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

BULLETIN 1173 JUNE 25, 1957

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ITEM

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

BULLETIN 1173 JUNE 25, 1957.

1. APELLLATE DECISIONS - JARWIN WINES & LIQUOR, INC. ET ALS. v. NEWARK AND L. B. COMPANY, INC.

JARWIN WINES & LIQUOR, INC., ET ALS.,
Appellants,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, NEW JERSEY, and L. B. COMPANY, INC.,
Respondents.

ON APPEAL
CONCLUSIONS AND ORDER

Leonard Brass, Esq., Attorney for the Appellants.
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney for the Respondent Municipal Board.
Carl J. Yagoda, Esq., Attorney for the Respondent Corporation.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

"This is an appeal from the action of respondent Board whereby on November 5, 1956 it granted an application for a new plenary retail distribution license to respondent L. B. Company for premises #72 Chapel Street, Newark.

"Appellants allege, in substance, that said action was erroneous in that it was arbitrary and contrary to the statutes and the municipal ordinance.

"Respondents deny appellants' allegations and respondent Board avers that its action was predicated upon the factual testimony adduced before it.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15 and a transcript of the proceedings below was received in evidence. Rule 8 of State Regulation No. 15.

"Briefly stated, the facts are: Prior to July 1, 1956, respondent L. B. Company held a plenary retail distribution license for premises #28 Park Place, Newark, which it failed to renew. On July 31, 1956, respondent company vacated said premises. Thereafter, respondent company twice applied for transfer of its license to different premises on Watson Avenue, Newark. Both applications were denied. Danzis Wine and Liquor Company then filed an application for a person-to-person and place-to-place transfer of the license in question which was also denied, and said denial was affirmed on appeal to this Division. On September 17, 1956, respondent company filed with the Director a verified petition setting forth facts tending to show that its failure to apply for a renewal of its license was due to circumstances beyond its control; that it had exerted a bona fide effort to find a new location; that it had arranged for a lease covering premises #72 Chapel Street; and that under the circumstances, the relief provided by R. S. 33:1-12.18 should be granted. On September 26, 1956,

the Director determined in writing, that petitioner's failure to apply for the 1956-1957 renewal of its license was due to circumstances beyond its control. Thereafter, on September 27, 1956, respondent company filed an application for a new plenary retail distribution license for premises #72 Chapel Street and after a hearing thereon, respondent Board on November 5, 1956, by a vote of 2 to 1 adopted a resolution granting the application.

"It is apparent from the record herein that respondent company held a valid license for premises #28 Park Place until June 30, 1956. It is also apparent that thereafter, respondent company desiring to preserve its license sought relief under R. S. 33:1-12.18; that the Director determined that it was entitled to such relief; and that it filed its application for a new license on September 27, 1956, one day prior to the expiration date for the filing of such an application under the terms of the statute.

"Since the record discloses that appellants contest the validity of respondent Board's action in granting an application for a new license when filed more than sixty days after June 30 of a license year, the interpretation and explanation of the law as stated by former Commissioner Hock in Bulletin 762, Item 2, is set forth below:

> '---Section 1 of the new law [R. S. 33:1-12.13] provides that a license application to be one for renewal must be filed not later than thirty days after July 1st. Section 6 [R. S. 33:1-12.18] provides that the Act [R. S. 33:1-12.13 to 33:1-12.21] shall not prevent issuance of a new license to a person who files application therefor within sixty days after the renewal period has expired (i.e., within sixty days after July 30th) if the State Commissioner shall determine in writing that the applicant's failure to apply for a renewal of his license was due to circumstances beyond his control. This section is designed not to weaken the renewal period requirement but to permit the sixty-day extension only in cases of undue hardship.'

"Appellants contend that the failure of respondent company to apply for a renewal of its license was not due to circumstances beyond its control. The director determined otherwise. His findings cannot be attacked collaterally in these proceedings.

"Appellants further contend that respondent Board's action was not in accord with the provisions of the municipal ordinance, in that it was incumbent upon the Board to make an independent determination by resolution prior to considering the application that applicant's failure to apply for renewal of its license was due to circumstances beyond its control. The resolution and pertinent section of the ordinance follow:

RESOLUTION

'BE IT RESOLVED by the Board of Alcoholic Beverage Control of the City of Newark, Newark, New Jersey:

1: That the Board in this application for a new license, having considered and evaluated all of the testimony and evidence produced for the applicant for said license, and the objectors to the said license, it

is the majority opinion of this Board, in its exercise of sound discretion, that the application be granted.

2: Accordingly, therefore, this application for a new license is approved.'

ORDINANCE

'Nothing herein shall prevent issuance of a new license to a person who files application therefor within 60 days following the expiration of the license renewal period, if the State Director shall have made a favorable determination as to such application granting relief under R. S. 33:1-12.18, and if the local issuing authority shall determine by resolution that such applicant's failure to apply for a renewal of his license was due to circumstances beyond his control.' (emphasis supplied)

"The right to determine whether or not an applicant's failure to apply for a renewal of his license was due to circumstances beyond his control, vests in the Director alone. R. S. 33:1-12.18. When he has made a favorable determination in writing with respect thereto, the application for a new license may be filed with the issuing authority. The determination to be made by respondent Board as set forth in the above quoted section of the municipal ordinance applies to what the Board must do before adopting a resolution either granting or denying an application and not to what must be done before an application may be considered. That respondent Board complied with the terms of the ordinance is indicated by the language of its resolution wherein it 'considered and evaluated all the testimony and evidence produced', which included, as appears from the record, the written determination of the Director.

"Appellants still further contend that since no proof was offered to show a need for a distribution license in the locality of the premises licensed, the action of respondent Board was arbitrary and an abuse of discretion.

"It has been held repeatedly that the number and type of licenses which shall be permitted in a locality is within the sound discretion of the issuing authority and that the Director's function on appeal is not to substitute his opinion for that of the issuing authority, but rather to determine whether reasonable cause exists for its opinion and if so, to affirm irrespective of his personal views. Re Guarino v. Newark and Suppa, Bulletin 1069, Item 2. In any event proof of need and convenience was adduced at the hearing de novo.

"Under the facts and circumstances appearing herein, I cannot find that the Board's determination on this point was an abuse of its discretion warranting reversal of its action.

"The burden of establishing that respondent Board's action was erroneous and should be reversed rests with appellants. Rule 6 of State Regulation No. 15.

"After considering all of the evidence and all of the facts and circumstances presented in this case as well as the briefs submitted by counsel for the respective parties, I find that appellants have failed to sustain that burden. I recommend, therefore, that respondent Board's action be affirmed."

Exceptions to the Hearer's Report were duly filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the facts and circumstances herein, I concur in and adopt the findings and recommended conclusions of the Hearer.

Accordingly, it is, on this 13th day of May, 1957,

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

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - TERRELL v. WEST AMWELL TOWNSHIP.

ST. JOHN TERRELL,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WEST AMWELL,)
Respondent.)

Emmett D. Topkins, Esq., Attorney for Appellant.
Nicholas F. Gallicchio, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from respondent's denial by a two to one vote of appellant's application for a plenary retail consumption license for premises located on a highway known as U. S. Route #202, Township of West Amwell.

"Appellant in his petition of appeal contends that the action of respondent was erroneous and should be reversed for the following reasons:

'(a) it stated no lawful reason for denying the Appellant the license which he sought.

'(b) it was discriminatory in that the location of the business of the said Appellant and the suitability of his premises and also the public convenience, was not taken into the consideration of the Respondent.

'(c) the decision was based on bias and prejudice, in that it was stated by the Mayor of the Township of West Amwell, that the principle reason for denying the said application was that the said Committee had not set the license fee high enough, which is not a legal reason.'

"A transcript of the proceedings held before the respondent was marked without objection as an exhibit in evidence herein. Additional evidence was also presented by the parties to this appeal. The pertinent facts are not in dispute.

"In order to fully understand the matter under consideration, it might be helpful to enumerate in chronological order the events which transpired prior to and concurrent with the determination by the respondent. It appears from the record that appellant conferred unofficially with the three members of respondent Committee at which time he described the type of establishment he was contemplating operating at a site owned by him on Route #202. He testified that he exhibited to the members of the respondent Committee some sketches and drawings showing the building on the existing property to be remodeled for use as the licensed premises. At that time there was no ordinance in effect which permitted the issuance of any type of retail liquor license in the Township. On December 7, 1956, an ordinance permitting the issuance of a plenary retail consumption license passed on first reading by the unanimous vote of the Committee. On December 21, 1956, on final reading of said ordinance, two of the Committeemen voted in favor and one voted against the adoption thereof. On December 21, 1956, appellant filed an application for the plenary retail consumption license in question. On January 4, 1957, an ordinance expressly repealing the ordinance which was approved on December 21, 1956 was passed on first reading by a two to one vote and again by a similar vote on final reading on January 18, 1957. At the same meeting and just prior to the adoption of the repealer ordinance the application filed by appellant for a liquor license was denied. It might be advisable to explain that one of the members of respondent Committee who had voted for the adoption of the original ordinance on December 21, 1956 was not a member of the said Committee when appellant's application or the repealer ordinance was acted upon. Furthermore appellant testified that he never received a promise of a license, either officially or unofficially, from any member of the respondent Committee.

"The question immediately arises as to the effect of the repealer ordinance upon appellant's application.

"There is a long line of legal adjudications in this State to the effect that the status of the municipal law at the time the appellate authority renders its decision governs, rather than when adjudicated by the municipal authority, which in this case resulted in the appeal from its action. Roselle v. Wright, 37 N. J. Super. 507.

"In Socony-Vacuum Oil Co., Inc. v. Mt. Holly Twp., 135 N.J.L. 112, Justice Perskie, speaking for the New Jersey Supreme Court, said:

> 'Moreover, in my opinion, there can no longer be any question as of the time when the status of the applicable law controls. It is neither the status of the law prevailing at the time of the application for the permit nor the status of the law prevailing at the time of the application or allowance of the rule to show cause. It is the status of the law prevailing at the time of the decision of the court that is controlling. Cf. Westinghouse Electric Corp. v. United Electrical, etc. (Court of Errors and Appeals 1946), 139 N. J. Eq. 97, 105, 106; 49 Atl. Rep. (2d) 896.'

"Therefore, the fact that the repealer ordinance was adopted subsequent to the denial of the application cannot avail

appellant since the immediate question is whether a license can now be granted.

"If, for the sake of argument, the facts (which I am not called upon to decide at the time) might warrant the issuance of a license, it would necessitate a reversal of the respondent's action and the only order that could be appropriately entered is one directing the respondent to issue the license. In view of the fact that there is no ordinance in effect which would permit the issuance of a liquor license, the issuing authority could not approve an application therefor. This being so, it makes it unnecessary to consider the reasons now advanced by appellant in his petition of appeal.

"Under the circumstances appearing herein, I recommend that the action of the respondent Committee be affirmed and that the within appeal be dismissed."

There were no exceptions taken to the Hearer's Report within the time limited by Rule 14 of State Regulation No. 15.

I have carefully considered the entire record in this case and the Hearer's Report submitted herein. I concur in and adopt the conclusions set forth in the Hearer's Report as my conclusions and, as recommended by the Hearer, I shall enter an order affirming respondent's action.

Accordingly, it is, on this 13th day of May, 1957,

ORDERED that the action of respondent 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 - GREEN STAR, INC. v. ROSELLE.

GREEN STAR, INC.,
Appellant,
-vs-
MAYOR AND COUNCIL OF THE BOROUGH OF ROSELLE,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Leo J. Berg, Esq., by Anthony L. Cecere, Esq., Attorney for Appellant.
Harry Dvorken, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on November 29, 1956, it denied appellant's application for transfer of a plenary retail consumption license from Andrew Kraemer, Elizabeth Kraemer and Pauline Kraemer, t/a Kraemer's, to appellant and from premises 112 West First Avenue to premises 108-118 Chestnut Street. Both premises are situated in the Borough of Roselle.

"In its petition of appeal appellant alleges, in substance, that respondent's action was erroneous in that it was arbitrary, capricious and 'influenced by the judgment of individuals or forces prejudiced against the transfer.'

"Respondent in its answer alleges that its action was based upon a consideration of (a) the best interests of the citizens of the Borough; (b) the proximity of the proposed location to the premises of an existing licensee, and (c) the accessibility of part of the proposed licensed premises to bowling alleys used by adolescents and minors.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15.

"The record herein discloses that appellant is the owner of a building situated on the west side of Chestnut Street around the corner from Kraemer's, a distance of approximately four hundred feet. Chestnut Street is the main street of the Borough and zoned strictly for business. For nearly twenty years a tavern and bowling alleys were operated under separate management in appellant's building. Recently, the license for the tavern (operated by one Fredericks) was transferred to a store located in an adjoining building but separated from appellant's premises by three other stores. During part of that twenty-year-period a liquor license was held by a hotel formerly located across the street from appellant's premises. The premises which appellant seeks to have licensed consist of a proposed cocktail lounge, service bar and two banquet rooms. The lounge is located on the first floor to the right of the main entrance of the building and has a separate entrance thereto from Chestnut Street and a door opening into a lobby which leads to an elevated recreation hall having sixteen bowling alleys. The service bar is a recessed compartment in the rear wall of the recreation center, and the banquet rooms are one flight up from the said center and independent therefrom. Senior and Junior League Bowlers have been using the bowling alley since April 1, 1956.

"Sidney Greenberg (president and principal stockholder in appellant corporation) testified in substance that he subscribes to the rules of the American Junior Bowling Congress which provide that alcoholic beverages may not be served in and around an area in which Junior Leaguers are bowling and that, if the license in question were transferred to appellant, the service bar would be closed during the hours set aside for Junior Leaguers which at present are 10:00 a.m. to 5:00 p.m. on Mondays through Fridays, and from 9:00 a.m. to Noon on Saturdays.

"Other witnesses appearing in appellant's behalf testified that in their opinion neither the community nor minors who frequent the recreation center would in any way be harmed if the license were transferred to appellant, and two Councilmen who voted to deny appellant's application testified that they so voted despite their belief that respondent's action was motivated by 'factional pressure.'

"The testimony of respondent's witnesses was to the effect that the transfer of the license to the proposed premises would result in the moral and spiritual debasement of minors who frequent the center if a licensed service bar were permitted therein; that there was no need or convenience to be

served by the transfer of the license; that many individuals and representative groups in the Borough were opposed to the transfer, and that a transfer under the circumstances would discriminate against an existing licensee (Fredericks) who had been granted his transfer with the understanding that his premises would not be connected with bowling alleys.

"No challenge is made of the personal fitness of appellant's officers and stockholders or the suitability of the premises.

"Where, as here, an application is made for a person-to-person and place-to-place transfer of a license within the same area, the applicable ruling is that, when no attack is made on the personal fitness of the applicant or the suitability of the premises, a refusal to transfer cannot, in the absence of good independent cause, be sustained. Costa v. Verona, Bulletin 501, Item 2; Vogel et al. v. Matawan et al., Bulletin 1043, Item 1, and cases cited therein.

"It is apparent from the evidence herein that the independent cause which motivated respondent in denying appellant's application for transfer of the license in question is the moral and spiritual harm likely to result to minors frequenting the recreation center in which a licensed service bar is located.

"The principle first promulgated by Commissioner Burnett in Turner v. Ramsey, Bulletin 37, Item 7 (that 'the denial of a license because the premises are used by minors is within the power of the local board and is justified') has been enunciated by his successors in numerous cases decided by them, including the recent case of Livingston Land Corp. v. Livingston et al., Bulletin 1136, Item 3, and is controlling in the case sub judice. However, in the instant case the proposed premises sought to be licensed include a cocktail lounge and two banquet rooms separated from the bowling alleys. Since it appears that the objections were mainly directed against licensing the service bar, I recommend that an order be entered permitting appellant to amend its application to include only the cocktail lounge and banquet rooms, and directing respondent to grant the application so amended.

"I further recommend that, should appellant refuse to so amend its application within ten (10) days from the date of said order, a further order be entered affirming respondent's action."

Exceptions to the Hearer's Report and answers thereto were filed by the attorneys for the respective parties herein pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record, including the Exceptions, I concur in and adopt the Hearer's findings and recommendations.

Accordingly, it is, on this 14th day of May, 1957,

ORDERED that the action of respondent be affirmed unless, within ten (10) days from the date hereof, appellant amends its application heretofore filed with respondent to include only the cocktail lounge and banquet rooms as the premises to be licensed, in which event respondent is directed to grant the application so amended.

WILLIAM HOWE DAVIS
Director.

4. DISCRIMINATION - DIRECTOR'S POWER TO GRANT AD INTERIM RELIEF TO WHOLESALER AGAINST ALLEGED DISCRIMINATION BY DISTILLER, IMPORTER OR RECTIFIER - TEMPORARY RESTRAINT CONTINUED PENDING FINAL HEARING ON PETITION FILED PURSUANT TO R. S. 33:1-93.1-93.5.

June 12, 1957

Green and Yanoff, Esqs.
Newark 2, N. J.

Re: Petitioners: F. & A. Distributing Co.
235-241 West First Street
Bayonne, N. J. Lic. W-54

Gillhaus Beverage Co., Inc.
95 Temple Avenue
Hackensack, N. J. Lic. W-14

Merchants' Wine & Liquor Co.
4576 Crescent Boulevard
Camden, N. J. Lic. W-6

Respondent: Canada Dry Ginger Ale, Inc.
100 Park Avenue
New York, N. Y. Lic. W-32

Motions have been made by the above respondent and the intervenor, Joseph E. Seagram and Sons, Inc., to dissolve the ad interim restraints* granted by my order of April 26, 1957 and continued by my order of May 2, 1957 pending hearing on May 27, 1957. On the latter date, counsel for the parties argued personally before me and submitted briefs limited solely to the question whether the ad interim restraints should be continued pending final hearing on the merits at a date yet to be set.

Two questions are presented, namely, (1) whether the power to issue the instant interlocutory restraining orders has been delegated to me and (2) assuming this power exists, whether it should be exercised in this instance.

As to the first, the mere fact that the sections in question (R. S. 33:1-93.1-93.5) do not specifically grant interlocutory power is no implied restriction upon my general authority under R. S. 33:1-39 to "make such general rules and regulations and such special rulings and findings as may be

*each of which provides in pertinent part:

"AND IT IS FURTHER ORDERED that pending the hearing of this order to show cause, and until further order of the Director, the respondent and its agents, servants and employees be and are hereby ordered and directed to refrain, cease and desist from discriminating against the petitioner in the sale of alcoholic beverages and from refusing to sell to petitioner alcoholic beverages upon petitioner offering to pay for same on terms usually and normally required by the respondent, and from refusing to fill and complete orders heretofore placed by the petitioner for products of the respondent, and from disseminating and circulating statements among customers of the petitioner that petitioner is no longer a distributor of respondent's products."

necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this chapter, in addition thereto, and not inconsistent therewith" and under R. S. 33:1-23 "to do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration of this chapter." (underscoring added), nor does it limit the statutory mandate that the chapter "shall be liberally construed" R. S. 33:1-73. Furthermore, for practical purposes, failure to be able to take immediate preliminary action to preserve the status quo of the parties prior to final disposition could render any final action by me futile and academic in view of the harm that could occur to the petitioner's businesses during a lengthy time interval. But, aside from the general and implied authority afforded me by the Alcoholic Beverage Act, the sections in question themselves may be deemed to contain express authorization to exercise interlocutory power since they provide that I may "adopt and promulgate such rules and regulations as may be necessary to carry out and insure compliance with the provisions of this act." See R. S. 33:1-93.5. (That the absence of the actual promulgation of any such rules or regulations concerning the procedure of Division interlocutory relief, in cases such as these, does not indicate want of authority to so act, see Liptak v. Division of Alcoholic Beverage Control, 44 N. J. Super. 140.) Consequently, I conclude that this question should be answered in the affirmative.

As to the second question, reference is made to the injunctive process of the New Jersey Courts, which may be considered applicable by way of analogy in an administration agency proceeding such as is now before me. The decisions indicate that interlocutory injunctions may be used to prevent a potential irreparable injury, not adequately compensable in damages at law, pending final hearing of the cause. Ferraiuolo v. Manno, 1 N. J. 105; Citizens' Coach Co. v. Camden Horse R. Co., 29 N. J. E. 299. (Cf. Rule 4:67-2 of the New Jersey Superior Court Rules of Civil Practice) "Acts destroying a complainant's business, custom and profits do an irreparable injury and authorize the issue of a preliminary injunction." Scherman v. Stern, 93 N. J. E. 626. See also Sunbeam Corp. v. Windsor-Fifth Avenue, 14 N. J. 222.

Generally, to warrant such relief, plaintiff must exhibit a right free from doubt or reasonable dispute either as to the law or the facts supporting the right. Allman v. United Brotherhood of Carpenters, 79 N. J. E.641; Hoffman Hardware Co. v. Naame, 18 N. J. Super. 234. Where the material facts are met by a full, explicit and circumstantial denial under oath, the general rule is that a preliminary injunction will not issue. Sneath v. Lehsten, 120 N.J.E. 327; Kellet v. Local No. 274, et al., 114 N.J.E. 107. However, one of the exceptions to this rule is where the court will intervene "to protect the res from destruction, loss or impairment, so as to prevent the decree of the court, upon the merits, from becoming futile or inefficacious in operation. Particularly is this so where it appears that the damage resulting to the complainant by a continuance of the alleged wrong may prove to be irreparable." Ferraiuolo v. Manno, supra. As was said in Peters v. Public Service Corp. of N. J., 132 N.J.E. 500, (at pp. 511, 512) "The purpose of ad interim restraint is to enable the court to fully deliberate and investigate the case in order that the injunction maintains the status quo so that the parties are in substantially the same plight when the

final decree is entered as they were when the litigation began"; "On application for an interlocutory injunction when the respective rights of the parties are not clear, the court considers what injury the defendant would suffer from an injunction, assuming that he shall prevail in final hearing, and what injury might be done complainants if the injunction be denied and yet complainant should finally win. This is the balancing of conveniences. It is a factor on practically all applications for an interlocutory injunction"; "when maintenance of the status quo will result in no material damage to defendant's rights or, if so, it will be comparatively slight, there is a duty upon the court to continue the restraint." Doubt as to the validity of the complainant's asserted cause of action is not adequate reason for refusing to maintain the subject of litigation in status quo pending definite settlement after final hearing. The court should preserve the subject matter of the controversy from destruction or substantial impairment. Christiansen v. Local 180 of Milk Drivers et al., 127 N.J.L. 215; Harker v. McKissach, 1 N. J. Super. 510.

Applying the above principles to the instant cases, I find from the evidence introduced that petitioners are dependent in their businesses on the continued supply of key products from the respondent, the deprivation of which may cause an impairment to their businesses; that this impairment would result regardless of the proportion of petitioners' business with respondent since their retail customers would be forced to do business with their competitors in order to obtain the key products; that petitioners have no adequate remedy at law to compensate for damage to their businesses, because such damage is deemed irreparable; that there has been no showing that the respondent would be materially harmed in any respect by continuance of the orders, but if so, it would be slight in comparison to the harm that might be suffered by the petitioners if the order is vacated; that respondent is not unduly at a disadvantage by the lack of a posting of a bond by the petitioners in view of the fact that there has been no claim that it does not have a remedy by recourse to a suit in the courts for damages against the petitioners; and that the raising of issues of law and fact at this juncture of the proceedings is no bar to continuance of the orders to preserve the status quo of the parties, namely, the supply (and reputation thereof in the retail trade) of respondent's products to petitioners in effect prior to these proceedings, pending final hearing on the merits. Accordingly, the restraining orders will be continued for that purpose.

An order should be submitted by petitioners' counsel in conformity with the above, with leave being open to the respondent to apply at any time for an order modifying the restraints upon a showing that future merchandise orders of the petitioners are in excess of their orders prior to the institution of the instant action, or otherwise abuse their rights in this matter. Thereafter, a date will be fixed for final hearing herein.

WILLIAM HOWE DAVIS
Director.

5. AUTOMATIC SUSPENSION - VIOLATION OF R. S. 33:1-2 AND 50 - LICENSE PREVIOUSLY SUSPENDED BY DIRECTOR - APPLICATION TO LIFT GRANTED.

Auto. Susp. #137
In the Matter of Disciplinary Proceedings against

ANDREW TUCCIARONE and
LEONARD TUCCIARONE
T/a OLDE PICADILLY
North Side of Valley Road
Passaic Township
PO Stirling, N. J.,

Holders of Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Passaic.

ON PETITION
O R D E R

Robert W. Wolfe, Esq., Attorney for Petitioner.

It appears from a petition filed herein that on April 26, 1957, Leonard Tucciarone was fined the sum of $300.00 in the Union County Court after he had pleaded non vult to charges alleging that he sold alcoholic beverages in violation of R. S. 33:1-2 and R.S. 33:1-50. Said conviction has resulted in the automatic suspension for the balance of its term of the license held by the defendants herein. R. S. 33:1-31.1. The petition requests the lifting of the automatic suspension.

By order dated December 7, 1956, the Director suspended defendants' license for a net period of fifteen days after they had pleaded non vult in disciplinary proceedings to a charge alleging that Leonard Tucciarone had sold alcoholic beverages contrary to R. S. 33:1-2 and R.S. 33:1-50. Said suspension was effective from 2:00 a.m. January 2, 1957 to 2:00 a.m. January 17, 1957 (Bulletin 1150, Item 6).

It appearing that the suspension heretofore imposed is adequate, the relief sought herein will be granted.

Accordingly, it is, on this 1st day of May, 1957,

ORDERED that the automatic suspension of the license held by defendants be and the same is hereby lifted, and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS
Director.

By:
Edward J. Dorton
Deputy Director.

6. AUTOMATIC SUSPENSION - STAYED PENDING DISCIPLINARY PROCEEDINGS BY ISSUING AUTHORITY.

Auto. Susp. #138
In the Matter of a Petition by)

WILLIAM KURUC)

To Lift the Statutory Automatic Suspension of Plenary Retail Distribution License D-30, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to) ON PETITION

) O R D E R

WILLIAM KURUC
T/a KURUC FINEST WINE-LIQUOR & BEER STORE
248 Ackerman Avenue
Clifton, N. J.)

Shershin and Feder, Esqs., by Richard Yale Feder, Esq., Attorneys for Petitioner.

The petition herein discloses that on May 7, 1957, William Kuruc, the licensee, was fined the sum of $50.00 and costs after he had pleaded guilty in the Municipal Court of the City of Clifton to a charge of selling alcoholic beverages to a minor. Such conviction resulted in the automatic suspension of petitioner's license under the provisions of R. S. 33:1-31.1.

The purpose of the automatic suspension is to ensure that, when a licensee is convicted in a criminal court for violating the Alcoholic Beverage Law, there is swift and sure penalty against the license. See Re Panasevitz, Bulletin 485, Item 3.

In the present case petitioner alleges that disciplinary proceedings have been instituted by the Municipal Board against petitioner for the same sale of alcoholic beverages but that said Board will not meet in regular session until May 27, 1957. In fairness to petitioner, the effect of the automatic suspension will be stayed pending the entry of a further order herein. Cf. Re Faessler, Bulletin 920, Item 15.

If the local issuing authority dismisses the charge in the disciplinary proceedings, a supplemental petition to lift the automatic suspension immediately may be filed with the Director; or, if the local issuing authority imposes a suspension in the disciplinary proceedings, a supplemental petition to lift the automatic suspension at the expiration of said suspension may be filed with the Director.

Accordingly, it is, on this 10th day of May, 1957,

ORDERED that the aforesaid automatic suspension be stayed pending the entry of a further order herein.

WILLIAM HOWE DAVIS
Director.

By: Edward J. Dorton
Deputy Director.

7. DISQUALIFICATION REMOVAL PROCEEDINGS - FIVE YEARS' GOOD CONDUCT NOT SHOWN - APPLICATION DENIED WITH LEAVE TO REAPPLY AFTER APRIL 1, 1958.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.	CONCLUSIONS AND ORDER
Case No. 1343.	

BY THE DIRECTOR:

On March 24, 1930, applicant was placed on probation and ordered to pay costs after he had been convicted in a County Court on a charge of attempted larceny of an auto. On September 3, 1934, he was fined $5.00 in a Municipal Court on a charge of disorderly conduct. On January 20, 1949, he was fined $2,000.00 after being convicted in a County Court on a charge of keeping a gambling resort. The crime of which applicant was convicted in 1949 involved moral turpitude (Re Case No. 618, Bulletin 878, Item 12) and, hence, he was thereafter ineligible to hold a license or to be employed on licensed premises.

Our investigation herein discloses, and it is admitted by applicant, that he is the same person who had an undisclosed interest in a license which was revoked on June 24, 1942 (Re The Famous Door, Inc., Bulletin 518, Item 14). It further appears that, despite his ineligibility at that time, applicant was employed from October 1952 until March 1953 as a bartender in licensed premises which were beneficially owned by his brother, and that during the month of March 1953 he exercised the privileges of a license held by one Vitale with the result that the license was suspended for ninety-five days on this and other charges (Re Vitale, Bulletin 971, Item 3). At the hearing held herein applicant testified that he has held no interest in any license and has not worked on any licensed premises since March 1953. His testimony that he did not know, in 1953, that he was ineligible to work on licensed premises is not convincing.

At the hearing applicant testified that he is about fifty years of age, unmarried, and that since March 1953 he has had no regular employment but has been taking care of properties owned by his mother and has been supported by her.

Despite the testimony of his three witnesses, I am not convinced that applicant has been law-abiding for more than five years last past or that his association with the alcoholic beverage industry at this time would not be contrary to the public interest. I shall deny his application, with leave to renew on and after April 1, 1958.

Accordingly, it is, on this 13th day of May, 1957,

ORDERED that the application be denied, with leave to reapply as aforesaid.

WILLIAM HOWE DAVIS
Director.

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

In the Matter of Disciplinary Proceedings against IN AND OUT SOCIAL CLUB, INC. 805 Hudson Street Trenton, N. J., Holder of Club License CB-49, issued by the Director of the Division of Alcoholic Beverage Control.	CONCLUSIONS AND ORDER

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

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On March 26, 1957 and on divers days prior thereto, 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 March 26, 1957 and on divers days prior thereto, 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."

The file herein discloses that, acting upon a complaint that bets were being accepted at the licensed premises, three ABC agents entered the premises on March 26, 1957, at about 1:00 p.m. Searching the premises, the agents found on a table a pink slip of paper containing a horse-race bet, and one of the members of the club stated that the slip belonged to him. The agents also found in a wastepaper basket several torn number slips. After Harry Brown (the steward of the club) entered, the telephone rang and Brown answered it while an agent listened in. The person calling said that she wanted to play 521, 671, 167, 670 and 960 for ten cents each, and gave her first name. Harry Brown then gave to the agents a voluntary signed statement in which he admitted that he had been accepting number bets at the club for about eight months.

In attempted mitigation the attorney for defendant states that the club has been in existence since 1888; that its members are respectable citizens of high standing in the community; that the officers could discover no member who had knowledge of Brown's activity and that the club has discharged Brown from his position as steward.

Defendant has no prior adjudicated record. The minimum penalty imposed for violations similar to those herein, and committed prior to January 16, 1956, consisted of a suspension for twenty days (Re Twelve Aces Social Club, Inc., Bulletin 1104, Item 1). However, on January 16, 1956, I announced that

the penalty in such cases would be increased by five days (Bulletin 1095, Item 1). I shall impose the present minimum penalty in this case and suspend defendant's license for twenty-five days. Five days will be remitted for the plea herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 13th day of May, 1957,

ORDERED that Club License CB-49, issued by the Director of the Division of Alcoholic Beverage Control to In and Out Social Club, Inc., for premises 805 Hudson Street, Trenton, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. May 21, 1957, and terminating at 2:00 a.m. June 10, 1957.

WILLIAM HOWE DAVIS
Director.

9. STATE LICENSES - NEW APPLICATION FILED.

Kasser Distillers Products Corp.
Third and Luzerne Streets
Philadelphia, Pa.

Application filed June 18, 1957 for person-to-person transfer of Plenary Wholesale License W-3 from Sonoma Vineyards Winery, 188-194 21st Avenue, Paterson, N. J.

William Howe Davis
Director.