

BULLETIN 1091

DECEMBER 21, 1955.

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1091

DECEMBER 21, 1955.

1. APPELLATE DECISIONS - ROTHMAN v. HAMILTON TOWNSHIP (ATLANTIC COUNTY).

HARRY ROTHMAN,)
Appellant,)
-vs-) ON APPEAL
THE TOWNSHIP COMMITTEE OF THE) CONCLUSIONS AND ORDER
TOWNSHIP OF HAMILTON (ATLANTIC)
COUNTY),)
Respondent.)
-----)
Joseph R. Moss, Esq., Attorney for Appellant.
Glenn and Glenn, Esqs., by Alfred T. Glenn, Jr., Esq.,
Attorneys for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of the respondent whereby it denied, unanimously, appellant's application for a person-to-person and place-to-place transfer of a plenary retail consumption license from George W. Starr for premises located on Weymouth Road, Mays Landing, to Harry Rothman for premises located on the south side of Harding Highway between Richland and Mizpah, both locations being in the Township of Hamilton, separated by a distance of about five miles.

The petition of appeal herein alleges that the action of the respondent was erroneous, arbitrary, discriminatory and the result of prejudice, bias and mistake, in that there were no facts or circumstances presented to respondent which legally warranted the denial and was grounded wholly upon unfounded general objections of residents of the Township and elsewhere.

The answer herein alleges that the grounds upon which respondent based its action were:

- (a) The objections of fifty (50) citizens of the village of Mizpah to the transfer of said license to the premises in question.
- (b) Its finding that there is no public need nor necessity for an additional plenary retail consumption license in the immediate neighborhood.
- (c) Its finding that the needs of the public in said neighborhood are amply provided for, so far as plenary retail consumption premises are concerned.

At the hearing held herein, the appellant testified that he had recently purchased the premises to which transfer was proposed with the intention of opening a tap room and motel; that it was not a built-up area and that the nearest tap room is six tenths of a mile distant therefrom.

A member of the Township Committee, testifying on its behalf, stated that he had been such a member since 1944; that the Committee has always been of the opinion that the people of the community should have the right to help to determine exactly where the license holders should place their establishments; that the property owners who voiced their objections to the

transfer by petition, and personal appearances at the hearing below, ought to have some say in the matter of whether or not they want a license in their immediate vicinity. That the Committee felt that in view of the fact that there was, at that time, a licensed premises within approximately one-half or six tenths of a mile on one side of the proposed location and others within a mile or a mile and a half in another community adjacent to the Township, those licensed premises were sufficient to take care of the needs of the estimated four to seven hundred residents of Mizpah; that based on those two primary facts, it was the opinion of the Committee that this license should not be transferred to that particular place. This witness formally stated that there is no public need or necessity whatsoever for an additional plenary retail consumption license in the immediate neighborhood of this location.

A petition signed by fifty citizens of the community objecting to the proposed transfer of the license was presented in evidence. A member of the Planning Board of the Township, one of the persons who signed such petition, testified at the hearing herein in objection to the transfer. He stated that all of the persons who signed the petition reside within six tenths of a mile of the proposed location. Another person who signed the petition, who is a member of the local Board of Adjustment, also testified in objection to the transfer.

It appears that the Township Committee took into consideration the number of licenses in adjacent communities as well as those in the Township itself. Hamilton Township is described as being the largest municipality (in area) in the State, with Mizpah an isolated section thereof at one end. It is stated that the residents of Mizpah are more accustomed to trading in the adjacent community of Richland in Buena Vista Township than Mays Landing or other sections of Hamilton Township.

The number of licenses which should be permitted in any particular area and the determination as to whether or not a license will be transferred to a particular location are matters within the sound discretion of the issuing authority and my function on appeal is not to substitute my 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 my personal views. Guarino v. Newark and Suppa, Bulletin 1069, Item 2.

The respondent may consider the availability of licensed premises in an adjacent municipality in determining the public need or necessity for a license at a particular location within its borders. Mullen v. Pemberton, Bulletin 611, Item 5; Hillman v. Brielle, Bulletin 717, Item 3; Richardson v. Montgomery, Bulletin 898, Item 1.

The weight to be accorded to petitions for or against granting or a transfer of a license is entirely within the discretion of the issuing authority. Moschera v. Plumsted, Bulletin 1075, Item 8.

Under the facts and circumstances appearing in the case, the burden resting upon the appellant to establish that the respondent acted in an unreasonable or abusive exercise of its discretionary authority has not been sustained. I shall therefore affirm the action of the Township Committee.

Accordingly, it is, on this 28th day of November, 1955,

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.

2. APPELLATE DECISIONS - EISENHARDT v. CAPE MAY (ORDER REINSTATING SUSPENSION).

MAUD F. EISENHARDT,)

Appellant,)

-vs-)

ON APPEAL
O R D E R

BOARD OF COMMISSIONERS OF THE)
CITY OF CAPE MAY,)

Respondent.)

-----)
Charles W. Sandman, Jr., Esq., Attorney for Appellant.
Malandra & Tomaselli, Esqs., of Counsel, for Appellant.
Nathan C. Staller, Esq., Attorney for Respondent.

BY THE DIRECTOR:

On October 3, 1955, I entered an order dismissing the within appeal and suspending appellant's license for a period of twenty-nine days, the effective dates of said suspension to be fixed by subsequent order. See Bulletin 1084, Item 2.

Recent investigation discloses that the licensed premises are sufficiently open for business and respondent has advised me that it has no objection to the imposition of the suspension at the present time.

Accordingly, it is, on this 1st day of December, 1955,

ORDERED that the twenty-nine (29) day suspension of the license issued to Maud F. Eisenhardt, for premises 1287 Washington Street, Cape May, is hereby reinstated to commence at 7:00 a.m. December 2, 1955, and to terminate at 7:00 a.m. December 31, 1955.

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - KANDELL v. NEWARK.

HARRY KANDELL, trading as)
PASADENA BAR,)

Appellant,)

-vs-)

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF NEWARK,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

George B. Astley, Esq., Attorney for Appellant.
Vincent P. Torppey, Esq., by Jacob M. Goldberg, Esq., Attorney
for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action whereby it suspended appellant's license C-530 (issued for premises 622 Orange Street) for a period of ten days, effective October 17, 1955, after it had found him guilty of a charge alleging that on December 19, 1954, he allowed, permitted and suffered a brawl, act of violence, disturbance and unnecessary noises on his licensed premises, in violation of Rule 5 of State Regulations No. 20.

Upon the filing of this appeal an order was entered by me staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31.

This case was presented upon the transcript of the proceedings before respondent in accordance with the provisions of Rule 8 of State Regulations No. 15. On November 28, 1955, counsel for appellant and respondent appeared before me on oral argument.

The petition of appeal alleges, in substance, that the action of respondent was erroneous because its finding of guilt was against the weight of the evidence.

At the hearing below William Yancey and Wiley Cooper were called as witnesses by the attorney for the Board. Yancey testified that he entered appellant's premises at about 6:00 p.m. on December 19, 1954; took a seat at the bar and ordered a bottle of beer; that he was seated near Cooper, and that two other patrons (Robinson and Lowe) were seated at the opposite side of the horse-shoe bar facing them; that, apparently without any reason, Lowe called Yancey a vile name and Yancey replied "If that is the way you feel about it, that could go two ways;" that Lowe arose from his seat and started to come around the bar, but the bartender told Lowe "to leave me alone and he went back, without trouble". Yancey further testified that about ten minutes later he saw Lowe getting up and thought he was going out but "didn't pay him no more mind" until Lowe hit him as he was passing and that, as a result of the blow, he was confined to a hospital for nine days. Wiley Cooper testified that Lowe ran around the bar, passed him and hit Yancey on the jaw with his fist. On direct examination he testified that "it was so fast that nobody knew whether he was going out of the door or going around to where Yancey was". On cross-examination he testified that Lowe "ran around so fast, like he was going out of the door and not to hit the man. If I knew he wanted to hit him, I would have tried to stop it, to stop him. He was so fast that I couldn't get up off the stool quick enough".

On behalf of defendant below (appellant herein) Lawrence Barnhart testified that he was the sole bartender on duty in the premises at the time in question. He testified that he heard some loud conversation between Yancey and Lowe and that, when the latter got up from his stool, he made him go back and sit down and "there was no more said". He further testified that he did not see Lowe run around the bar ten or fifteen minutes later and strike Yancey because, at that time, he was putting beer in the cooler; that, after Yancey was struck, he wiped his face with a towel; "told one of the fellows to call a cop" and that Lowe had never created any trouble before.

After considering the testimony given below and the oral argument herein, I find that the bartender acted promptly to stop the argument between the patrons, and that he had no reason to suspect that this sudden act of violence would occur at least ten minutes later. Under these circumstances, it has not been established by a preponderance of the evidence that appellant, by his agent, allowed, permitted or suffered a brawl, act of violence, disturbance or unnecessary noises on his licensed premises. Hence, I must reverse the action of respondent. Smarsch v. Elizabeth, Bulletin 1083, Item 2, and cases therein cited. Ferdinand v. Newark, Bulletin 1084, Item 3.

Accordingly, it is, on this 5th day of December, 1955,

ORDERED that the action of respondent be and the same is hereby reversed.

WILLIAM HOWE DAVIS
Director.

4. APPELLATE DECISIONS - M & H DEVELOPMENT CO. v. WATCHUNG.

M & H DEVELOPMENT CO., trading)
as THE WASHINGTON HOUSE,)

Appellant,)

-vs-)

MAYOR AND COUNCIL OF THE)
BOROUGH OF WATCHUNG,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
Cornelius J. McCarthy, Jr., Esq., Attorney for Appellant.

James W. Hurley, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from denial of appellant's application for a renewal of its plenary retail consumption license for the present licensing year. The licensed premises are located on Upper Somerset Street, Watchung.

Appellant is presently operating pursuant to an extension of its license granted by me upon the filing of the appeal. See R. S. 33:1-22.

Renewal of the license was denied by respondent because of a complaint made by the local Board of Health that appellant violated a section of the plumbing code. Thereafter appellant was found guilty in a Magistrate's Court, but the conviction was reversed by the County Court of Somerset County.

At the hearing held herein the attorney for respondent stated that "we have been unable up to this time to reach a satisfactory conclusion to our problem" but he consented to a reversal of respondent's action in order that appellant might not be deprived of its license and have a further opportunity to correct the condition (concerning an overflow of sewerage) before application for renewal for the next licensing year. The Washington House has been in existence since 1738, and has been licensed since Repeal.

No reason appearing to the contrary,

It is, on this 5th day of December, 1955,

ORDERED that respondent's action be and the same is hereby reversed, and respondent is hereby directed to issue the renewal license in accordance with the application heretofore filed.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against)

ABRAHAM BRESSLER)
T/a WILLIE'S TAVERN)
562 Avenue C)
Bayonne, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-168, issued by the Board of Commissioners of the City of Bayonne.)

Maurice Summer, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charges:

"1. On or about August 23, 1955 and prior thereto, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets, in and upon your licensed premises; in violation of Rule 7 of State Regulations No. 20.

"2. On the aforesaid occasions, 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, and you also possessed, had custody of, and allowed, permitted and suffered tickets and participation rights in the aforementioned lottery in and upon your licensed premises; in violation of Rule 6 of State Regulations No. 20."

The evidence adduced herein discloses that at 12:30 p.m. on August 23, 1955, two members of the New Jersey State Police and two ABC agents visited defendant's licensed premises. As they entered the premises a man, subsequently identified as Joseph Agliialoro, and also known as "Husky", was observed throwing a piece of paper on the floor. One of the agents retrieved the paper and found written thereon the names of horses which had been entered in races the previous day.

According to the testimony presented herein, the police officers and one of the agents searched the kitchen which constitutes part of the licensed premises. This search resulted in the finding of a cigar box which contained a pad on which was written a list of numbers, with amounts of money opposite each number. In addition thereto, the cigar box also contained a sum of money. One of the police officers testified that from time to time he answered incoming calls on two telephones, and that various anonymous callers placed bets on horses scheduled to run in certain races at various tracks.

The slip of paper found on the floor containing the names of the horses, as aforementioned; the pad containing the numbers, and also the money seized by the law enforcement officers were marked in evidence as exhibits in this case.

The defendant testified that he was not aware that any gambling was taking place on his licensed premises. He said that for a long period of time, due to illness, he visited the premises each day for only a little while and depended on his employees to operate the establishment.

The defendant apparently contends that, in order to find that he has "allowed, permitted and suffered" either violation to take place, it is essential that the proofs disclose that he or his employees were personally implicated in the violations. This contention is without merit. The rule relating thereto was succinctly stated by former Commissioner Hock in Re Alberti, Bulletin 856, Item 11:

"Knowledge of the fact by the licensee or his employees that wrongdoing has taken place on the licensed premises is not a necessary ingredient to make the offense complete under the Alcoholic Beverage Law. Cf. Essex Holding Corp. (a corporation) v. Hock, 136 N.J.L. 28. As the Court said in Guastamachio v. Brennan, 128 Conn. 356; 23 Atl. (2d) 140:

"While it may well be that "suffer" as used in the regulation would not render the permittee responsible for the acts of a trespasser upon the premises; we conclude that it is effective to make him responsible, regardless of knowledge or negligence, for failure to take effectual measures to prevent prohibited conduct by those occupying them with his authority."

After a careful examination of the evidence presented herein, I find the defendant guilty of the charges preferred.

Defendant has no prior adjudicated record as a licensee. The usual minimum penalty for a first offense of this kind is a twenty-day suspension (Re Conklin, Bulletin 1086, Item 4). However, when the license was held by Christine Crawford, such license was suspended for twenty-five days because said Christine Crawford was "fronting" for defendant (Re Crawford, Bulletin 934, Item 8, and Bulletin 939, Item 7). Since defendant was then a party to the offense and violated the Alcoholic Beverage Law in that he exercised the privilege of the license contrary to R. S. 33:1-26, I shall suspend the license for twenty-five days. Cf. Re Zielonka, Bulletin 987, Item 6.

Accordingly, it is, on this 21st day of November, 1955,

ORDERED that Plenary Retail Consumption License C-168, issued by the Board of Commissioners of the City of Bayonne to

Abraham Bressler, t/a Willie's Tavern, for premises 562 Avenue C, Bayonne, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. November 28, 1955, and terminating at 2:00 a.m. December 23, 1955.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES UPON LICENSED PREMISES DURING PERIOD OF SUSPENSION OF LICENSE - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

UNION CASINO, INC.
T/a MAMBO BAR
526 Front Street
Union Beach, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of Union Beach.

Karkus, Kantor & Burns, Esqs., by Ezra W. Karkus, Esq.,
Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on April 30, 1955, during a period when its license was suspended, it allowed, permitted and suffered the consumption of alcoholic beverages in and upon the licensed premises, in violation of Rule 30 of State Regulations No. 20.

The file herein discloses that on April 30, 1955, Donald L. Bucci (president and stockholder of defendant corporate-licensee) held a birthday party in the dining room of the licensed premises wherein he entertained about twenty guests to whom he served assorted alcoholic beverages. The licensed premises, at the time, were under a thirty-day suspension imposed by me for an aggravated sale of alcoholic beverages to minors. The suspension was effective from April 6 to May 6, 1955 (Re Union Casino, Inc., Bulletin 1058, Item 14).

Subsequent to the aforesaid violation eighteen of the twenty issued and outstanding shares of stock of the corporate-licensee herein were transferred equally to Joseph (Guiseppi) Tetro and Mamie Tetro who were not stockholders at the time the violation occurred.

Only two other proceedings involving the exercise of the privilege of a license during the period of suspension have heretofore been instituted by this Division -- Re Kirdzik, Bulletin 637, Item 2, and Re Caplan, Bulletin 1051, Item 2. The penalty imposed in the former case was revocation of the license, and in the latter case a ninety-day suspension. Because the violation herein occurred within a month of the prior infraction, a substantial penalty is likewise indicated. However, since it appears that Mr. Bucci gratuitously served his guests alcoholic beverages which he purchased for the occasion from another retailer, and that the premises were closed to the

public, I am satisfied that the violation herein charged resulted from ignorance of the law rather than from a purposeful endeavor to circumvent it.

Considering all the factors herein, including the argument of defendant's counsel who appeared before me on oral argument and the fact that the licensed premises are now being conducted under different management, I shall suspend defendant's corporate license for a period of twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 22nd day of November, 1955,

ORDERED that Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of Union Beach to Union Casino, Inc., t/a Mambo Bar, for premises 526 Front Street, Union Beach, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. November 29, 1955, and terminating at 2:00 a.m. December 19, 1955.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PARENTS' UNCERTAINTY OF CHILD'S AGE NEGATED BY BIRTH CERTIFICATE - LICENSE SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against
ANGELA TABONE
T/a WEST SIDE INN
W/S Trenton Road
Pemberton Township
PO Browns Mills, N. J.,
Holder of Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Pemberton.

CONCLUSIONS
AND ORDER

Sido L. Ridolfi, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to a charge alleging that on September 30, 1955, she sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to a minor, and permitted the consumption of such beverages by said minor in and upon her licensed premises, in violation of Rule 1 of State Regulations No. 20.

At the hearing herein Lyman --- testified that he was born on April 14, 1935; that he had been at defendant's tavern on various occasions including September 30, 1955; that he entered the tavern at about 9:00 p.m. on that date and went to the bar; that, during the course of his stay there, he requested and was served by Edward Malampy (the bartender) with four glasses of beer -- two for himself and two for a companion; that he drank the beers served to him and was not asked to state his age by anyone in the tavern.

During the course of Lyman's testimony counsel for the defendant stated that there was no question that Lyman was in the bar at that particular time; that defendant is not contesting the sale and service of alcoholic beverages to Lyman but the defense is that Lyman is twenty-one years old.

This contention is based upon counsel's efforts, previous to the hearing, to establish Lyman's actual age. He visited Lyman at his home and, in the presence of his mother, asked Lyman how old he was, to which Lyman replied that he had lost his birth certificate and that he did not know whether he was twenty or twenty-one; that he thought he was twenty-one years old because that was what appeared on his draft certificate; that the bartender asked his age and he displayed such certificate (the certificate was later presented in evidence and purports to give the date of Lyman's birth as April 14, 1934).

On cross-examination Lyman stated that he was not sure whether he was twenty or twenty-one. During the course of this examination counsel for the Division offered in evidence a Certificate of Birth issued by the Registrar of Vital Statistics of Pemberton Township, under its seal, certifying that a Certificate of Birth was on file in that Township bearing the name of Lyman ---, who was born April 14, 1935, in that Township, and the maiden name of mother, Anna Paul.

Anna --- (formerly Anna Paul), called as a witness by defendant, testified that she is Lyman's mother. Asked to state Lyman's age, she replied, "*** I won't say for sure because I lost his birth certificate, and I couldn't say he was born in 1934 or not to swear to it." When the aforementioned birth certificate was shown to her, she acknowledged that her husband's (Lyman's father's) name was correctly stated therein. Asked whether she had any reason to doubt the authenticity or the correctness of the certificate, she replied, "Well, I can't doubt either because I don't know for sure myself."

Counsel argues in his memorandum submitted in the matter that the Division has failed to establish by a preponderance of the evidence that Lyman is under twenty-one years of age in that the testimony of Lyman and his mother on that score is vague and contradictory and, hence, the charge should be dismissed. If such were the only evidence in the case, the contention might have merit. However, the effect of the birth certificate in evidence must be considered, although not referred to by counsel in his memorandum.

In the last analysis, the single matter to be resolved is whether there is tangible and probative evidence as to the actual age of Lyman. This is purely factual, and the law provides for a birth certificate, thus furnishing one positive method of ascertaining such fact. If it appears therefrom that Lyman is under twenty-one years of age, his failure, and that of his mother, to have an accurate recollection of the date of his birth, in fairness, should not serve to excuse the unlawful sale and service of alcoholic beverages to a minor.

The birth certificate is prima facie evidence of the facts therein stated. R. S. 2A:82-12. Such record may be corrected only upon establishing mistake or fraud. Devlin v. Surgent, 31 N. J. Super. 208. No such contention is here presented. Neither mother nor son says that the birth certificate is incorrect; they simply say that they cannot remember the son's date of birth. It is, therefore, established by the evidence that Lyman was twenty years of age when served alcoholic beverages in defendant's licensed premises and, hence, I find defendant guilty as charged.

Defendant has no prior adjudicated record. Under the circumstances presented, the defendant's license will be suspended for a period of five days (Re Wedemeyer, Bulletin 1050, Item 8; Re Giordano, Bulletin 1087, Item 2).

Accordingly, it is, on this 22nd day of November, 1955,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Pemberton to Angela Tabone, t/a West Side Inn, for premises W/S Trenton Road, Pemberton Township, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. December 5, 1955, and terminating at 2:00 a.m. December 10, 1955.

WILLIAM HOWE DAVIS
Director.

- 8. DISCIPLINARY PROCEEDINGS - FALSE ANSWERS IN APPLICATION FOR LICENSE - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 15 DAYS, EFFECTIVE DATE TO BE FIXED BY FURTHER ORDER.

In the Matter of Disciplinary Proceedings against
FRANCES MELILLO & ORLANDO MELILLO
T/a DOLPHIN INN
Cor. Ocean Avenue & Laird Street
Long Branch, N. J.,

CONCLUSIONS
AND
ORDER

Holders of Plenary Retail Consumption License C-48, issued by the Board of Commissioners of the City of Long Branch, and transferred during the pendency of these proceedings to

ORLANDO A. MELILLO & JOSEPH V. MELILLO
64 Ocean Avenue
Long Branch, N. J.

Fox and Schackner, Esqs., by Donal C. Fox, Esq., Attorneys for Defendant-licensees.

William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to the following charges:

"1. In your application dated July 2, 1954, filed with the Long Branch Board of Commissioners, upon which you obtained your 1954-55 plenary retail consumption license, you falsely stated 'No' in answer to Question 30, which asks: 'Has any individual, ...other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Joseph Melillo had such an interest in that he was co-owner with you, Orlando Melillo, of the licensed business; said false statement being in violation of R. S. 33:1-25.

"2. From on or about July 22, 1954 until the present time, you knowingly aided and abetted Joseph Melillo to exercise, contrary to R.S. 33:1-26, the rights and privileges of your plenary retail consumption license; thereby yourself violating R. S. 33:1-52."

An examination of the file in the instant case discloses that on July 22, 1954, pursuant to an application theretofore filed in the matter, the license in question was transferred to defendants Frances Melillo and Orlando Melillo. In the said application it was stated that no individual other than the applicants named therein had any interest, directly or indirectly, in the license or in the business to be conducted thereunder.

During the course of an investigation in this case, it was admitted by both Frances and Orlando Melillo that Frances Melillo, one of the partners, had no interest in the licensed business but was a "front" for Joseph V. Melillo, her husband. The latter's name was not disclosed in the application because he was under indictment by a federal grand jury for theft from interstate commerce. On March 28, 1955 he pleaded guilty to the charge and was placed on probation for one year. After careful examination of the facts which resulted in the conviction of the crime in question, I ruled that in my opinion it did not involve moral turpitude.

The license has now been transferred by the local issuing authority to Orlando A. Melillo and Joseph V. Melillo, as partners. Both parties are apparently qualified to hold the license, thus correcting the illegal situation.

Our investigation resulted from an unsolicited and voluntary disclosure made by Joseph V. Melillo to a member of the staff of this Division and it was obvious at the time that Joseph V. Melillo did not realize that the situation constituted a "front". Weighing all of the facts, I am inclined to show leniency in fixing the penalty. However, the license is subject to suspension because of the violation committed herein.

Defendants have no prior adjudicated record. I shall, therefore, under the circumstances appearing in this case, suspend the license for a period of fifteen days.

A recent inspection by a representative of this Division discloses that the defendants' business is being conducted on an extremely limited basis at this time. Thus, under the circumstances, no effective penalty can be presently imposed. The period for the suspension will be fixed by further order to be entered at a subsequent date.

Accordingly, it is, on this 23rd day of November, 1955,

ORDERED that Plenary Retail Consumption License C-48, issued by the Board of Commissioners of the City of Long Branch to Frances Melillo & Orlando Melillo, t/a Dolphin Inn, Cor. Ocean Avenue & Laird Street, Long Branch, and transferred during the pendency of these proceedings to Orlando A. Melillo & Joseph V. Melillo, 64 Ocean Avenue, Long Branch, or any license issued to any other person for the same premises, be and the same is hereby suspended for a period of fifteen (15) days, the time to be fixed by subsequent order as aforesaid.

WILLIAM HOWE DAVIS
Director.

9. DISCIPLINARY PROCEEDINGS - CLUB LICENSE - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

THE FIRST ITALIAN-AMERICAN CITIZENS LEAGUE
50 West Pitman Street
Penns Grove, N. J.,

CONCLUSIONS AND ORDER

Holder of Club License CB-3, issued by the Borough Council of the Borough of Penns Grove.

Louis F. Di Nicola, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant has pleaded non vult to a charge alleging that during the afternoon of Sunday, August 7, 1955, it sold, served and permitted the consumption of alcoholic beverages on its licensed premises, contrary to a local ordinance which prohibits such activity between 12:30 a.m. on Sunday and 7:00 a.m. on Monday.

The file herein discloses that at 3:50 p.m. on Sunday, August 7, 1955, a local police officer observed 18 persons seated at the bar and 9 others seated at tables in defendant's licensed premises, all of whom were either being served or drinking alcoholic beverages.

Defendant has a prior adjudicated record. Effective March 21, 1938, its license was suspended for five days by the local issuing authority for sales of alcoholic beverages during prohibited hours. Inasmuch as said violation occurred more than ten years ago, I shall not take it into consideration in fixing the penalty herein. Re Stein, Bulletin 1067, Item 4. The minimum suspension in a case of this kind is fifteen days. Re Loyal Order of Moose, Woodstown Lodge No. 932, Bulletin 1053, Item 9. However, this case is aggravated by the large number of persons found on the premises during prohibited hours. I shall suspend defendant's license for twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 21st day of November, 1955,

ORDERED that Club License CB-3, issued by the Borough Council of the Borough of Penns Grove to The First Italian-American Citizens League, 50 West Pitman Street, Penns Grove, New Jersey, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 7:00 a.m. November 28, 1955, and terminating at 7:00 a.m. December 13, 1955.

WILLIAM HOWE DAVIS
Director.

10. DISCIPLINARY PROCEEDINGS - CLUB LICENSE - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against WASHINGTON CLUB Northwest Cor. East Griffith St. & Virginia Ave. Penns Grove, N. J., Holder of Club License CB-242, issued by the Director of the Division of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

John M. Summerill, Jr., Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant has pleaded non vult to a charge alleging that during the afternoon of Sunday, August 7, 1955, it sold, served and permitted the consumption of alcoholic beverages, contrary to a local ordinance which prohibits such activity between 12:30 a.m. on Sunday and 7:00 a.m. on Monday.

An examination of the file herein discloses that at 4:00 p.m. on Sunday, August 7, 1955, a local police officer observed 21 men in defendant's barroom with glasses of alcoholic beverages in front of them. The officer advised the bartender in charge of the violation and thereupon directed him to close the bar.

Defendant has no prior adjudicated record. The minimum suspension in cases of this kind is fifteen days. Re Loyal Order of Moose Woodstown Lodge No. 932, Bulletin 1053, Item 9. However, this case is aggravated by the large number of persons found in the licensed premises during prohibited hours. I shall suspend defendant's license for twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 21st day of November, 1955,

ORDERED that Club License CB-242, issued by the Director of the Division of Alcoholic Beverage Control to Washington Club, Northwest Cor. East Griffith St. & Virginia Ave., Penns Grove, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 7:00 a.m. November 28, 1955, and terminating at 7:00 a.m. December 13, 1955.

WILLIAM HOWE DAVIS Director.

11. STATE BEVERAGE DISTRIBUTOR'S LICENSE - OBJECTIONS TO TRANSFER HELD TO BE WITHOUT MERIT - APPLICATION GRANTED.

In the Matter of an Objection)
 to the Transfer of State Beverage)
 Distributor's License SBD-39 held)
 by)

WILLIAM De ASCENTIIS)
 T/a BREWER'S DISTRIBUTORS)

CONCLUSIONS

From Rear Building 3928 Marlton)
 Pike, Pennsauken Township, to)
 Rear Building, 666 Mantua Avenue,)
 Woodbury, N. J.)
 -----)

William De Ascentiis, Applicant, Pro Se.

BY THE DIRECTOR:

A written objection to the proposed transfer of the license was filed on behalf of the Mayor and Council of the City of Woodbury and a hearing was held thereon. Rules 8 and 9 of State Regulations No. 6.

The objection is based upon the fact that, as far back as 1933, the Mayor and Council adopted an ordinance limiting the number of consumption, distribution and club licenses, and the expressed opinion that there is adequate provision in the City for all persons desiring alcoholic beverages.

At the hearing Albert J. Riggins, City Clerk of Woodbury, appeared and testified, in substance, that the written objection set forth the feeling of all members of the local governing body. He further testified that there is no objection to the proposed building which is located in a section zoned for industry. The applicant testified that he has been in business for two years; that he also sells soft drinks, and that, at present, only ten per cent. of his business consists of selling to consumers.

In considering the objection, it must be borne in mind that municipal consent is not a statutory prerequisite to the issuance or transfer of a State license, and that the privileges of a State Beverage Distributor's license are state-wide. Re Vigor Beverages Co., Inc., Bulletin 941, Item 9. Moreover, the present application is for the transfer of an existing license. Re Novak, Bulletin 1067, Item 2. I conclude that the objection presented herein is without merit.

Therefore, I shall grant the transfer, in accordance with the application filed in this matter.

Dated: December 2, 1955.


 Director.