Jersey State Library