

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

BULLETIN 1440

March 28, 1962

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - ESSEX COUNTY RETAIL LIQUOR STORES ASSN. v. NEWARK, SABAR ASSOCIATES AND HOME LIQUORS, INC.
2. APPELLATE DECISIONS - NORTH CENTRAL COUNTIES RETAIL LIQUOR STORES ASSOCIATION v. EDISON AND R. H. MACY & CO. (Case No. 1).
3. APPELLATE DECISIONS - NORTH CENTRAL COUNTIES RETAIL LIQUOR STORES ASSOCIATION v. EDISON AND R. H. MACY & CO. (Case No. 2).
4. ACTIVITY REPORT FOR FEBRUARY 1962.
5. DISCIPLINARY PROCEEDINGS (Jersey City) - ACT OF VIOLENCE ON LICENSED PREMISES - LICENSE SUSPENDED FOR 25 DAYS.
6. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION WITHOUT LICENSE - ALCOHOLIC BEVERAGES ORDERED FORFEITED - MOTOR VEHICLE ORDERED RETURNED TO INNOCENT OWNER.
7. DISCIPLINARY PROCEEDINGS (Hamilton Township - Mercer County) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
8. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

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

BULLETIN 1440

March 28, 1962

1. APPELLATE DECISIONS - ESSEX COUNTY RETAIL LIQUOR STORES ASSN. v.
NEWARK, SABAR ASSOCIATES AND HOME LIQUORS, INC.

ESSEX COUNTY RETAIL LIQUOR)
STORES ASSOCIATION,)
)
Appellant,) ON APPEAL
) CONCLUSIONS
v.) AND ORDER
)
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
NEWARK; SABAR ASSOCIATES,)
t/a SABAR ASSOCIATES, AND HOME)
LIQUORS INCORPORATED OF NEW JERSEY,)
)
Respondents.

Brass & Brass, Esqs., by Leonard Brass, Esq., Attorney for Appellant.
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney for
Respondent Board.
Abe W. Wasserman, Esq. and Harry Castelbaum, Esq., Attorneys for
Respondent Home Liquors, Inc.
Franklin Swersky, Esq., Attorney for Respondent Sabar Associates.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board, whereby on July 19, 1961, by a unanimous vote, it granted the application of respondent Sabar Associates, a partnership comprised of Jacob Weiss, Louis Ranch and Harry Lapidus, trading as Sabar Associates (hereafter Sabar) to transfer its plenary retail distribution license D-93 from 445 Chancellor Avenue to 476-78 Market Street, Newark, and on August 16, 1961, by a similar vote, granted a person-to-person application for transfer of said license from respondent Sabar to respondent Home Liquors Incorporated (hereafter Home).

"Appellant, in its petition of appeal, alleges that the actions of the respondent Board should be reversed for the following reasons:

- (1) That Sabar never intended to make a bona fide transfer of their license to 476-78 Market Street
- (2) That Sabar had no right of possession to 476-78 Market Street when they filed their place-to-place application.
- (3) That the applications for place-to-place and person-to-person transfers were not bona fide.
- (4) That the Board's approvals of the applications were in violation of Rule 14 of State Regulation No. 6.

"The answer filed on behalf of respondent Sabar denied that the actions of the Board were contrary to Rule 14 of said Regulation and, by way of separate defense, states:

- '(1) Transferability of liquor license is not dependent upon the continued operation of the licensed business by the transferor.
- '(2) Rule 14 is for the benefit of the transferee, so that he is not burdened with a location in the event a person to person transfer is approved, but a place to place transfer is denied. This rule is optional and makes allowance for joint or separate applications. Rule 14 of Regulation 6 does not compel a joint application.
- '(3) The transfers of place to place and persons to person were in conformity with applicable law and inasmuch as both transfers were validly effected, it is immaterial that two separate applications were filed.'

"The answer filed on behalf of respondent Home denied the allegations of the appellant. The answer filed on behalf of the respondent Board denied the allegations of the appellant and contends that the grounds upon which the issuing authority made its decisions were based upon the factual testimony before the Board from which it, in its sound discretion, concluded that the transfer should be made.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. The transcripts of the proceedings before the respondent Board were received in evidence and additional and supplemental testimony was presented by appellant and respondents Home and Sabar, in accordance with Rules 6 and 8 of said Regulation.

"The record before the local Board discloses that on July 7, 1961, Sabar filed their place-to-place application with the clerk of the Board; that on July 19, 1961, a public hearing was held before the Board; that no objector appeared at the hearing; that on July 19, 1961, the Board adopted a resolution granting the place-to-place transfer of said license (endorsed and effective July 25, 1961). The Board's record further discloses that on August 3, 1961, Home filed its person-to-person application with the clerk of the Board; that on August 16, 1961, a public hearing on the application was held before the Board; that appearances were entered for all parties concerned by their respective attorneys; that following a conference between the attorneys, the attorney for Home placed on record the following stipulation:

'I will stipulate that the agreement between Sabar Associates and Home Liquors was made on May 29, 1961, and that it was an agreement contingent upon approval of the application for transfer of license by Sabar Associates from the situs on Chancellor Avenue, in Newark, to 476 and 478 Market Street, and further contingent upon transfer of that same license, for premises on Market Street, from Sabar Associates to Home Liquors.

'It is further stipulated that following the execution of this contract, Sabar Associates made an application for place-to-place transfer, to premises which are beyond one thousand feet from any other (sic) license.

'And that application was heard by this Board on July 19th and the transfer was approved.'

"The attorney for appellant contended that under the circumstances, Home was required to file a single application for the place-to-place and person-to-person transfer and that the procedure of the filing of separate applications as hereinabove outlined was in violation of Rule 14 of State Regulation No. 6, which reads as follows:

'Transfers of licenses both as to person and place may be applied for simultaneously and in a single application; but if there is such combined application for person-to-person and place-to-place transfer, the license shall not be transferred to the applicant unless the place-to-place transfer is also effected.'

"At the close of the meeting, the Board adopted a resolution granting the person-to-person application.

"At the hearing held herein, Louis R. Cerefice, Chairman of the local Board, testified (in lieu of the transcript of proceedings of place-to-place transfer, which, by stipulation at the end of the hearing was placed in evidence), that no objectors appeared at the public hearing on Sabar's place-to-place application; that the applicant met the requirements of the Board; that the application was in proper form, and that, like others of a similar nature, it was processed in a routine manner.

"Mr. Cerefice further testified that the name of the respondent Home was not brought up at said meeting; that as far as the Board was concerned, Sabar's application was made in good faith; that normally in a place-to-place application, it is assumed that the applicant intends to conduct his licensed business at the new location; that the license in question was a 'distress license' (purchased by Sabar from a trustee or receiver in bankruptcy); that in view thereof and despite his assumption that Sabar would operate the licensed business at the new location, he was not sure of the same.

"Mr. Cerefice, called as a witness by appellant, testified that with respect to the place-to-place transfer, the Board assumed that Sabar had a right to possession of the proposed site; that the Board relied upon Sabar's representation in their application that no one other than Sabar had an interest, directly or indirectly, in the license or in the business to be conducted under the license. Mr. Cerefice further testified that at the public hearing held on Home's person-to-person application, the Board was fully informed that Home, on May 29, 1961, had agreed to purchase Sabar's license contingent on the Board's approval of the aforementioned place-to-place and person-to-person applications and that prior thereto, it had no knowledge of the agreement.

"On cross-examination, Mr. Cerefice testified that he knew that the license in question was a 'distress license' because an application had been made to the Board to transfer the same to a trustee in bankruptcy.

"Jacob Weiss, a partner of Sabar, testified that Marshall Liquors Incorporated, their predecessor-in-interest, was indebted to Sabar in the sum of \$10,500; that Marshall was declared a bankrupt; that on June 14, 1961, the Board approved a transfer of the license from the trustee in bankruptcy to Sabar; that Sabar did not undertake to conduct any business under the license at 445 Chancellor Avenue, because of the keen competition in the area; that Sabar, while looking for a suitable location, was approached by a business broker; that on May 29, 1961, as a result of negotiations by aforesaid business broker and another broker, Home agreed to purchase the license and licensee's business on the following conditions: (a) that the local Board would approve an application to transfer the license to premises 642-648 Broadway or other suitable location, (b) that the local Board would approve a person-to-person application to Home, and (c) that Home will be able to obtain a satisfactory lease at the new location.

"Mr. Weiss further testified that, 'We made this agreement

because we thought that in case the license wasn't transferred, at least we would have a location that we could open up and maybe do something later with, or sell it on a difference basis'; that on July 6, 1961, Joseph Santa Maria, attorney-in-fact for the owner of premises 476-78 Market Street, advised Sabar in writing that on even date therewith, he had executed and delivered a lease to Home for the premises contingent on the approval of aforementioned applications and that in the event the local Board approved the place-to-place application and denied the person-to-person application, Sabar may occupy the premises on a month-to-month basis or lease the premises under the terms of aforesaid lease. Mr. Weiss further testified should the aforesaid eventualities come to pass, that Sabar intended to sell their license from the new location and, if unsuccessful, they would undertake to conduct the licensed business and thereafter attempt to sell the same as a going business.

"On cross-examination, Mr. Weiss testified that he did not disclose Sabar's agreement with Home to the Board, and that he did not consider that the agreement gave Home an interest in the license.

"Appellant's contention that Sabar never intended to make a bona fide transfer to the proposed site is without merit. Mr. Weiss' uncontroverted testimony is clearly to the contrary.

"With respect to appellant's second contention, it is well-established that an applicant for a liquor license must have possession, a right to possession of, or interest in the premises sought to be licensed. Richwine v. Pennsauken, Bulletin 1045, Item 2. However, there is no requirement as to the quantum of such interest provided the applicant has a colorable claim to possession and control of the premises. Rittenger v. Bordentown et al., Bulletin 547, Item 10. In view of the provisional letting on July 6, 1961 of the premises by the attorney-in-fact for the landlord to Sabar on a month-to-month basis with an option to occupy the premises under the same terms of the lease given to Home (provided that Home did not take possession of the premises), I find that Sabar had a colorable claim to possession and control of the premises.

"Appellant's third contention is based on the grounds that (a) Sabar's place-to-place application did not disclose that Home had an interest in the license, and (b) that Sabar did not inform the Board of their pending agreement to sell their license to Home. I find no merit to these contentions.

"As to (a), it is clear that the agreement in a legal sense does not constitute an interest in the license by Home. Such an interest would come into being only upon the Board's approval to transfer the license to Home. As to (b), the transcript of the proceedings on Home's person-to-person application discloses that the attorney for Home made a full disclosure of the pertinent parts of the purchase agreement.

"I find no merit in the appellant's fourth contention. Rule 14 of State Regulation No. 6 did not make it mandatory for Home to file a combined application for place-to-place and person-to-person transfer.

"After reviewing all the evidence, the exhibits, and the briefs presented, I conclude that appellant has failed to sustain the burden of proof in showing that the actions of respondent Board were erroneous. Rule 6 of State Regulation No. 15. Helms v. Newark et als., Bulletin 1398, Item 3.

"For the reasons aforesaid, it is recommended that an order be entered affirming the action of the respondent Board and dismissing the appeal."

Pursuant to Rule 14 of State Regulation No. 15, exceptions to the Hearer's Report and written argument thereto were filed with me by the attorneys for appellant, and written answering arguments were filed by the attorney for respondent Home Liquors. Thereafter, on my own motion, pursuant to aforesaid Rule, I heard oral argument.

I shall affirm the Hearer's Report, but with some reluctance for the reasons hereinafter given.

The original place-to-place transfer from 445 Chancellor Avenue to 476-78 Market Street, Newark, was granted by respondent Board on July 19, 1961, without objection. It is obvious to me that at the time the Board was of the opinion that Sabar fully intended to operate under its license at the new location, whereas the facts produced at the hearing on appeal convince me to the contrary. The conditional contract of sale to Home Liquors, Inc. was signed by the parties prior to the transfer in question negating any intention of Sabar (a money-lending organization) to engage in the retail liquor business at the new or any other address. My opinion is further fortified by the taking of a conditional lease by Home Liquors, Inc. for the new premises prior to the transfer of the license to it. One would have to be naive to come to any other conclusion.

I would strongly recommend to the respondent Board that they familiarize themselves (if they have not already done so) with a resolution of record passed by a prior Board of which one of the present Board members was at the time a member and designed to prevent from occurring just such a situation which they have approved in this case.

Of record in the Division's files is a copy of the following resolution adopted May 12, 1955:

"BE IT RESOLVED BY THE BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, that the following resolution be adopted:

"That is is opposed to trafficking in and acquisition of liquor licenses by speculators at Receivers' or Assignees' Sales (court appointed or otherwise) and that hereafter the purchasers of assets of a tavern or package goods store (C and D licenses) and the Receivers' or Assignees' right, title and interest in and to a liquor license of such defunct or insolvent licensee must show, upon application for the transfer or renewal of said license to the purchaser, public necessity for same and that the public convenience will be served thereby (possession of the premises wherein said licensee had conducted the business of dispensing liquor); and that the purchaser, in good faith, intends to operate under said license; and that the assets and license were not acquired for transfer or renewal for the purpose of investment and resale, and that the acquisition was not merely an incidental concomitant to a real or personal property transaction."

If the Board does not intend to be guided by the resolution in question, they should rescind it.

I shall affirm the Hearer's Report without further comment and dismiss the appeal.

Accordingly, it is, on this 1st day of February, 1962,

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

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - NORTH CENTRAL COUNTIES RETAIL LIQUOR STORES ASSOCIATION v. EDISON AND R. H. MACY & CO. (Case No. 1).

Case No. 1

NORTH CENTRAL COUNTIES RETAIL LIQUOR STORES ASSOCIATION,)

Appellant,)

v.)

ON REMAND
CONCLUSIONS
AND ORDER

MUNICIPAL COUNCIL OF THE TOWNSHIP OF EDISON, AND R. H. MACY & CO., INC., t/a BAMBERGER'S NEW JERSEY,)

Respondents.)

Samuel Moskowitz, Esq., and Samuel J. Davidson, Esq., Attorneys
for Appellant.

Christian J. Jorgensen, Esq., by R. Joseph Ferenczi, Esq., Attorney
for Respondent Municipal Council.

Lum, Biunno & Tompkins, Esqs., by William F. Tompkins, Esq., Attorneys
for Respondent R. H. Macy & Co., Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"These proceedings are supplementary proceedings in the above appeal which was taken from the action of respondent Municipal Council whereby it renewed (for the 1960-61 licensing year) a plenary retail consumption license held by respondent R. H. Macy & Co., Inc. for premises on the second floor of its building located at Woodbridge and Parsonage Roads, Township of Edison.

"On January 3, 1961, the Director entered his Conclusions and Order affirming the action of the Municipal Council. North Central Counties Retail Liquor Stores Assn. v. Edison, et al., Bulletin 1375, Item 2. Appellant appealed to the Superior Court, Appellate Division, and, by its decision dated June 30, 1961, said court reversed the Director's order. North Central Counties Retail Liquor Stores Association v. Township of Edison et al., 68 N. J. Super. 351. Thereafter these supplementary proceedings were instituted pursuant to that portion of the court's opinion which provided as follows:

'The order of the Division is reversed, but without costs, and without prejudice to further proceedings before the Division or the Municipal Council which may eventuate in arrangements for the licensee to conduct its operations conformably with the views expressed herein.'

"On July 31, 1961, all parties to the appeal were notified that a hearing would be held at the offices of this Division on August 31, 1961, to receive evidence as to proposed plans of respondent R. H. Macy & Co., Inc. (hereafter Macy) to change the operation of its licensed business to conform with the decision of the Appellate Division. At said hearing certain plans setting forth a proposed 'neutral space or area' on the second floor of its building were introduced into evidence by Macy but these plans need not be considered herein for the reasons herein-after set forth.

"On November 11, 1961, before any decision had been entered as a result of the hearing held on August 31, 1961, respondent Municipal Council adopted a resolution granting an application made by Macy to

transfer its license (as renewed for the 1961-62 licensing year) from its present location on the second floor of its building to other premises not yet constructed on the mall level of said building; provided, however, that the license shall not be actually transferred unless and until the new premises have been completed. Shortly thereafter the attorneys for Macy filed with the Director a notice of motion to reopen the record for the purpose of introducing evidence as to said transfer, and a hearing upon said motion was held on December 5, 1961. The evidence introduced at said hearing will be considered to determine whether the changes proposed to be made at the premises to which the license has been transferred will conform with the views expressed in the decision of the Appellate Division.

"At the hearing held on December 5, 1961, the attorney for respondent Macy introduced into evidence its application for the transfer of its 1961-62 license to premises described as 'Northeast corner of the mall level floor of the Bamberger Store, which is outlined in red on the attached diagram.' The diagram discloses that there is to be an entrance vestibule on the north side of the building at the mall level; that a member of the general public may enter any of six doors from the mall to said vestibule; that he may walk straight through the vestibule and enter the main portion of the mall level floor where merchandise of many kinds is sold and displayed, or he may turn to his right and pass through a door which leads to stairways to the upper or lower level, or he may turn to his left and enter through one of two doorways which lead into the proposed licensed premises. It further appears that these proposed licensed premises are to be entirely enclosed by solid walls with the exception of the aforesaid doors between the vestibule and the licensed premises, a window which opens upon the mall and a doorway on the west side of the proposed licensed premises which will be used solely by Macy's employees and which may not be used by the general public. From this evidence it sufficiently appears that there will be a physical separation of the respective different businesses licensed and unlicensed, so that a patron of one cannot pass directly into the other. In other words, the entrance vestibule will constitute a 'neutral area or space' which the court deemed necessary to satisfy the pertinent requirements of R.S. 33:1-12(1).

"In its brief filed herein appellant contends that no license exists at this time by reason of the reversal by the court and that the operation as presently conducted is contrary to the law. In my opinion, appellant is mistaken as to the effect of the court's decision on the existence of the license. This is clear from the portion of the opinion cited above. Ordinarily, a license continues in effect until it is revoked or cancelled or has expired. If the decision of the court could, in some fashion, be construed as a revocation or cancellation of the license, there would have been no need for the provision that the reversal of the Director's order was 'without prejudice to further proceedings.' It is true that, as has been determined by the Court, the operation as presently conducted is contrary to the law. However, since appellant's attorney has requested a separate decision in this case, that matter will be disposed of in the pending appeal case between the parties described as Case No. 2 and to be decided herewith.

"It is recommended that, since the license which is the subject of this appeal has expired by its terms, no order should be entered herein. It is further recommended that Conclusions only should be entered herein by the Director finding that the changes proposed to be made at the premises to be constructed on the mall level of the building will conform with the views expressed in the decision of the Appellate Division."

Pursuant to the provisions of Rule 14 of State Regulation No. 15, exceptions to the Hearer's Report and written argument thereto were filed with me by the attorneys for appellant and written answering argument was filed the attorneys for respondent R. H. Macy & Co., Inc.

After carefully considering the evidence and exhibits, briefs, exceptions to Hearer's Report and all the arguments thereto, I concur in the findings and conclusions of the Hearer. Hence, I conclude that the changes proposed to be made at the premises to be constructed on the mall level of the building will conform with the views expressed in the decision of the Appellate Division. As to the recommendation of the Hearer that no order should be entered because the license has expired, I conclude that, under the circumstances, an order affirming the action of respondent Municipal Council should be entered for record purposes.

Accordingly, it is, on this 5th day of February 1962,

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

WILLIAM HOWE DAVIS
DIRECTOR

3. APPELLATE DECISIONS - NORTH CENTRAL COUNTIES RETAIL LIQUOR STORES ASSOCIATION v. EDISON AND R. H. MACY & CO. (Case No. 2).

Case No. 2

NORTH CENTRAL COUNTIES RETAIL LIQUOR STORES ASSOCIATION,)

Appellant,)

v.)

ON APPEAL
CONCLUSIONS
AND ORDER

MUNICIPAL COUNCIL OF THE TOWNSHIP OF EDISON, and R. H. MACY & CO., INC., t/a BAMBERGER'S NEW JERSEY,)

Respondents.)

Samuel Moskowitz, Esq., and Samuel J. Davidson, Esq., Attorneys for Appellant.

Christian J. Jorgensen, Esq., by R. Joseph Ferenczi, Esq., Attorney for Respondent Municipal Council.

Lum, Biunno & Tompkins, Esqs., by William F. Tompkins, Esq., Attorneys for Respondent R. H. Macy & Co., Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Municipal Council whereby it renewed (for the 1961-62 licensing year) a plenary retail consumption license held by respondent R. H. Macy & Co., Inc. (hereafter Macy) for premises on the second floor of its building located at Woodbridge and Parsonage Roads, Township of Edison.

"Appellant alleges, in substance, that the license held by Macy for the 1960-61 licensing year was invalidly issued and, hence, that the license issued for the 1961-62 licensing year is not a renewal of said license, which is permitted under R.S. 33:1-12.16, but, in fact, a new license, the issuance of which is now prohibited by R.S. 33:1-12.14. The answer filed by Macy herein denies appellant's allegation.

"The prior proceedings as to the license held by Macy for the 1960-61 licensing year are set forth in North Central Counties Retail Liquor Stores Assn. v. Edison et al., Bulletin 1375, Item 2; North Central Counties Retail Liquor Stores Association v. Township of Edison

et al., 68 N. J. Super. 351, and in the pending appeal case between the parties (described as Case No. 1, on remand, and to be decided herewith).

"Aside from the physical arrangement of the licensed premises, no question has been raised as to the validity of the Macy licenses. Aside from said arrangement of the premises, it is clear that the licenses issued to Macy for the 1960-61 and for the 1961-62 licensing years were renewals of licenses previously held. R.S. 33:1-12.26 and R.S. 33:1-96.

"Appellant, however, in its brief filed herein alleges that 'obviously the Appellate Division's reversal of the issuance of the 1960-61 license eliminates that license.' In my opinion, appellant is mistaken as to the effect of the court's decision on the existence of the license. Ordinarily, a license continues in effect until it is revoked, cancelled or has expired. If the decision of the court could, in some fashion, be construed as a revocation or cancellation of the license, there would have been no need for the provision that the reversal of the Director's order was 'without prejudice to further proceedings.' If the illegal physical arrangement of the licensed premises is corrected by transfer to the mall level of the building, as set forth in the case decided herewith, no reason remains for reversal of the action of Municipal Council.

"In Reed v. Independence et al., Bulletin 57, Item 10, under facts similar to the facts herein, Commissioner Burnett affirmed the issuance of the license on condition that the licensee permanently close the door between the licensed premises and the general store within twenty days. At the hearing herein it was stated on behalf of Macy that the new premises could be completed within a month or six weeks from the date of the order herein. It is recommended, therefore, that an order be entered herein affirming the action of respondent Municipal Council upon condition that the new premises be completed to the satisfaction of the local issuing authority within six weeks from the date of said order, and that the transfer be endorsed upon the face of the license certificate as soon as the premises are so completed."

Pursuant to the provisions of Rule 14 of State Regulation No. 15, exceptions to the Hearer's Report and written argument thereto were filed with me by the attorneys for appellant and written answering argument was filed by the attorneys for respondent R. H. Macy & Co., Inc.

After carefully considering the evidence and exhibits, briefs, exceptions to Hearer's Report and all the arguments thereto, I concur in the findings and conclusions of the Hearer, and adopt them as my conclusions herein. I shall accept the recommendation of the Hearer as to the order to be entered except that the time for completion of the new premises will be fixed at eighty days instead of six weeks.

Accordingly, it is, on this 5th day of February, 1962,

ORDERED that the action of respondent Municipal Council be affirmed upon condition that the new premises be completed to the satisfaction of the local issuing authority within eighty (80) days from the date of the order herein, and that the transfer be endorsed upon the face of the license certificate as soon as the premises are so completed.

WILLIAM HOWE DAVIS
DIRECTOR

ACTIVITY REPORT FOR FEBRUARY 1962

ARRESTS:

Total number of persons arrested		23
Licensees and employees	13	
Bootleggers	10	

SEIZURES:

Motor vehicles - cars		1
Distilled alcoholic beverages - gallons		4.131
Wine - gallons		5.125
Brewed malt alcoholic beverages - gallons		6.187

RETAIL LICENSEES:

Premises inspected		591	
Premises where alcoholic beverages were gauged		540	
Bottles gauged		8,614	
Premises where violations were found		102	
Violations found		124	
Unqualified employees	44	Other mercantile business	2
Reg. #38 sign not posted	41	Disposal permit necessary	1
Application copy not available	18	Other violations	14
Prohibited signs	4		

STATE LICENSEES:

Premises inspected		34
License applications investigated		5

COMPLAINTS:

Complaints assigned for investigation		400
Investigations completed		424
Investigations pending		207

LABORATORY:

Analyses made		180
Refills from licensed premises - bottles		25
Bottles from unlicensed premises		20

IDENTIFICATION:

Criminal fingerprint identifications made		3
Persons fingerprinted for non-criminal purposes		194
Identification contacts made with other enforcement agencies		179
Motor vehicle identifications via N. J. State Police teletype		3

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities		14	
Violations involved		16	
Sale during prohibited hours	10	Sale to minors	4
Failure to close premises during prohibited hours			2
Cases instituted at Division		16	
Violations involved		27	
Sale during prohibited hours	7	Sale below filed price	1
Sale to minors	5	Fraud in application	1
Hindering investigation	3	Permitting foul language on premises	1
Permitting lottery activity (numbers, horse race pool, raffle) on premises	3	Conducting business as a nuisance	1
Beverage Tax Law non-compliance	2	Failure to have copy of license application on premises	1
Permitting bookmaking on premises	1	Permitting immoral activity on premises	1
Cases brought by municipalities on own initiative and reported to Division		18	
Violations involved		24	
Sale to minors	7	Permitting immoral activity on premises	1
Permitting brawls on premises	5	Employing bartender without proper identification card (local reg.)	1
Sale during prohibited hours	3	Sale below filed price	1
Conducting business as a nuisance	2	Unauthorized transportation	1
Hindering investigation	1	Fraud in application	1
Failure to close premises during prohibited hours	1		

HEARINGS HELD AT DIVISION:

Total number of hearings held		42	
Appeals	10	Seizures	1
Disciplinary proceedings	21	Tax revocations	1
Eligibility	8	Applications for license	1

STATE LICENSES AND PERMITS ISSUED:

Total number issued		854	
Licenses	2	Wine permits	1
Solicitors' permits	52	Miscellaneous permits	77
Employment permits	135	Transit insignia	128
Disposal permits	47	Transit certificates	33
Social affair permits	379		

OFFICE OF AMUSEMENT GAMES CONTROL:

Licenses issued	73
Enforcement files established	6

WILLIAM HOWE DAVIS
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: March 6, 1962

5. DISCIPLINARY PROCEEDINGS - ACT OF VIOLENCE ON LICENSED PREMISES -
 LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary
 Proceedings against)

500 COMMUNIPAW TAVERN, A CORPORATION)
 t/a 500 COMMUNIPAW TAVERN)
 488 Communipaw Avenue)
 Jersey City, New Jersey)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption)
 License C-53, issued by the Municipal)
 Board of Alcoholic Beverage Control of)
 the City of Jersey City.)

 Morris Goldsmith, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On August 16, 1961, you allowed, permitted and suffered in and upon your licensed premises an act of violence viz., an assault and battery upon the persons of Jack M. Lauer and James P. Moore, Investigators of the Alcohol and Tobacco Tax Division of the U. S. Treasury Department, Internal Revenue Service, by Joseph Clarino, a person employed on your licensed premises and connected with you in a business capacity in the conduct and operation of your licensed business; in violation of Rule 5 of State Regulation No. 20.'

"The testimony of Jack M. Lauer and James P. Moore, Investigators employed by the Alcohol and Tobacco Tax Division of the United States Treasury Department, discloses that on August 16, 1961, after Investigator Lauer identified himself to Helen Clarino (president of defendant corporate-licensee), he went behind the bar to examine the federal tax stamp. During the course of the examination, Joseph Clarino, husband of Helen Clarino (hereinafter Joseph) arrived at the licensed premises and said, 'Get the hell out from behind my bar'. Investigator Lauer exclaimed, 'I am a federal officer making a tax inspection', to which Joseph replied, 'I don't care who you are. Get the hell out from behind the bar', and began to 'shove and push' the investigator. Investigator Lauer protested and threatened to have Joseph arrested for assaulting a federal officer, but Joseph said, 'I'll bury you' and continued to push and shove. At this juncture, Investigator Moore jumped over the bar, identified himself to Joseph by showing his badge to Joseph and then verbally stated that he and Lauer were federal officers. Joseph replied, 'I don't care who you are', and eventually pushed both Investigator Lauer and Investigator Moore 'from behind the bar to the kitchen, from the kitchen to the front of the bar'. After reaching the front of the bar, Joseph said, 'Put your hands up'. The investigators did not comply but left the premises shortly thereafter, communicated with their office and returned with other federal agents. During the scuffle with Joseph, Investigator Lauer's shirt was torn.

"Helen Clarino testified that Investigators Lauer and Moore visited the licensed premises on August 15th and, when they inquired

for Joseph, she advised them he would be in the place at one o'clock on the following day. The investigators arrived on August 16th at 'ten minutes to one' and when she told them that Joseph would 'be right back', Investigator Lauer waited for a short period of time and then asked her for the frame hanging on the wall behind the bar, which contained the tax stamp. She testified that when difficulty arose while she was attempting to take the frame from the wall, Investigator Lauer came behind the bar, identified himself and then removed the frame. As Investigator Lauer was examining the papers in the frame, Joseph came into the premises and said, 'Get out from behind the bar', and started to push Lauer, and when the latter offered resistance, 'it became a pushing contest'. She further testified that she told Joseph that Lauer had identified himself as a federal agent, but Joseph continued to push him. After Joseph finally pushed Investigator Lauer from behind the bar, Joseph said, 'Now I will show you anything you want to see'.

"Joseph testified that he arrived at the premises about 1:00 p.m. to keep an appointment which his wife had made for him to meet two 'Internal Revenue men for one o'clock' and, upon seeing a man (Investigator Lauer) behind the bar 'throwing papers', he said, 'Whoa! What are you doing here, buddy?'; that when the man said, 'I am a federal agent' and 'swung at me I said "Get out"', and then pushed the man through the kitchen. Joseph denied that he told Investigator Lauer that he would bury him.

"Joseph Clark, a police officer employed by Jersey City, testified that he entered the licensed premises with Joseph and observed a man (Investigator Lauer) wearing a 'short sleeve shirt' standing behind the bar near the kitchen entrance; that Joseph ordered the man 'to get out from behind the bar' and then told him that, 'If you want to see anything I'll show it to you'; that when some pushing and shoving took place between Joseph and Investigator Lauer, the other agent jumped over the bar and grabbed Joseph 'and the three of them were pushing and shoving' and eventually the agents and Joseph 'came into the barroom from the kitchen'.

"The evidence presented herein is clear that Joseph took the initiative and used force to eject the federal agents from behind the bar. There is no doubt from the evidence that Joseph knew that Investigator Lauer was a federal agent because he had known that his wife had made an appointment with two agents to be in the licensed premises at 1:00 p.m. on the day in question. Although Helen Clarino, the president of the defendant corporate-licensee, was present, she made no attempt whatsoever to prevent the scuffle between her husband and the agents. A defendant cannot escape the consequences of the acts of its employees, particularly when such employee physically interferes with the orderly investigation of officers of the law while in the course of their sworn duties. I recommend that the defendant be found guilty of the charge preferred herein.

"Defendant has a prior adjudicated record. Effective May 12, 1958 its license was suspended by the State Director for ten days for an 'hours' violation. Bulletin 1229, Item 7. I recommend that defendant's license be suspended for twenty days for the violation committed herein (Re Pyramid Holding Co. Inc., Bulletin 1029, Item 1), and for an additional five days for the dissimilar violation occurring within five years, making a total suspension of twenty-five days."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by defendant's attorney pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of testimony, the Hearer's Report and the written exceptions

and argument filed herein, I concur in the Hearer's findings and conclusions and shall adopt his recommendation.

Accordingly, it is, on this 5th day of February, 1962,

ORDERED that Plenary Retail Consumption License C-53, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to 500 Communipaw Tavern, A Corporation, t/a 500 Communipaw Tavern, 488 Communipaw Avenue, Jersey City, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m., Tuesday, February 13, 1962, and terminating at 2:00 a.m., Saturday, March 10, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

6. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION WITHOUT LICENSE - ALCOHOLIC BEVERAGES ORDERED FORFEITED - MOTOR VEHICLE ORDERED RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on)	
December 11, 1961 of a quantity of)	Case No. 10,726
alcoholic beverages and a Chevrolet re-)	ON HEARING
frigerator truck on a public highway)	CONCLUSIONS
at Buena-Tuckahoe Road, in Buena Vista)	AND ORDER
Township, County of Atlantic and State)	
of New Jersey.)	

Hertz Rent-A-Car, by Edward I. Feinberg, Esq.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether 903 bottles of assorted taxpaid alcoholic beverages and a Chevrolet truck described in a schedule attached hereto seized on December 11, 1961 near Buena-Tuckahoe Road in Buena Vista Township, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, Albert Rothenberg, one of the operators of Hertz Drive-Yourself System, lic. of Atlantic City, entered an appearance on behalf of claimant of the truck and sought its return. Forfeiture of the alcoholic beverages was not opposed.

Reports of ABC agents and other documents in the file were presented in evidence with the consent of the attorney for the claimant and the said reports disclose the following facts: Acting upon information previously received two ABC agents and a New Jersey State trooper on December 11, 1961 stopped the truck in question as it was proceeding on Buena-Tuckahoe Road, in Buena Vista Township. Examination of the truck which had no transportation insignia attached thereto was being operated by Frank Karwowski who at the time was accompanied by Daniel Marley. An examination of the contents of the truck disclosed that it carried 903 bottles of taxpaid alcoholic beverages. Thereupon the agents seized the truck and alcoholic beverages.

Albert Rothenberg testified that he operates a Hertz Drive-Yourself, lic. agency in Atlantic City and that the Chevrolet truck in question was rented to John J. Bacigalupo pursuant to his request for a refrigerator truck. Bacigalupo said he intended to haul meat, and that he would use the truck for approximately ten days. Bacigalupo produced a current driver's license and deposited sufficient money to pay for the use of the truck and the approximate mileage for the ten day period. Rothenberg produced a

truck rental agreement dated December 4, 1961 entered into between the Hertz truck rental agency and Bacigalupo which has been marked as an exhibit in this case. Rothenberg also produced the certificate of Ownership for the truck. Rothenberg testified that the truck renting agency has been in business in Atlantic City since 1925 and that the usual procedure for the renting trucks was followed when the truck in question was rented to Bacigalupo.

R.S. 33:1-2 provides that alcoholic beverages intended in good faith to be used solely for personal consumption may be transported in any vehicle from any point within the State in limited amounts within any consecutive period of twenty-four hours. It is clear that the alcoholic beverages in question were transported in New Jersey in a quantity far in excess of the permissible amounts without a special permit. Moreover, it seems incredible that the tremendous stock of alcoholic beverages transported in the truck would, in any manner, be used for personal consumption. Since the alcoholic beverages were transported in New Jersey in violation of R.S. 33:1-2 said alcoholic beverages are illicit. R.S. 33:1-1(i).

I am satisfied from the evidence presented by Albert Rothenberg that the claimant herein acted in good faith and did not know or have any reason to suspect that its truck would be used by Bacigalupo for the transportation of illicit alcoholic beverages. Hence, the truck will be returned to the claimant upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 16th day of February, 1962 claimant pays the costs of the seizure and storage of the Chevrolet refrigerator truck more fully described in Schedule "A", attached hereto, it will be returned to it; and it is further

DETERMINED and ORDERED that the alcoholic beverages as listed in Schedule "A" constitute unlawful property and that the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66, and that they 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.

WILLIAM HOWE DAVIS
DIRECTOR

DATED: February 6, 1962

SCHEDULE "A"

903 bottles of assorted taxpaid alcoholic beverages
1 - Chevrolet refrigerator truck, Serial No.
14183, New Jersey Registration SCY199.

DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED -
LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

FRANK P. DELLAIRA AND JOHN J. PIETROWSKI
t/a FRANKIE AND JOHNNIE
2022 Nottingham Way
Hamilton Township
PO Trenton 9, N. J.

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-35, issued by the Township Committee of the Township of Hamilton (Mercer County).

Defendant-licensees, by Frank P. Dellaira, A Partner.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that they possessed on their licensed premises alcoholic beverages in bottles bearing labels which did not truly describe the contents, in violation of Rule 27 of State Regulation No. 20.

On January 8, 1962, an ABC agent tested defendants' open stock of assorted brands of liquor and seized six bottles for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of three of the seized bottles, when compared with the contents of genuine bottles of the respective brands, varied substantially in acids and solids.

Defendants have a prior adjudicated record. Effective April 25, 1949 their license was suspended for five days by the local issuing authority for an "hours" violation. Inasmuch as this dissimilar violation happened more than five years ago, it will not be considered in fixing the penalty herein. I shall suspend defendants' license for twenty days, the minimum penalty imposed in "refill" cases involving three bottles. Re Meszaros, Bulletin 1431, Item 8. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 6th day of February, 1962,

ORDERED that Plenary Retail Consumption License C-35, issued by the Township Committee of the Township of Hamilton (Mercer County) to Frank P. Dellaira and John J. Pietrowski, t/a Frankie and Johnnie, for premises 2022 Nottingham Way, Hamilton Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m., Tuesday, February 13, 1962, and terminating at 2:00 a.m., Wednesday, February 28, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary
Proceedings against)

VICTOR MACKIEWICZ)

t/a TAPPA KEG)

509 Henderson Street)

Jersey City 2, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-86, issued by the Municipal
Board of Alcoholic Beverage Control)
of the City of Jersey City.)

Victor Mackiewicz, Licensee, Pro se.

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

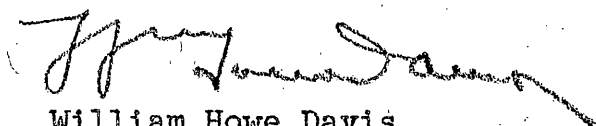
BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on Friday,
January 19, 1962, at 11:55 p.m., he sold a pint bottle of whiskey for
off-premises consumption, in violation of Rule 1 of State Regulation
No. 38.

Absent prior record, the license will be suspended for the
minimum period of fifteen days, with remission of five days for the
plea entered, leaving a net suspension of ten days. Re 74 Hamilton Ave.,
Corp., Bulletin 1428, Item 9.

Accordingly, it is, on this 20th day of February, 1962,

ORDERED that Plenary Retail Consumption License C-86, issued
by the Municipal Board of Alcoholic Beverage Control of the City of
Jersey City to Victor Mackiewicz, t/a Tappa Keg, for premises 509
Henderson Street, Jersey City, be and the same is hereby suspended for
ten (10) days, commencing at 2:00 a.m., Monday, February 26, 1962, and
terminating at 2:00 a.m., Thursday, March 8, 1962.


William Howe Davis
Director

New Jersey State Library