

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 782

NOVEMBER 14, 1947.

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STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 782

NOVEMBER 14, 1947.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 )  
JOSEPH FORMISANO )  
T/a THE BEVERAGE CENTRE & )  
THE RATHSKELLER )  
S/W Cor. Warren & South Pearl Sts.)  
Bridgeton, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-6 for the above premises, )  
and Plenary Retail Distribution License D-3 for premises 40 South )  
Pearl Street, Bridgeton, both issued )  
by the City Council of the City of )  
Bridgeton. )  
----- )

Harry Adler, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to a charge alleging that he sold alcoholic beverages below the established Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

On August 13, 1947, an investigator of the State Department of Alcoholic Beverage Control purchased from the licensee, for consumption off the licensed premises, one case containing 12 - 4/5 quart bottles of Three Feathers Reserve Blended Whiskey for the price or sum of \$44.00. The minimum retail price of said whiskey, as established in Bulletin 765, then in effect, was \$4.04 per fifth, or \$48.48 for the case.

Since this is defendant's first adjudicated violation, I shall impose the minimum ten-day suspension, remitting five days thereof because of the plea, leaving a net suspension of five days. Re 20th Century Bar, Inc., Bulletin 762, Item 4.

Since the charges herein were served, the premises covered by License C-6 have been reduced by eliminating a store at 40 South Pearl Street, and a "D" license issued to Formisano for the part of said premises known as 40 South Pearl Street. It is obvious that the suspension herein should be effective against the entire premises as licensed at the time of the violation, otherwise the defendant will escape the full force of the suspension. Cf. State Regulations No. 16; Re Leininger, Bulletin 493, Item 1. It further appears that the local issuing authority, in granting the new "D" license, specifically imposed a condition therein to the effect that it was subject to the outcome of the disciplinary proceedings herein. Re Byer, Bulletin 477, Item 4.

Accordingly, it is, on this 30th day of October, 1947,

ORDERED that Plenary Retail Consumption License C-6, issued by the City Council of the City of Bridgeton to Joseph Formisano,

t/a The Beverage Centre and The Rathskeller, for premises s/w cor. Warren & South Pearl Streets, Bridgeton, now reduced to exclude store at 40 South Pearl Street, together with Plenary Retail Distribution License D-3 issued as aforesaid to the said Joseph Formisano, t/a The Beverage Centre, for premises at 40 South Pearl Street, Bridgeton, be and the same are hereby suspended for a period of five (5) days, commencing at 9:00 a.m. November 10, 1947, and terminating at 9:00 a.m. November 15, 1947.

ERWIN B. HOCK  
Commissioner.

2. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF FEMALE BARTENDER, IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 5 DAYS, LESS 2 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

MARY CHAPOLA )  
13 North Main Street )  
Paterson 1, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-263, issued by the Board of Alcoholic Beverage Control of the City of Paterson. )

I. Victor Klenert, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that she had a female bartender in her employ, in violation of a local regulation.

On September 14, 1947, an ABC agent was served a glass of beer by the defendant's mother, who was then acting as bartender. The local regulation prohibits a female, unless a licensee or the wife of a licensee, from serving in that capacity on licensed premises.

The defendant has no previous record. The license will be suspended for a period of five days, less two days for the plea, leaving a net penalty of three days. Cf. Re Knight, Bulletin 548, Item 4.

Accordingly, it is, on this 31st day of October, 1947,

ORDERED that Plenary Retail Consumption License C-263, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Mary Chapola, for premises 13 North Main Street, Paterson, be and the same is hereby suspended for a period of three (3) days, commencing at 3:00 a.m. November 5, 1947, and terminating at 3:00 a.m. November 8, 1947.

ERWIN B. HOCK  
Commissioner.

3. DISCIPLINARY PROCEEDINGS - PERMITTING PIN BALL MACHINE AND LOTTERY ON LICENSED PREMISES IN VIOLATION OF RULES 6 AND 7 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

MICHAEL CASERTA )  
 T/a IRMA LOUISE RESTAURANT )  
 E. Colony Road & State Highway 37 )  
 Silver Beach, Dover Township )  
 P.O. Normandy Beach, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-23, issued by the Township Committee of the Township of Dover. )

-----)  
 Michael Caserta, Defendant-licensee, Pro Se.  
 William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to charges alleging (1) that he allowed, permitted and suffered a bagatelle or pin ball machine on his licensed premises, in violation of Rule 7 of State Regulations No. 20; (2) that he allowed, permitted and suffered a lottery (i.e., a punch board) to be conducted and chances thereon sold on or about his licensed premises, in violation of Rule 6 of State Regulations No. 20; and (3) that he allowed, permitted and suffered a device designed for gambling, i.e., a punch board, on and about his licensed premises, in violation of Rule 7 of State Regulations No. 20.

On September 16, 1947 an investigator of the State Department of Alcoholic Beverage Control, during an inspection of the licensed premises, discovered thereon a five-ball bagatelle or pin ball machine. This machine, the mere presence of which is a violation of Rule 7 of State Regulations No. 20, was a model providing a "pay-off" apparently in free games.

In addition to the above game, the investigator found a large and elaborate "punch board". The "prizes" awarded by this model, containing some 2500 ten-cent "punches", range to \$10.00. This "board" had admittedly been on the licensed premises for at least a month and was apparently a gambling device popular with the licensee's patrons. Such a punch board is in effect a lottery. Re Novac, Bulletin 230, Item 15.

Defendant-licensee has no prior adjudicated record. I shall suspend the license on the first charge for a period of ten days, Re Carteret Club of Trenton, Bulletin 672, Item 12, and an additional ten days for charges 2 and 3, remitting five days because of the plea, leaving a net suspension of fifteen days.

Investigation by this Department discloses that defendant's premises are now only operating on a part-time basis and will continue so to do until some time in the spring. Thus, no effective suspension can be imposed at the present time. The starting date of the suspension herein will be postponed until my further order, after the licensed premises shall have reopened on a full-time basis in the spring of 1948. Re Solomon, Bulletin 583, Item 2.

Accordingly, it is, on this 30th day of October, 1947,

ORDERED that Plenary Retail Consumption License C-23, issued by the Township Committee of the Township of Dover to Michael Caserta, t/a Irma Louise Restaurant, for premises E. Colony Road & State Highway 37, Silver Beach, Dover Township, be and the same is hereby suspended for a period of fifteen (15) days, the time to be fixed by subsequent order as aforesaid.

ERWIN B. HOCK  
Commissioner.

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

In the Matter of Disciplinary Proceedings against )

THERESA G. WOODS )  
T/a MONTROSE TAVERN )  
37 Clinton Avenue )  
Hillsdale, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Mayor and Council of the Borough of Hillsdale. )  
----- )

Theresa G. Woods, Defendant-licensee, Pro Se.  
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that, on September 26, 1947, she possessed an illicit alcoholic beverage, to wit, a 4/5 quart bottle labeled "Walkers DeLuxe Straight Bourbon Whiskey", which was not genuine as labeled, in violation of R. S. 33:1-50.

Since defendant has no previous adjudicated record, the usual fifteen-day suspension will be imposed, less five days for the plea, or a net suspension of ten days. Cf. Re Matarazzo, Bulletin 770, Item 4.

Accordingly, it is, on this 31st day of October, 1947,

ORDERED that Plenary Retail Consumption License C-4, issued by the Mayor and Council of the Borough of Hillsdale to Theresa G. Woods, t/a Montrose Tavern, for premises 37 Clinton Avenue, Hillsdale, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. November 10, 1947, and terminating at 3:00 a.m. November 20, 1947.

ERWIN B. HOCK  
Commissioner.

5. APPELLATE DECISIONS - PIRONE v. WEEHAWKEN TOWNSHIP.  
BORROMETI v. WEEHAWKEN TOWNSHIP.

ROSE VIRGINIA PIRONE, )  
Appellant, )

-vs-

TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF WEEHAWKEN, )  
Respondent )

ON APPEAL  
CONCLUSIONS AND ORDER

FRANK BORROMETI, )  
Appellant, )

-vs-

TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF WEEHAWKEN, )  
Respondent )

Alfred M. Cozzi, Esq., by Frederick J. Fox, Esq., Attorney for Appellants.  
John N. Platoff, Esq., by Harold Kolovsky, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant, Rose Virginia Pirone, filed an appeal from the action of respondent Township Committee on June 26, 1947, whereby said Township Committee refused to transfer her plenary retail consumption license to Frank Borrometi. If any person was aggrieved by said refusal, it was the applicant for the transfer, namely, Frank Borrometi. Appellant, Rose Virginia Pirone, has no standing to file an appeal from the refusal to transfer her license or to file an appeal from the failure to renew the license in the name of Frank Borrometi for the current fiscal year. Hence I shall dismiss her appeal.

In the companion case decided herewith, Frank Borrometi has appealed from the action of respondent Township Committee on June 26, 1947, whereby the Township Committee denied his application for a transfer to him of the license formerly held by Rose Virginia Pirone for premises at 4704 Park Avenue, Weehawken. He has also appealed from the failure of the Township Committee to grant his application for renewal of the license for the present fiscal year for the same premises.

On April 22, 1947, the license then held by Rose Virginia Pirone was suspended for the balance of its term, which expired on June 30, 1947, after she had pleaded non vult to charges alleging that she held the license as a "front" for her husband, Frank Pirone, and that she allowed, permitted and suffered gambling and gambling devices on her licensed premises. Re Pirone, Bulletin 760, Item 5. On the same date, and in said proceedings, it was further ordered that "if a transfer of said license is effected to a duly qualified person prior to June 30, 1947, such transferee may apply for a renewal thereof prior to July 30, 1947, but the renewed license, if and when issued to said transferee, shall remain under suspension until 2:00 a.m. August 6, 1947."

On June 14, 1947, Mrs. Pirone entered into an agreement with Frank Borrometi whereby she agreed to sell her licensed business to him for the sum of \$1,000.00. The agreement was contingent upon the

ability of Borrrometi to obtain a transfer of the license from the local issuing authority. On the same day Frank Borrrometi applied to respondent Township Committee for a transfer of the license which had been issued to Rose Virginia Pirone and also applied for a renewal of said license for the present fiscal year. On June 26, 1947, respondent denied the application for transfer upon the ground that "there has been considerable trouble at this tavern and also that there are enough taverns in this vicinity." Apparently no formal action was taken upon the application for renewal because the application for transfer had been denied.

Appellant Borrrometi alleges that said "refusals were in violation of the terms of the order advised by the Honorable Erwin B. Hock, Commissioner of the State of New Jersey Department of Alcoholic Beverage Control on the 22nd day of April 1947." This reason may be dismissed forthwith. There was no directive in said order requiring the transfer or renewal of the license. The effect of the additional order entered on April 22, 1947 was merely to insure that a proper period of suspension should be served if the license were transferred to a duly qualified person.

Appellant Borrrometi also contends that the action of respondent was arbitrary and unreasonable. No serious objection has been raised as to the personal qualifications of Frank Borrrometi. However, there is adequate proof that the licensed premises were operated in a loud and boisterous manner during the time they were conducted in the name of Mrs. Pirone. Several witnesses who reside in apartments above the licensed premises testified that they were disturbed by excessive noises and the playing of a juke box long after 11:00 p.m. and on many occasions until the closing hour at 2:00 a.m. Chief of Police Kirk testified that, between June 1946 and January 1947, members of his Department investigated eight complaints which concerned excessive noise and the playing of the juke box at the licensed premises. In addition, three of the neighbors testified to the use of vile and filthy language by patrons on the licensed premises.

A license may be denied, or a transfer of a license refused, for premises which have been conducted in an improper manner. Alexander v. Trenton, Bulletin 37, Item 13; Malone v. Bordentown, Bulletin 129, Item 8; Lalliker v. New Milford, Bulletin 141, Item 8; Mulligan v. Lyndhurst, Bulletin 146, Item 6; Wilson v. Highlands, Bulletin 282, Item 8. Considering the testimony herein, together with the gambling charge to which Mrs. Pirone pleaded non vult in the disciplinary proceedings cited above, the evidence is clearly sufficient to sustain the action of respondent in refusing to transfer the license to appellant Borrrometi upon the ground that the premises had been improperly conducted by the prior licensee.

Since the application for transfer was properly denied, and since P.L. 1947, c. 94 prohibits the issuance of a new plenary retail consumption license in Weehawken, respondent had and has no alternative except to deny the application filed by Frank Borrrometi for a renewal of the license for the present fiscal year. No one is entitled as a matter of right to a liquor license or a renewal thereof. Zicherman v. Driscoll, 133 N.J.L. 586. In order to complete its records, respondent Township Committee should adopt a resolution formally denying the application for renewal. Under the circumstances I shall affirm the action of respondent.

Accordingly, it is, on this 6th day of November, 1947,

ORDERED that the action of respondent Township Committee taken on June 26, 1947, be and the same is hereby affirmed, and that both appeals set forth above be and the same are hereby dismissed.

ERWIN B. HOCK  
Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

RALPH T. & ROSE ALBINO )  
T/a CLUB ROYAL )  
147 Ridge Road )  
Lyndhurst, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Board of Commissioners of the Township of Lyndhurst. )  
----- )

Ralph T. & Rose Albino, Defendant-licensees, Pro Se.  
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants plead non vult to a charge that they possessed illicit alcoholic beverages at their licensed premises, in violation of R.S. 33:1-50.

On October 8, 1947, an ABC inspector tested 26 bottles of the open stock of assorted brands of alcoholic beverages in defendants' licensed premises and seized four bottles of Schenley Reserve Blended Whiskey when preliminary tests indicated an apparent difference in the color of the whiskey in question when compared with a test of a genuine sample. Subsequent analyses by the Department Chemist disclosed that the whiskey was not genuine as labeled in three of the four seized bottles.

Defendants have no previous adjudicated record. I shall, therefore, suspend their license for a period of twenty days, less five days for the plea entered herein, or a net suspension of fifteen days. Cf. Re Ivanowski, Bulletin 745, Item 2.

Accordingly, it is, on this 6th day of November, 1947,

ORDERED that Plenary Retail Consumption License C-7, issued by the Board of Commissioners of the Township of Lyndhurst to Ralph T. & Rose Albino, t/a Club Royal, for premises 147 Ridge Road, Lyndhurst, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. November 12, 1947, and terminating at 2:00 a.m. November 27, 1947.

ERWIN B. HOCK  
Commissioner.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 )  
 SAM MOSKOWITZ & FRANK T. )  
 BRIGLIDORE )  
 86½ Market St. )  
 Paterson 1, N. J., )

CONCLUSIONS & ORDER

----- )  
 Holders of Plenary Retail Consumption License C-176 for the fiscal years 1946-47 and 1947-48, issued by the Board of Alcoholic Beverage Control of the City of Paterson. )

----- )  
 Sam Moskowitz and Frank T. Briglidore, Defendant-licensees, Pro Se. William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control. )

BY THE COMMISSIONER:

Defendants plead non vult to a charge alleging that, on May 26, 1947, they possessed illicit alcoholic beverages, to wit, one 4/5 quart bottle labeled "Black & White Blended Scotch Whisky", two 4/5 quart bottles labeled "Blended Scotch Whisky Johnnie Walker Black Label", and one 4/5 quart bottle labeled "Blended Scots Whisky Haig & Haig", which were not genuine as labeled, in violation of R. S. 33:1-50.

On May 26, 1947 an ABC agent seized the bottles in question when preliminary tests indicated that the contents of the bottles were not genuine as labeled. Subsequent analyses by the Department chemist disclosed that the characteristics of the whiskey in the seized bottles varied from the characteristics of genuine samples of the same products.

Defendants claim they purchased the liquor business on May 14, 1947 and that the alcoholic beverages found to be illicit were part of the liquor stock of the former licensee. Licensees, however, are responsible for any "refills" found in their stock of liquor. Re Kurian, Bulletin 517, Item 2.

I shall suspend defendants' license for a period of twenty days, less five days for the plea. Re Donst, Bulletin 777, Item 6.

Although this proceeding was instituted during the licensing year 1946-47, it does not abate but remains fully effective against the renewal license for the 1947-48 fiscal year. State Regulations No. 16.

Accordingly, it is, on this 6th day of November, 1947,

ORDERED that Plenary Retail Consumption License C-176, issued for the 1947-48 fiscal year by the Board of Alcoholic Beverage Control of the City of Paterson to Sam Moskowitz and Frank T. Briglidore, for premises 86½ Market Street, Paterson, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 a.m. November 12, 1947, and terminating at 3:00 a.m. November 27, 1947.

ERWIN B. HOCK  
 Commissioner.

8. APPELLATE DECISIONS - MACCHIAVERNA v. ELIZABETH.

ELISEO GEORGE MACCHIAVERNA, )  
trading as GEORGE'S BAR, )  
Appellant, )

-vs-

MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY )  
OF ELIZABETH, )  
Respondent )

ON APPEAL  
CONCLUSIONS AND ORDER

Eugene J. Kirk, Esq., Attorney for Appellant.  
Louis P. Longobardi, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from respondent's action in suspending his plenary retail consumption license for fifteen days following adjudication of appellant's guilt in disciplinary proceedings on a charge of selling, serving and delivering alcoholic beverages to a minor upon the licensed premises, in violation of R. S. 33:1-77 and in violation of Rule 1 of State Regulations No. 20. Upon filing the appeal an order was entered staying the suspension in accordance with R. S. 33:1-31.

By agreement of the parties, the case was submitted upon the stenographic transcript of the hearing below, which was supplemented by testimony taken herein in accordance with Rule 8 of State Regulations No. 15.

There is no serious dispute as to the facts. Luke --- testified that he was born on February 6, 1930. A certified copy of his birth certificate was properly received in evidence. R. S. 2:98-14. In the latter part of July 1947, when Luke --- was seventeen years and five months of age, he entered appellant's premises accompanied by an adult, Robert Morgan. At that time Frank Macchiaverna, son of the appellant, was tending bar. He questioned Luke as to his age because he was "young looking". Thereupon Luke produced a birth certificate, which was in fact the birth certificate of Robert Morgan and which indicated that "Robert Morgan" was born on February 10, 1923. When Luke assured the bartender that the birth certificate then produced was his own birth certificate, drinks of alcoholic beverages were sold to the minor by the bartender. Luke did not, and in fact was not asked to, sign any written statement that he was twenty-one years of age or over.

On August 9, 1947, Luke, Robert Morgan and another adult again visited appellant's premises. At that time Frank Macchiaverna sold alcoholic beverages to these three patrons. After this sale had been made, the licensee said to his son, Frank, that Luke "looked pretty young", but his son assured him he had previously seen a birth certificate which indicated that the youth was twenty-four years of age. Thereafter the licensee, at least indirectly, sold alcoholic beverages to Luke.

As originally enacted, Section 77 of the Control Act (now R. S. 33:1-77) provided that anyone who sells alcoholic beverages to a minor shall be guilty of a misdemeanor. As the law then stood, the mere sale of alcoholic beverages to a person who was in fact under the age of twenty-one years constituted a violation. On July 18, 1939,

Ch. 228, P. L. 1939, amended R. S. 33:1-77 by adding to said section the following language:

"\*\*\*provided, however, that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over; and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over."

Consistently and continuously from the time this amendment was passed, the Commissioner has stated that the defense prescribed by the statute as amended can be established by a licensee only where the minor falsely represented in writing that he or she was twenty-one years of age or over; that the appearance of the minor was such that an ordinary prudent person would believe him or her to be of such age, and that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one years of age or over. Re Fornaro, Bulletin 339, Item 10; Caruso v. Jersey City, Bulletin 694, Item 1; Re Roey, Bulletin 747, Item 3. It is admitted that the minor in this case never represented in writing that he was twenty-one years of age or over. I have seen the boy at the hearing and he appeared to me to be no more than seventeen years of age. At the hearing below, Commissioner Leonard, referring to the boy, said, "I will tell you he is not twenty-one." I do not agree with appellant's contention that the production of Morgan's birth certificate by the boy was sufficient to satisfy the requirements of Section (a) of R. S. 33:1-77 and, in any event, I find that the appearance of the minor was such that no ordinary prudent person would believe him to be twenty-one years of age or over. How the bartender could have been fooled by a birth certificate which indicated that the minor was seven years older than his actual age is beyond my understanding. The case illustrates the wisdom of requiring a written representation by the minor as to his age. The evidence clearly sustains the finding of guilt and, hence, I shall affirm the action of respondent. See opinion of Justice Parker in Roey v. Hock (not officially reported) as set forth in Bulletin 758, Item 2.

Accordingly, it is, on this 6th day of November, 1947,

ORDERED that the action of the respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the fifteen-day suspension by respondent of appellant's Plenary Retail Consumption License C-143, for premises at 41 Rahway Avenue, Elizabeth, which suspension was held in abeyance pending disposition of the instant appeal, is hereby restored to take effect at 2:00 a.m. November 11, 1947, and to terminate at 2:00 a.m. November 26, 1947.

ERWIN B. HOCK  
Commissioner.

9. APPELLATE DECISIONS - ALICE & RAY'S INC. v. MONROE TOWNSHIP.

ALICE & RAY'S, INC., trading )  
as ALICE & RAY'S, INC., )

Appellant, )

-vs- )

TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF MONROE (Middlesex )  
County), )

Respondent )

ON APPEAL  
CONCLUSIONS AND ORDER

-----  
Benjamin Kleinberg, Esq., Attorney for Appellant.  
Henry C. Berg, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of the respondent whereby it denied appellant's application for renewal of a plenary retail consumption license for premises located on Etra-Disbrough Hill Road, Township of Monroe.

Raymond Louis Foss held a plenary retail consumption license during the 1946-47 fiscal year for premises in Union Valley, Township of Monroe. Bates v. Monroe and Foss, Bulletin 750, Item 10. After the unsuccessful attempt to transfer his license to other premises (known as the Vandervere property) as set forth in the case cited herein, appellant corporation was organized. All shares of appellant corporation are owned by Robert Louis Foss and his wife.

On April 22, 1947, respondent duly transferred the 1946-47 license from Raymond Louis Foss to appellant corporation, and from the premises in Union Valley to the premises on Etra-Disbrough Hill Road. However, appellant's application for renewal of the license for the present fiscal year was denied on June 28, 1947. Hence this appeal.

It appears that no objections had been filed to the transfer of the license, but that numerous persons objected to the renewal thereof. The objectors explain that they failed to object to the transfer because they had no knowledge of said application, despite the formal advertisement of the application. They filed written objections when they learned that application to renew the license had been filed. Appellant, however, had not changed its position between the time the transfer was granted and the renewal denied because appellant never operated under its license at the premises on Etra-Disbrough Hill Road. In fact, Foss obtained a liquor license in another municipality. Under these circumstances the case is similar to Lindstrom v. Delaware, Bulletin 635, Item 11. In deciding this appeal, therefore, it must be determined whether the objections to renewal were valid and whether the denial was reasonable despite the prior action of respondent.

The section of Monroe Township to which the license was transferred is rural in character. Fourteen objectors, including many who reside in close proximity to the premises, testified at the hearing herein that there is no need for another license in the vicinity. The evidence discloses that appellant's premises consist of a "seven-room home" on a fourteen-acre tract of land located on a road described as being infrequently traveled. There is a tavern in Monroe Township on the same road about a mile away in one direction, and another tavern in an adjoining municipality on the same road slightly more than a mile away in the opposite direction. Those of

the objectors who engage in farming testified that they employ migrant workers during the summer; that many of these migrant workers live in a nearby camp, and that the existence of an additional licensed place near this camp would be detrimental. The previous action of respondent in granting the transfer seems to have been ill advised. Under all the circumstances I conclude that the action of respondent in refusing to renew the license was not arbitrary or unreasonable. Hence the action of respondent denying renewal for the current fiscal year is affirmed.

Accordingly, it is, on this 6th day of November, 1947,

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

ERWIN B. HOCK  
Commissioner.

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

In the Matter of Disciplinary Proceedings against )  
JOSEPH FORMISANO )  
T/a THE BEVERAGE CENTRE & )  
THE RATHSKELLER )  
S/W cor. Warren & South Pearl Sts. )  
Bridgeton, N. J., )

ON PETITION  
O R D E R

Holder of Plenary Retail Consumption License C-6 for the above premises, and Plenary Retail Distribution License D-3 for premises 40 South Pearl Street, Bridgeton; both issued by the City Council of the City of Bridgeton. )

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Harry Adler, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

An order having been entered herein on the 30th day of October, 1947, suspending the licenses held by defendant herein for a period of five days, commencing at 9:00 a.m. November 10, 1947, and terminating at 9:00 a.m. November 15, 1947; and

It appearing that, prior to the entry of said order, the American Legion had arranged with defendant to hold a banquet on defendant's premises during the period originally fixed for suspension of the licenses, and that more than 300 reservations have been made for said banquet; and

It thus appearing that numerous innocent persons would be inconvenienced by suspension of defendant's licenses for the period beginning November 10, 1947;

It is, on this 7th day of November, 1947,

ORDERED that the suspension of five days imposed in this proceeding, instead of commencing at 9:00 a.m. November 10, 1947, shall, in lieu thereof, commence at 9:00 a.m. November 17, 1947, and terminate at 9:00 a.m. November 22, 1947.

ERWIN B. HOCK  
Commissioner.

11. APPELLATE DECISIONS - ASHTON v. HOPEWELL AND CORCORAN.

DEAN H. ASHTON, )  
Appellant, )

-vs-

MAYOR AND COUNCIL OF THE BOROUGH )  
OF HOPEWELL, and JOHN F. CORCORAN, )  
trading as CORCORAN'S WINE & LIQUOR )  
STORE, )  
Respondents )

ON APPEAL  
CONCLUSIONS AND ORDER

Rothstein & Giordano, Esqs., by Louis Rothstein, Esq., Attorneys )  
for Appellant. )  
David L. Smith, Esq., Attorney for Respondent Mayor and Council. )

BY THE COMMISSIONER:

This is an appeal from the issuance by respondent Borough Council of a plenary retail distribution license for the current licensing period to respondent John F. Corcoran, for premises at 12 Seminary Avenue, Borough of Hopewell.

The principal ground of appeal set forth in the petition is that objectors to the issuance of the license were not properly notified of the date of the hearing, to wit, June 23, 1947, when said application for the plenary retail distribution license was approved. The evidence presented herein discloses that the original hearing of the application in question was on June 9, 1947. Inasmuch as the notice of intention as published in the local newspaper was defective because said advertisement omitted the address of the premises for which the license was sought, respondent Corcoran was permitted to re-advertise, and June 23, 1947 was designated as the date of a special meeting for consideration of respondent Corcoran's application.

It appears from the testimony herein that appellant was present at the meeting held on June 9, 1947; that he was then notified of the date of the special meeting to be held on June 23rd, and a letter was written to him confirming said verbal notification. Another objector who had addressed a written communication to respondent Borough Council was also notified in writing of the date of the special meeting to be held on June 23rd.

Immediately after the Council meeting of June 9, 1947, according to the witnesses presented in this case, appellant and respondent Corcoran, in an effort to solicit the interest of residents of the Borough for their respective views as to whether a liquor license should or should not be issued, circulated post cards addressed to the Borough Clerk. Borough Clerk Joseph M. Pierson testified that he received these post cards about twelve hours before the meeting on Monday, June 23, 1947 and, being a part-time clerk, it was utterly impossible to notify these objectors to the issuance of the license of the meeting on June 23, 1947.

Rule 6 of State Regulations No. 2 provides that upon receipt of a written objection it shall become the duty of each issuing authority to afford a hearing to all parties and immediately notify the applicant and the objector of the date, hour and place thereof. Appellant and the other person who filed the original written objections were notified of the hearing to be held on June 23rd. The other persons who objected by post card, although not notified of the hearing before respondent issuing authority because of the exigencies of the situation, were notified by the issuing authority of the hearing of the appeal herein. Since in this appeal the entire matter was heard de novo and all objectors were afforded an opportunity to be heard, the

objectors have been fully protected and hence cannot complain because they were not formally notified of the hearing before respondent issuing authority. Cf. Marsteller v. Somers Point and Hagenbucher, Bulletin 244, Item 7.

The plenary retail distribution license was issued to respondent Corcoran pursuant to an ordinance allowing one of that type of license, which ordinance had been approved by the governing body a short time previous thereto. The Federal census disclosed that in 1940 the Borough of Hopewell had an all-year-round population of 1,678. There are two hotels, each possessing a plenary retail consumption license in the Borough of Hopewell. One of these hotels is located on the corner of Seminary Avenue and East Broad Street, a short distance from respondent Corcoran's licensed premises; whereas the other hotel is located some distance away. It appears that Corcoran holds the only plenary retail distribution license in Hopewell and that the nearest package goods store is located nearly four miles away in another municipality.

Appellant testified that, in his opinion, there was no need or necessity for the issuance of a plenary retail distribution license in the Borough of Hopewell. Three witnesses produced by appellant testified that they were of the same opinion.

Kenneth L. Williams, who presided as Acting Mayor on June 23, 1947, and who voted in favor of the license, testified that in his opinion the issuance of the license was warranted because there was a need for and convenience to be served by a package goods store in the municipality. Councilman Claude Dilts testified in a similar fashion. George B. Genther, who was not a member of the issuing authority at the time the application for respondent Corcoran was approved but who has since become a member thereof, testified that he is in favor of the license because of its convenience to the citizens of the community. Three other witnesses testified in favor of the issuance of the license. The testimony of the witnesses indicated that the particular street where respondent Corcoran's licensed premises are located is used both for business and residential purposes.

Joseph M. Pierson, Borough Clerk, testified that 467 post cards in favor of the license and 162 post cards objecting thereto were received by him.

The Acting Mayor and two members of the Council voted in favor of the issuance of the license, two voted against the issuance, and one member refrained from voting.

The determination as to the number of licensed premises to be permitted in a community is a matter confided to the sound discretion of the issuing authority. R. S. 33:1-19 and 24. The burden of showing that the issuing authority abused its discretion rests with the appellant. Segal et al. v. Clifton et al., Bulletin 732, Item 5.

The State Commissioner's function in appeals of this type is not to substitute his personal opinion for that of the issuing authority, but rather to determine whether reasonable cause exists for its opinion and, if so, to affirm. Rafalowski v. Trenton, Bulletin 155, Item 8; Curry v. Margate City, Bulletin 460, Item 9.

After consideration of the evidence presented in the instant case I cannot say that the action of the majority of the members of the Borough Council who voted to grant the application was so arbitrary and unreasonable as to amount to an abuse of discretion warranting a reversal of its action.

The action of the Borough Council, therefore, in issuing a plenary retail distribution license for the fiscal year 1947-48 to respondent Corcoran is hereby affirmed.

Accordingly, it is, on this 7th day of November, 1947,

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

ERWIN B. HOCK  
Commissioner.

- 12. APPELLATE DECISIONS - HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION v. JERSEY CITY AND FINBAR.
- GINSBERG v. JERSEY CITY AND FINBAR.
- BEN'S GRILL INC. v. JERSEY CITY AND FINBAR.
- TUBE BAR INC. v. JERSEY CITY AND FINBAR.

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION, )  
 )  
 Appellant, )

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF JERSEY CITY, and FINBAR, )  
 )  
 Respondents )

----- )  
 SOLOMON GINSBERG, )  
 t/a YOUNG'S LIQUOR STORE, )  
 )  
 Appellant, )

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF JERSEY CITY, and FINBAR, )  
 )  
 Respondents )

ON APPEAL

----- )  
 BEN'S GRILL, INC., t/a TERMINAL CAFE, )  
 )  
 Appellant, )

CONCLUSIONS AND ORDERS

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF JERSEY CITY, and FINBAR, )  
 )  
 Respondents )

----- )  
 TUBE BAR, INC., )  
 )  
 Appellant, )

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF JERSEY CITY, and FINBAR, )  
 )  
 Respondents )

----- )  
 Samuel Moskowitz, Esq., Attorney for Appellants, Hudson Bergen County Retail Liquor Stores Association, Solomon Ginsberg, t/a Young's Liquor Store, and Ben's Grill, Inc., t/a Terminal Cafe. )  
 Maurice C. Brigadier, Esq., Attorney for Appellant Tube Bar, Inc. )  
 Charles A. Rooney, Esq., by Edward M. Malone, Esq., Attorney for Respondent Board of Commissioners of the City of Jersey City. )  
 James F. McGovern, Jr., Esq., Attorney for Respondent Finbar. )

BY THE COMMISSIONER:

These four appeals were filed to review the action of respondent Board of Commissioners whereby it granted a transfer of Plenary Retail Consumption License C-285 from Mary C. Howard to respondent Finbar, a

New Jersey corporation, and from premises at 33 Bevan Street to premises on the lower level of the tube station, Journal Square, Jersey City.

The Answer filed by respondent Finbar admits that the advertisement, containing the notice of intention to apply for this transfer, did not contain the location of the premises sought to be licensed, and consents to a reversal of the action of the respondent Board of Commissioners of the City of Jersey City without prejudice to its right to reapply. The other parties join in the request to reverse the action of respondent Board.

State Regulations No. 6, Rule 4 requires a form of advertisement which indicates the location of the premises to which the license is sought to be transferred, and the failure to include such location in the notice of intention is fatally defective and deprives the local issuing authority of jurisdiction to consider the application. Trotto v. Trenton, Bulletin 46, Item 11.

Under the circumstances, no testimony was taken as to other alleged errors.

Accordingly, it is, on this 10th day of November, 1947,

ORDERED that the action of respondent Board of Commissioners of the City of Jersey City is hereby reversed, and it is further

ORDERED that said transfer be set aside and be and hereby is declared null and void and for nothing holden without prejudice to the right of respondent Finbar to reapply for a transfer of said license.

ERWIN B. HOCK  
Commissioner.

13. STATE LICENSES - NEW APPLICATIONS FILED.

Jess R. Neufeld  
46 Laight St.  
New York 13, N. Y.

Application for Transportation License filed November 12, 1947.

American Express Field Warehousing Corporation  
611-615 Atlantic Ave.  
Atlantic City, N. J.

Application for Public Warehouse License filed November 13, 1947.

*Erwin B. Hock*  
Commissioner.