

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1369

December 29, 1960.

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STATE OF NEW JERSEY  
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BULLETIN 1369

December 29, 1960.

1. APPELLATE DECISIONS - HUDSON BERGEN COUNTY RETAIL LIQUOR STORES  
ASSOCIATION ET AL. v. TEANECK AND PANZENHAGEN.

Hudson Bergen County Retail Liquor Stores Association, and Callahan & Donohue Wine & Liquors,	)	
	)	
Appellants,	)	ON APPEAL
v.	)	CONCLUSIONS
Township Council of the Township of Teaneck, and Herbert & Bernhard Panzenhagen, t/a Excelsior Wine & Liquors,	)	AND
	)	ORDER
Respondents.	)	

-----  
Samuel Moskowitz, Esq., Attorney for Appellants.  
Leland F. Ferry, Esq., Attorney for Respondent Township Council.  
William Genser, Esq., Attorney for Respondent Herbert & Bernhard  
Panzenhagen.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Council whereby on April 19, 1960 by a vote of 4 to 0 (the fifth member disqualifying himself) it granted the application (subject to certain conditions) of Herbert & Bernhard Panzenhagen, t/a Excelsior Wine & Liquors, to transfer their plenary retail distribution license from premises 451 Cedar Lane to premises 492 Cedar Lane, Teaneck.

"Appellants' petition of appeal sets forth the following grounds for reversal of the action of respondent Council:

'A. There is no public need or necessity for the transfer of said license to the premises in question, inasmuch as this area is amply served by the present existing outlets.

'B. The granting of the transfer of said license is socially undesirable.

'C. The granting of the transfer of said license is in violation of the Alcoholic Beverage Control Laws and Regulations of the State of New Jersey.

'D. Transfer was based on restrictions which are invalid and unenforceable.

'E. The Township Council of the Township of Teaneck, New Jersey, was guilty of an abuse of discretion and a mistake of law and fact in granting the transfer of said license.

'F. The granting of said transfer of license to the Respondents, Herbert and Bernhardt Panzenhagen, t/a Super Excelsior Supermarket, was arbitrary and unreasonable.'

"The undisputed evidence discloses that the proposed location (in a super market) is immediately adjacent to a building wherein appellant Callahan & Donohue Wine & Liquors has a plenary retail distribution license.

"At the instant hearing the testimony of Patrick Callahan and Gerald Donohue (officers of the appellant licensee) indicated that their primary objection was that the transfer in question permitted two liquor stores to be located immediately next to each other, which they claimed would adversely affect their business and hence, respondent Council's action in approving the transfer was arbitrary and unreasonable. In Kelley v. Manalapan, Bulletin 531, Item 3, a transfer of a tavern license to a location directly opposite Kelley's tavern was permitted. On appeal from the action of the local issuing authority, former Commissioner Driscoll stated:

'An issuing authority is not obligated to consider, when reaching a determination of whether to grant a liquor application, whether the financial interests of any pre-existing license will be promoted or harmed. The test in the issuance of liquor licenses is the welfare of the entire community and not the interference with the private rights of any individual. It is settled that a denial of a license may not be predicated upon the sole ground of injury to the profitable conduct of the business of existing licensees. Sobocienski et al. v. Newark et al., Bulletin 239, Item 8; Licata v. Camden, Bulletin 342, Item 1; Delia v. New Providence et al., Bulletin 408, Item 3; Turetsky v. Garfield, Bulletin 524, Item 3.'

Also see Jamison v. Liberty, Bulletin 640, Item 7 and Schuster v. Union et al., Bulletin 754, Item 2.

"The proposed premises and the former premises are located on opposite sides of Cedar Lane, approximately a distance of one block from each other.

"In DeCicco and Rula v. Manville, Bulletin 467, Item 1 (which has been followed time and again), it was held:

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

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

'While it is true that, generally, the question of public necessity and convenience is paramount in determining whether a license should be granted for a particular location, the instant case involves not the issuance of a new or additional license but the place-to-place transfer of a license which has been in existence for many years within this same business area.

In such cases it has been held that the mere fact that other licensees also serve the same neighborhood is not a valid reason for denying a place-to-place transfer from one location in a neighborhood to another location in the same neighborhood, since no increase in concentration of licenses results from such transfer. Kupay v. Passaic, Bulletin 803, Item 9; Grower v. Hackensack, Bulletin 789, Item 1; Costa v. Verona, Bulletin 501, Item 2.

See Geltzeller v. Newark, Bulletin 1171, Item 1, to like effect.

'The question as to whether licensed premises shall be permitted in a particular section of the municipality is a matter confided to the sound discretion of the issuing authority. Carriell v. Newark et als., Bulletin 1043, Item 2. On appeal the burden of showing that the municipal issuing authority abused its discretion rests with the appellant, Rule 6 of State Regulation No. 15.' Klein & Tucker v. Fair Lawn et als., Bulletin 1175, Item 3.

"Herbert Panzenhagen, one of the respondent licensees, testified that he and his brother have operated a food store on Cedar Lane for 19½ years; that about three years ago they acquired the liquor license in question for premises at 451 Cedar Lane; that the proposed site is in the building which is operated as a super market; that the respondent licensees requested a transfer to the proposed premises as soon as the lease for said premises, which was occupied by another, had expired; that the liquor business will be operated in conjunction with the food store and the hours of sale of alcoholic beverages will voluntarily be restricted to the closing hours maintained by the food market which are earlier than the legal time limit permitted for sale of alcoholic beverages in original containers for off-premises consumption.

"It appears that on May 17, 1960 after the members of respondent Council were advised by the Division of Alcoholic Beverage Control that one or more of the conditions which they proposed to insert in the license in question could not be approved by the Director, a motion made by Councilman Menkes to rescind the previous action of the Council in approving the transfer resulted in a tie vote and thus failed of approval.

"Councilmen Menkes and Bartoletta testified at this hearing that they voted originally to approve the application for transfer of the license in question because of the proposed conditions on the license forbidding exterior advertising and interior window display of bottled goods so that a passerby would not get the impression that the immediate area was oversupplied with liquor establishments.

"Councilmen Costa and Vottee testified that they voted in favor of the application to transfer the license and would have done so regardless of whether conditions were to be imposed thereon.

"I am of the opinion that a collateral attack with reference to conditions imposed or to be imposed in another's license could not be sustained. I have referred to the matter merely for the purpose of showing the various steps taken with reference to the transfer of the license.

"After careful consideration of the evidence adduced herein, I conclude that appellants have failed to sustain the burden of establishing that the action of respondent Council was

arbitrary or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15. It is recommended, therefore, that an order be entered affirming respondent Council's action in granting the transfer in question and dismissing the appeal."

Written exceptions to the Hearer's Report and written argument thereon were filed with me by the attorney for appellants, pursuant to Rule 14 of State Regulation No. 15.

After carefully considering the evidence, exhibits, memorandum filed by the attorney for respondent Council, the exceptions to the Hearer's Report and written argument thereon, I agree with the stated conclusions of the Hearer and adopt his recommendation.

However, the application in question was for place-to-place transfer of the 1959-1960 license. That license year has, of course, expired and 1960-1961 license renewal was granted for the premises at 451 Cedar Lane. If the Panzenhagens apply for transfer of the 1960-1961 license to the super market premises at 492 Cedar Lane, and if such application is granted subject to a special condition that the entrance to the super market shall not be too near the entrance to other licensed premises, I shall approve such a special condition.

Accordingly, it is, on this 1st day of November 1960,

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

WILLIAM HOWE DAVIS  
DIRECTOR

2. APPELLATE DECISIONS - BOBOWSKI v. NEWARK.

John & Mary Bobowski, trading as	)	
J. B. Tavern,	)	ON APPEAL
	)	
Appellants,	)	CONCLUSIONS
	)	
v.	)	AND
	)	
Municipal Board of Alcoholic Beverage	)	ORDER
Control of the City of Newark,	)	
	)	
Respondent.	)	

-----  
Leon Sachs, Esq., Attorney for Appellants.  
Vincent P. Torppey, Esq., by James E. Abrams, Esq.,  
Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board whereby it unanimously denied appellants' application for renewal of their plenary retail consumption license for the 1960-61 licensing period for premises known as 489 - 18th Avenue, Newark.

"Upon the filing of the appeal, an order dated June 29, 1960 was entered by the Director extending the term of the 1959-60 license until further order herein. Rule 12 of State Regulation No. 15.

"Appellants alleged that respondent's action was arbitrary, discriminatory and constituted an abuse of discretion in that it was without basis and fact or in law.

"Respondent Board in its answer denies the allegation in the petition of appeal and contends that its decision was 'based upon the factual testimony before the Board from which it, in its sound discretion, concluded that the denial of the application substantiated such action'.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. The transcript of the proceedings before the respondent Board was received in evidence and additional testimony was presented by appellants in accordance with Rule 8 of said regulation.

"On June 21, 1960, at the first hearing in this matter before the respondent Board, John Bobowski, one of the appellant-licensees, was admonished by members of the Board for alleged noise emanating from appellants' licensed premises. One woman objector arose at the hearing and remarked that she lived next door to appellants' licensed premises and she could not sleep at night because of the noise. At the conclusion of the hearing at which no testimony was taken, the chairman of respondent Board announced 'We are going to hold the license and see what cooperation you will give to these complaints, and then we will make up our minds as to what we will do'.

"On June 28, 1960, at a meeting of the respondent Board, the chairman thereof announced that it was the unanimous vote of the members of the Board that three licenses, including the one in question, would not be renewed for the current licensing term. At this meeting, appellants were present with their attorney and, after some discussion between the attorney and the members of the Board, the chairman thereof stated, 'The decision has been rendered. There is no inclination to change that decision'.

"At the hearing on this appeal the appellants called eight witnesses who testified that they resided in the immediate vicinity of appellants' premises, some of whom lived above the tavern, others across the street therefrom, and two of whom resided on another street but whose bedrooms of their apartments are separated from the rear of the premises by appellants' back yard. All of the witnesses were in agreement that the appellants' business has always been conducted in a proper manner and that they have never heard any loud or objectionable noises emanating therefrom.

"John Bobowski, one of the appellants, testified that the licensed premises have been operated at the same location since 1951 and that during that time no charges were ever preferred against the license for violation of the Alcoholic Beverage Law or Regulations promulgated by the Director; that last year he was advised by the respondent Board to tone down the music and, thereafter, he kept the doors closed to comply with that request; that there is another tavern located across the street from their premises.

"In Kleinberg v. Harrison, Bulletin 984, Item 2, the Director said:

'It is well established that there is no inherent right to a renewal of a license. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946). However, it is equally well established that an application for renewal of a license may not be denied capriciously or merely to reduce the number of licenses. Such denial must be

based on reasonable grounds or it will be reversed. Costa v. Red Bank, Bulletin 133, Item 5; McGuire v. Paulsboro, Bulletin 392, Item 10.'

See also Nelson et al. v. Egg Harbor, Bulletin 1031, Item 1.

"Appellants have held the license for the premises in question for a period of nine years and no charges of any kind have apparently ever been preferred against them. The licensees have been operating for a substantial period under the extension of their license and apparently no complaints have been made during that time as to the manner in which the premises have been conducted.

"After carefully considering the evidence presented on this appeal, I recommend that the action of the respondent be reversed and that it be ordered to issue a license to the appellants for the present licensing term. Appellants will thus be given a further opportunity to demonstrate their worthiness to hold a license. The recommendation made herein merely applied to the renewal for the present licensing year. Thus, respondent will have a full opportunity to consider the manner in which appellants' premises have been conducted for the current year and, in the exercise of its reasonable discretion, to determine whether it is warranted in further renewing the license if and when an application is filed for renewal of the license for the licensing term beginning July 1, 1961."

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15. Nevertheless, it is my duty to decide whether the action of respondent should be reversed as recommended, or remanded to respondent with instructions to comply with the section of the local ordinance (Sec. 3.34 of Revised Ordinances of Newark), the pertinent portions of which provide that:

"In the event any application for the renewal of license shall be questioned by the local issuing authority for any reason or in the event that an objection shall be filed in opposition to the application, then the applicant \*\*\* shall be given notice of the reasons of the local issuing authority or of the objector and a day shall be set for a hearing before the local issuing authority upon due notice to the applicant of the day of hearing in order that the applicant may be afforded an opportunity to show cause why the application should be granted."

Primarily, it is the duty of respondent Board to administer the issuance of retail licenses in the municipality. R.S. 33:1-19. In considering applications for renewal, the Newark Board is required to comply with the provisions of the local ordinance. It has failed to do so. As stated by Judge Clapp in Nordco, Inc. v. Division of Alcoholic Beverage Control, 43 N.J. Super. 277:

"We are by no means sanctioning a disregard of the Newark ordinance in the future. On the contrary, factual issues before the Newark board, which fall within the scope of the ordinance, should be resolved through a hearing, conducted in the manner referred to in Handlon v. Town of Belleville, 4 N.J. 99, 105 (1950)."

Accordingly, it is, on this 1st day of November, 1960,

ORDERED that the matter be remanded to respondent in order that it may schedule a hearing and then proceed pursuant to the provisions of the local ordinance applicable thereto.

WILLIAM HOWE DAVIS  
DIRECTOR

3. APPELLATE DECISIONS - SKOMINAS and DLUGOSZ v. NEWARK.

Peter Skominas and Stanley Dlugosz, t/a Balalalaika,	)	
	)	ON APPEAL
Appellants,	)	CONCLUSIONS
v.	)	AND
Municipal Board of Alcoholic Beverage Control of the City of Newark,	)	ORDER
Respondent.	)	

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Vincent Belfatto, Esq., Attorney for Appellants.  
 Vincent P. Torppey, Esq., by James E. Abrams, Esq.,  
 Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board whereby it unanimously denied appellants' application for renewal of their plenary retail consumption license for the 1960-61 licensing year for premises located at 617-619 South 11th Street, Newark.

"Upon the filing of the appeal, an order dated June 30, 1960 was entered by the Director extending the term of the 1959-60 license until further order herein. Rule 12 of State Regulation No. 15.

"Appellants, in their petition of appeal, allege that respondent's action was erroneous in that it was arbitrary, capricious and unreasonable and constituted an abuse of discretion.

"Respondent, in its answer, denies appellants' allegations and contends that it predicated its decision upon the factual testimony adduced before it.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. When the matter came on for hearing, transcripts of the proceedings before respondent Board were received in evidence and additional testimony was presented by appellants in accordance with Rule 8 of said Regulation.

"It appears from the transcript of the proceedings held on June 21, 1960 that several women appeared before respondent Board presumably to object to the renewal of appellants' license. However, only one of them asked to be heard and stated that, 'I live next to the tavern and I can't sleep nights because they are outside in the street and they make noise'.

"Prior to and following that objector's remarks, members of the Board berated the licensees herein and, when one of them who was present protested that they make no noise and never had any trouble, the chairman told him, 'We are going to reinvestigate your place and we are going to hold the license until the Board arrives at a decision. We don't think the neighbors should be subject to the noise'. It appears further from the transcript of the proceedings held on June 28, 1960 that the chairman of the Board, without hearing appellants, announced that it was the unanimous vote of the members of the Board that three licenses, including appellants', would not be renewed for the current licensing year, stating, 'The decision has been rendered. There is no inclination to change that decision'.

"At the hearing on appeal, two persons who live in the immediate vicinity of appellants' premises, a woman tenant in the licensed building, three local police officers who investigated the complaints against appellants, and the licensees, themselves, appeared and testified.

"Briefly stated, the evidence shows that after appellants took over the licensed premises on February 23, 1960, they engaged a three-piece orchestra consisting of an accordion, a saxophone and drums to play on Friday and Saturday nights; that soon thereafter neighbors living two doors away complained to respondent Board about the noise emanating from the tavern; that the licensees were called before the Board, which warned them that the noise had to be stopped; that shortly thereafter a complaint was lodged with the Board by a next door neighbor and a tenant in the licensed building and that after appearing before the Board, the licensees discontinued the music altogether. The evidence further shows that three police officers who investigated the complaints against the licensees found that they were based solely upon the loudness of the drums, and one of them testified that the Captain of the Precinct recommended renewal of the license. All of the witnesses, including the tenant in the licensed building who had previously complained to the Board, stated that the tavern is now properly conducted; that it caters primarily to married couples in the vicinity and that the noise has been eliminated.

"After carefully considering the evidence presented on the appeal herein, I find that there is little, if any, testimony to sustain the action of respondent. A denial of renewal must be based upon reasonable grounds or it will be reversed. Kleinberg v. Harrison, Bulletin 984, Item 2. I conclude, therefore, that appellants have sustained the burden of establishing that the action of respondent was erroneous. The secretary of respondent Board has advised that the dissolution of appellants' partnership was approved by respondent on August 23, 1960 and that title to said license is now in the name of Peter Skominas.

"Considering all the circumstances I recommend that an order be entered reversing respondent's action and directing respondent to issue a renewal of appellants' license to Peter Skominas. If, in the future, the holder of the license permits any disturbance or unnecessary noise on his premises, disciplinary proceedings may be instituted. Moreover, the manner in which the premises are conducted may be considered by respondent if and when the licensee applies for a future renewal of the license."

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15. Nevertheless, it is my duty to decide whether the action of respondent should be reversed as recommended, or remanded to respondent with instructions to comply with the section of the local ordinance (Sec. 3.34 of

Revised Ordinances of Newark), the pertinent portions of which provide that:

"In the event any application for the renewal of license shall be questioned by the local issuing authority for any reason or in the event that an objection shall be filed in opposition to the application, then the applicant \*\*\* shall be given notice of the reasons of the local issuing authority or of the objector and a day shall be set for a hearing before the local issuing authority upon due notice to the applicant of the day of hearing in order that the applicant may be afforded an opportunity to show cause why the application should be granted."

Primarily, it is the duty of respondent Board to administer the issuance of retail licenses in the municipality. R.S. 33:1-19. In considering applications for renewal, the Newark Board is required to comply with the provisions of the local ordinance. It has failed to do so. As stated by Judge Clapp in Nordco, Inc. v. Division of Alcoholic Beverage Control, 43 N.J. Super. 277:

"We are by no means sanctioning a disregard of the Newark ordinance in the future. On the contrary, factual issues before the Newark board, which fall within the scope of the ordinance, should be resolved through a hearing, conducted in the manner referred to in Handlon v. Town of Belleville, 4 N.J. 99, 105 (1950)."

Accordingly, it is, on this 3rd day of November, 1960,

ORDERED that the matter be remanded to respondent in order that it may schedule a hearing and then proceed pursuant to the provisions of the local ordinance applicable thereto.

WILLIAM HOWE DAVIS  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 "Five Points Cafe" (A Corporation) )  
 t/a Five Points Cafe )  
 917 Erial Road )  
 Pine Hill, New Jersey )  
 Holder of Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Pine Hill. )  
 ----- )

CONCLUSIONS

AND

ORDER

Defendant-licensee, by John Cathcart, President.  
Dora P. Rothschild, Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to a charge alleging sale during prohibited hours of alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

On Wednesday, October 19, 1960 about 10:30 p.m., an ABC agent purchased for off-premises consumption six 12-ounce cans of beer from William Chobert, bartender employed by defendant. After making payment the agent left the premises with the beer but returned immediately thereafter with another agent who had remained outside. The agents identified themselves to the bartender and he verbally admitted the violation in question.

Defendant has no prior adjudicated record. I shall suspend its license for the minimum period of fifteen days and remit five days for the plea entered herein, leaving a net suspension of ten days. Re Sarno, Bulletin 1357, Item 6.

Accordingly, it is, on this 1st day of November 1960,

ORDERED that Plenary Retail Consumption License C-4 issued by the Borough Council of the Borough of Pine Hill to "Five Points Cafe" (A Corporation), t/a Five Points Cafe, for premises 917 Erial Road, Pine Hill, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m., Thursday, November 3, 1960 and terminating at 3:00 a.m., Sunday, November 13, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ORDER PREVIOUSLY ENTERED AMENDED TO PROVIDE THAT 10-DAY SUSPENSION SHALL AFFECT LICENSE NOW HELD BY TRANSFEREE.

In the Matter of Disciplinary Proceedings against )  
 )  
 "Five Points Cafe" (A Corporation) )  
 t/a Five Points Cafe )  
 917 Erial Road )  
 Pine Hill, New Jersey )  
 Holder of Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Pine Hill. )  
 ----- )

AMENDED  
ORDER

Defendant-licensee, by John Cathcart.  
Dora P. Rothschild, Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On November 1, 1960 I entered an order suspending the plenary retail consumption license C-4 issued by the Borough Council of the Borough of Pine Hill for premises 917 Erial Road, Pine Hill, for a period of ten days, commencing at 3:00 a.m., Thursday, November 3, 1960, and terminating at 3:00 a.m., Sunday, November 13, 1960.

A copy of said order was sent to the Borough Council, c/o Johanna E. Berton, Clerk. The Division was not notified by the Borough until November 1, 1960 that the 1959-1960 license had been transferred on April 4, 1960 from Five Points Cafe, Inc., to Eva Cathcart, t/a Five Points Cafe, for the premises at 917 Erial Road, Pine Hill, New Jersey. The said license held by Eva Cathcart, t/a Five Points Cafe, was renewed for the current licensing term but the Division received no clear notification to that effect until November 1, 1960.

Inasmuch as the suspension imposed against the corporate-licensee aforementioned was in error for the reasons hereinbefore expressed, it is necessary that a nunc pro tunc order be entered to rectify such error.

Accordingly, it is, on this 7th day of November 1960,

ORDERED that Plenary Retail Consumption License C-4 issued by the Borough Council of the Borough of Pine Hill to Eva Cathcart, t/a Five Points Cafe, for premises 917 Erial Road, Pine Hill, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m., Thursday, November 3, 1960 and terminating at 3:00 a.m., Sunday, November 13, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

6. SEIZURE - FORFEITURE PROCEEDINGS - UNLICENSED TRANSPORTATION OF ALCOHOLIC BEVERAGES - APPLICATION OF OWNER FOR RETURN OF MOTOR VEHICLE DENIED FOR FAILURE TO ESTABLISH GOOD FAITH - ALCOHOLIC BEVERAGES AND MOTOR VEHICLE ORDERED FORFEITED.

In the Matter of the Seizure )  
on August 18, 1960 of 1200- )  
12 oz. cans of beer and a )  
Chrysler sedan in vicinity of )  
William and Arlington Streets )  
in the City of East Orange, )  
County of Essex and State of )  
New Jersey. )

Case No. 10,375

On Hearing

CONCLUSION AND ORDER

-----  
Billy Johnson, (also known as Dollie Johnson) Pro Se.  
I. Edward Amada, Esq., appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R.S. 33:1-66 to determine whether 50 cases (1200 cans) of beer and a Chrysler sedan, described in a schedule attached hereto, seized on August 18, 1960 in the vicinity of William and Arlington Streets, East Orange, New Jersey, constitute unlawful property and should be forfeited.

"Billy Johnson appeared at such hearing and sought return of the Chrysler sedan, which is registered in the name of Dollie Johnson. No one opposed forfeiture of the beer.

"The facts, as they appear from reports of ABC agents and other documents in the file, are that a local police officer, observing at about 2:00 A.M. on the date in question that the car was heavily loaded in the rear, halted the motor vehicle at the above location and discovered the beer, some in the rear seat and some in the trunk; that the officer ascertained that Alexander Washington was operating the car, and took possession of the car and beer and arrested Washington. Later the beer and motor vehicle were turned over to ABC agents.

"The alcoholic beverages were transported in a vehicle which was not licensed for that purpose, and the circumstances indicate that such transportation was not in the normal course of business, but suggest that it was stolen beer, inasmuch as Washington had been employed for a number of years at the brewery which manufactured such beer. The seized beer constitutes illicit alcoholic beverages because it was transported without a license. R.S. 33:1-1(i). Such illicit alcoholic beverages and the motor vehicle in which they were transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

"Billy Johnson appears to be a young man without any firm background or income. He testified that he buys and sells cars, without a place of business or a dealer's license, and resides with some friends, the address on his registration of the motor vehicle being more or less a mailing address; that he had resided in New Jersey off and on for the last ten years, and has been in the business of buying and selling cars a little over a year; that he had no other source of income during that period and sold seven or eight or ten cars, his profit on some sales being \$200.00 - \$250.00 or on others only \$25.00.

"Johnson further testified that he was casually acquainted with Washington, knew that he had a couple of trucks and worked for a brewery; that about midnight of August 17 - 18 he was at a garage in Newark, watching a mechanic who was repairing one of his cars, when Washington appeared unexpectedly driving a Pontiac sedan and told Johnson the transmission of the car was not working properly, and asked Johnson for the loan of his Chrysler, because he had a little business to take care of; that thereupon he loaned Washington his Chrysler sedan and drove home in Washington's Pontiac sedan.

"I do not believe that Billy Johnson's proffered explanation to account for Washington's possession of the Chrysler sedan on the occasion in question is the entire truth or should be accepted at face value. In any event, the exchange of cars at midnight by casual acquaintances allegedly for some vague purpose suggests a surreptitious, unlawful enterprise, especially where, as here, the owner of the seized car does not appear to have any tangible assets, income or residence.

"I therefore recommend that Billy Johnson's request for return of the Chrysler sedan be denied and that an Order directing that such motor vehicle and beer be forfeited be entered in due course."

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

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and I adopt them as my conclusions herein.

Accordingly, it is on this 1st day of November, 1960,

DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66 and shall be sold at public sale for the use of the State in accordance with State Regulation No. 29 or 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.

WILLIAM HOWE DAVIS  
DIRECTOR

SCHEDULE "A"

- 1200 - 12 oz. cans of beer
- 1 - Chrysler sedan, New Jersey Registration EYD 636.

7. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
 )  
 )  
 Jean Kosakowski  
 215 First Street )  
 Hoboken, N. J., )  
 )  
 Holder of Plenary Retail Consumption License C-110, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken. )  
 )  
 ----- )

CONCLUSIONS

AND

ORDER

Andrew F. Batistich, Esq., Attorney for Defendant-licensee.  
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On September 2 and 7, 1960, you allowed, permitted and suffered gambling, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game', in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.
- "2. On September 2 and 7, 1960, you allowed, permitted and suffered tickets and participation rights in a lottery commonly known as the 'numbers game' to be sold and offered for sale, in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

Two ABC agents entered defendant's premises at 11:30 a.m. September 2, 1960. While seated at the bar they observed two patrons placing small number bets with Michael De Fillippo who was tending bar. Another patron and both agents placed small number bets with a man who entered the premises.

Four other ABC agents entered defendant's premises at about 11:20 a.m. September 7, 1960. Michael De Fillippo was tending bar but left the premises at noon-time. One of the agents asked the licensee when Mike would return and stated that he had some numbers for him. The licensee replied that Mike would be back in about ten minutes. After De Fillippo re-entered, this agent placed with him the sum of \$4 on various numbers. As previously arranged, another ABC agent and members of the Hoboken Police Department entered the premises, found more than \$40 and fifty-four betting slips in the possession of Michael De Fillippo and placed him under arrest.

Defendant has no prior record. I shall suspend defendant's license for twenty-five days, the minimum suspension in a case of this kind when a licensee or his employee is involved. Re Mauriello, Bulletin 1351, Item 7. Five days will be remitted for the plea, leaving a net suspension of twenty days.

Accordingly, it is, on this 2nd day of November 1960,

ORDERED that plenary retail consumption license C-110, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Jean Kosakowski, for premises 215 First Street,

Hoboken, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Wednesday, November 9, 1960, and terminating at 2 a.m. Tuesday, November 29, 1960.

WILLIAM HOWE DAVIS  
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE TO WOMEN OVER BAR IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 5 DAYS, LESS 2 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
	)	CONCLUSIONS
S. & H. Liquor Corporation	)	
t/a Buddy's Bar & Liquor Store	)	AND
131 N. 11th Street	)	
Camden 2, New Jersey	)	ORDER
Holder of Plenary Retail Consumption License C-128, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.	)	

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Charles A. Rizzi, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On October 7, 1960, you served beverages to women directly over a bar on your licensed premises; in violation of Section 10 of an Ordinance adopted by the Board of Commissioners of the City of Camden on December 27, 1934, as amended February 25, 1960."

The pertinent clause of Section 10 of the Ordinance hereinabove referred to provides:

"No woman shall be served with beverages directly over any bar."

At 9:45 p.m. on Friday, October 7, 1960, two ABC agents visited defendant's licensed premises wherein they observed two females being served alcoholic beverages directly over the bar. The agents identified themselves to the bartender who verbally admitted aforesaid violation.

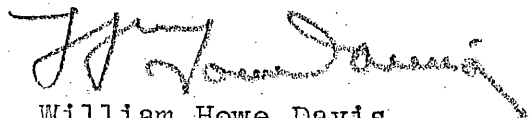
By way of mitigation, defendant's attorney has submitted a letter which I have carefully read, together with the file in the case and the reports of the agents. It is noted from the attorney's letter that defendant plans to place in the premises booths and tables where women will be served in the future. I, however, do not find any extenuating circumstances in this case which would impel me to impose less than the minimum penalty in cases of this kind.

Defendant has no prior adjudicated record. I shall suspend defendant's license for five days. Two days will be remitted for the plea entered herein, leaving a net suspension of three days.

Re Len-Ton, Inc., Bulletin 1243, Item 7.

Accordingly, it is, on this 3rd day of November, 1960,

ORDERED that Plenary Retail Consumption License C-128, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to S. & H. Liquor Corporation, t/a Buddy's Bar & Liquor Store, for premises 131 N. 11th Street, Camden, be and the same is hereby suspended for three (3) days, commencing at 2:00 a.m., Monday, November 14, 1960, and terminating at 2:00 a.m., Thursday, November 17, 1960.



William Howe Davis  
Director