Mr. Gossweiler

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

February 10, 1960

BULLETIN 1324

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1. COURT DECISIONS - FANWOOD v. ROCCO and DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR REVERSED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-533-58

BOROUGH OF FANWOOD, a Municipal Corporation,

Appellant,

vs.

ANTONIO ROCCO and DIVISION OF ALCOHOLIC BEVERAGE CONTROL,

Respondents.

Argued October 27, 1959 -- Decided January 26, 1960

Before Judges Price, Gaulkin and Sullivan.

Mr. Max L. Rosenstein argued the cause for the appellant (Mr. William M. Beard, Attorney).

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for the Division of Alcoholic Beverage Control (Mr. David D. Furman, Attorney General).

Mr. George F. Hetfield argued the cause for the respondent Atonio Rocco (Hetfield and Hetfield, Attorneys).

The opinion of the court was delivered by

GAULKIN, J.A.D.

The Borough Council of Fanwood unanimously denied Anthony Rocco's application for a place to place transfer of his plenary retail distribution ("package store") license. Rocco appealed to the Director of the Division of Alcoholic Beverage Control who reversed and ordered the granting of the transfer. Fanwood appeals.

Fanwood is a residential community whose boundaries form a rectangle roughly a mile square. It is bounded on the west by Plainfield and on the other three sides by Scotch Plains.

At present Fanwood has two taverns and one package store, but they are located on the outskirts of the borough, very close to its borders. The package store belongs to Rocco. It is at 193 Terrill Road, in the extreme westerly corner of the borough, a few feet from Scotch Plains to the north and Plainfield to the west. Immediately next door to the package store Rocco or a member of his family--it is not clear which--operates one of the two taverns in the borough. Counsel for

Fanwood referred to the tavern license as being held by "Lucy Rocco". Rocco did not testify but his son, Anthony, Jr., who appeared for him, testified that "we" did "sell package goods" from the tavern "at times" as well as from the package store, and that:

> "Q. In other words, if this transfer were granted, then you would be selling package goods from 252 South Avenue and there would also be sold package goods from the premises on Terrill Road, wouldn't there?
> A. We could if we wanted to, yes."

In short, there are at present no taverns or package stores anywhere in the borough except at two points near its remote borders. The requested transfer asks that Rocco's package store be moved about 1½ miles to a point which is almost the exact geographic center of the borough, leaving the Rocco tavern where it is. The net result of the granting of the transfer would be that instead of two points in the borough at which liquor is sold, and both on the outskirts, Fanwood would have three, the new one being in the center of the borough where no sale of liquor (except warm beer) has been permitted at lease since the repeal of prohibition. Indeed, the premises which Rocco intends to use as a package store were last occupied as a Christian Science reading room.

In its answer to the petition of appeal to the Director the Borough said:

> " Second Separate Defense
>
> The Mayor and Council of the Borough of Fanwood have for many years past denied all applications for a plenary retail distribution license for any and all premises situated on Martine Avenue and South Avenue in the Borough of Fanwood, for the reason that a retail liquor store in this section of Fanwood was not desired by the people of Fanwood.
>
> Third Separate Defense
>
> The Mayor and Council are officials elected by the Borough of Fanwood and they represent the people of Fanwood. It was their considered judgment that, taking into consideration the health, morals and general welfare of the people of Fanwood, the location of a plenary retail liquor store at 252 South Avenue would be against the public interest of the people of Fanwood. Among the facts considered were (a) the proposed liquor store is within one block of the Fanwood Presbyterian Church, which has a membership of approximately 2,000 people; (b) it is one and one-half blocks from Public School #4; and (c) there has always been a strong sentiment in the Borough of Fanwood against any more retail liquor stores."

The testimony presented before the Hearer of the Division proved these allegations, i.e., that Fanwood denied the application because no tavern or package store had ever been permitted in the area

and "a retail liquor store in the section of Fanwood was not desired by the people of Fanwood", that it was the governing body's "considered judgment that...the location of a plenary retail liquor store at 205 South Avenue would be against the public interest of the people of Fanwood", and that among the facts considered were the items set forth in the Third Separate Defense.

It would serve no useful purpose to review the evidence in detail. However it is pertinent to note that 252 South Avenue is in Fanwood's business center--a small one, consisting of about twenty-five stores. It is opposite the railroad station, at which trains arrive day and night. Two doors away from the proposed location is a store occupied as a confectionery, soda fountain and the only newsstand in the community, selling also magazines and comic books. It was described by all of the witnesses as the borough's major gathering place for youngsters. Indeed, some described it as Fanwood's only social center. Next door to the proposed location is a barber shop. Rocco admitted that at the council meeting at which the transfer was denied he was told orally by at least one councilman that the location was "too close to a place where teenagers congregate".

One of the two "warm beer" licenses is held by the confectionery store and the other by a supermarket nearby.

As we view it, the question in this case is whether the Director has the right to compel a municipality to permit a package store or a tavern to move into an area where none exists and in which the municipality does not want one to exist.

Prior to the opinion in Hickey v. Division of Alcoholic Beverage Control, 31 N. J. Super. 114 (App. Div. 1954) there was no doubt, even in the mind of the Director, that in appeals of this type the function of the Director was "not to substitute [his] personal opinion for that of the local issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of [his] personal view on the subject." Tube Bar, Inc. v. Commuters Bar, Inc., 18 N. J. Super. 351, 355 (App. Div. 1952); Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N. J. L. 502 (E. & A. 1947). The respondents' argument appears to be that Hickey and the cases decided thereafter have established a different rule, i.e., that in every appeal from the Director's action he must be sustained unless we find he "has manifestly erred or otherwise abused" his own discretion, and that this must be decided solely upon the Director's findings and decision without regard to what the local body heard, saw, said or did because his findings and decision "entirely supersede the action taken at the original hearing level". Respondents assert that the action taken at the local level thus becomes "a wholly non-justiciable issue", citing Neiden Bar and Grill v. Municipal Board of Alcoholic Beverage Control of City of Newark, 40 N. J. Super. 24, 29 (App. Div. 1956).

Respondents misunderstand Hickey, Neiden and the other cases which they say have established these rules: Belmar v. Division of Alcoholic Beverage Control, 50 N. J. Super. 423 (App. Div. 1958); Tp. Com. of Lakewood Tp. v. Brandt, 38 N. J. Super. 462 (App. Div. 1955); Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N. J. Super. 598 (App. Div. 1955), certif. denied, 18 N. J. 204 (1955); Florence Methodist Church v. Tp. Com. of Florence, 38 N. J. Super. 85 (App. Div. 1955).

In Neiden the court pointed out that "the only ground of appeal urged" before it was whether the approval of a transfer by the municipal board and affirmed by the Director "should be reversed because of the failure of the municipal board to make findings with respect to

the objections raised there." 40 N. J. Super. at 29. It was in disposing of this single ground of appeal that this court said that, since the Director had made "independent findings" upon the basis of which he had affirmed the municipality, the appellant was not prejudiced by the municipality's failure to make findings, even assuming it was the municipality's duty to do so. This merely means that when the Director makes findings of fact upon sufficient evidence there is no need to go back to the findings of the local board when he affirms. However, the Neiden case did not hold that upon an appeal such as here the reasons of the local body are to be ignored. On the contrary, they may not be ignored, either by the Director or by us. Cf. Price v. Excise Board of Town of Millburn, 29 N. J. Super. 103 (App. Div. 1953); Biscamp v. Tp. Council of the Tp. of Teaneck, 5 N. J. Super. 172 (App. Div. 1949). Upon an appeal such as this, where the underlying facts are not in dispute, we assay what was done by the Director against that which was done by the local board upon the basis of those facts and thus determine whether the Director was in error in reversing the local board. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, supra.

Nor is it always true that this court may not reverse the Director unless we find he "abused" his own discretion or (as is said more mildly in some of the cases) that his action "was a manifestly mistaken exercise of his own sound discretion." The element of the Director's "discretion" enters into only a certain class of cases, as we shall see.

The misunderstanding of the scope of review has doubtless been caused in large measure by the unfortunate use of the term "abuse of discretion" or its equivalent in some of the cases. Cf. Smith v. Smith, 17 N. J. Super. 128, 131 (App. Div. 1951), certif. denied, 9 N. J. 178 (1952). If all of us could always remember that "abuse of discretion" means, as Justice Case said in Hager v. Weber, 7 N. J. 201, 214 (1951), "nothing else than that the court's ruling went far enough from the mark to become reversible error", such misunderstanding would not arise. Better yet, we might stop using the term, for in a brief it usually obscures the issues and never illuminates them, while in an opinion it usually beclouds the real basis for the decision and misleads the reader.

To begin with, the scope of the Director's review of local action is not always the same. It depends upon the issue he is called upon to review. We are aware of the impossibility of keeping "law" and "fact" in separate exclusive compartments. However, for the purposes of this opinion those terms are sufficiently distinct to say that if the issue before the Director is one of law his "discretion" has nothing to do with it, sound or otherwise. Therefore, when this court reviews his decision upon such a question, we reverse if he was mistaken in the law and affirm if he was correct, just as if he were a trial judge. Many of the reported cases have been of this type: Conover v. Burnett, 118 N. J. L. 483 (Sup. Ct. 1937) (Common Pleas Court, then the issuing authority, refused renewal of package store license to A. & P. because it undersold competitors; Commissioner reversed because that was not a valid legal reason for refusal; affirmed); South Jersey Retail Liquor Dealers Assn. v. Burnett, 125 N. J. L. 105 (Sup. Ct. 1940) (tavern transfer denied because transferee said that he would sell only package goods; Commissioner reversed, holding that under the then law the local board had no legal right to compel transferee to run a tavern; affirmed); Wildwood v. Garrett, 126 N. J. L. 203 (Sup. Ct. 1941) (renewal of package store license refused because licensee, open only in the summer months, refused to stay open all year; Director reversed because not a valid legal reason; affirmed); Bivona v. Hock, 5 N. J. Super. 118 (App. Div. 1949) (transfer to new location denied because new premises would be larger and more attractive and would sell more liquor; Director affirmed; reversed because not a valid legal reason); Dal Roth, Inc. v. Division of Alcoholic Beverage Control, 28 N. J. Super. 246 (App. Div. 1953) (Jersey City granted a transfer, construing its ordinance as per-

mitting it; The Director construed it otherwise and reversed; this court affirmed); Tube Bar, Inc. v. Commuters Bar, Inc., supra, (both Jersey City and the Director erroneously construed an ordinance and this court reversed); Petrangeli v. Barrett, 33 N. J. Super. 378 (App. Div. 1954) (transfer in violation of ordinance; reversed by Director; affirmed); Tp. Com. of Lakewood Tp. v. Brandt, supra, (transfer denied because of a "desire to have the license die"; reversed by Director as illegal reason; affirmed). See also Passaic Co. Retail Liquor Dealers Assn. v. Board of Alcoholic Beverage Control of Paterson, 37 N. J. Super. 187 (App. Div. 1955); Mayor and Council Bor. of Totowa v. Chicken Barn, Inc., 41 N. J. Super. 459 (App. Div. 1956).

The cases of Liptak v. Division of Alcoholic Beverage Control, 44 N. J. Super. 140 (App. Div. 1957), certif. denied, 24 N. J. 222 (1957), and Presbyterian Church of Livingston v. Division of Alcoholic Beverage Control, 53 N. J. Super. 271 (App. Div. 1958), certif. denied, 29 N. J. 137 (1959), are interesting illustrations of the scope of the court's review where the issue involved is one of law and not of discretion. In the Liptak case the Director "in a self-initiated proceeding" set aside a transfer of a license issued by the municipality because it had not been renewed within the time fixed by law and thus became a new license beyond the statutory limit, and this court affirmed. In the Presbyterian Church case the Director issued a club license on an application made directly to him because a member of the local governing body was a member of the club. We reversed because he had misapplied the section of the statute relating to distances from churches and schools.

The second class of cases in which the Director's "discretion" is not involved, and in which his decision is reviewed in this court accordingly, is that in which the Director is called upon to decide disputed questions of fact, as, for example, in disciplinary and similar proceedings. Illustrations of such cases are Hornauer v. Div. of Alcoholic Beverage Control, 40 N. J. Super. 501 (App. Div. 1956) (whether sale was made to a minor); Florence Methodist Church v. Tp. Committee of Florence, supra, (whether applicant was a "front" for her disqualified husband), and Neiden Bar & Grill v. Municipal Board of Alcoholic Beverage Control of Newark, supra, (whether transferee was a fit person). In such cases the Director's "discretion" has nothing to do with his findings of the underlying facts. If the evidence is not there, no amount of "discretion" can supply the deficiency. Therefore, if he finds a licensee guilty upon insufficient or illegal testimony, we reverse. However, if after finding sufficient facts to warrant disciplinary action the Director imposes a penalty, the amount of the penalty would be an exercise of his discretion, the review of which would be governed by that which we will have to say about the third class of cases.

The third and last of the classes into which we have chosen to divide the cases for the purpose of this analysis is that in which the appeal to the Director is from action taken by the local agency which involved the local agency's discretion. The following are cases of that type: Bumball v. Burnett, 115 N. J. L. 254 (Sup. Ct. 1935) (borough refused to issue any more licenses; Commissioner affirmed; affirmed); Phillipsburg v. Burnett, 125 N. J. L. 157 (Sup. Ct. 1949) (Commissioner reversed licenses as too many; affirmed); Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, supra, (Commissioner reversed licenses as too many; affirmed); Brush v. Hock, 137 N. J. L. 257 (Sup. Ct. 1948) (Commissioner reversed licenses as too many; affirmed); Zicherman v. Driscoll, 133 N. J. L. 586 (Sup. Ct. 1946) (renewal refused for bad conduct; Commissioner affirmed; affirmed); Passarella v. Board of Commissioners, 1 N. J. Super. 313 (App. Div. 1949) (transfer granted to vacant lot, building to be built; Director

affirmed; affirmed); Biscamp v. Tp. Council of the Tp. of Teaneck, supra, (transfer denied because on narrow road too near park and intersection and a traffic hazard; affirmed by Director; affirmed); Price v. Excise Board of Town of Millburn, supra, (license denied because too near high school; Director affirmed; affirmed); Rajah Liquors v. Division of Alcoholic Beverage Control, supra, (transfer approved; reversed by Director because too many taverns in the new locality and too close to proposed new school; affirmed by this court); Belmar v. Division of Alcoholic Beverage Control, supra, (license renewed with conditions by local authority; Director deleted conditions; affirmed); Nordco, Inc. v. State, 43 N. J. Super. 277 (App. Div. 1957) (renewal refused to trouble spot; Director affirmed; affirmed).

However, even in this third class of cases the Director's "discretion" does not always play a part. For example, we conceive that the Director has no right to compel a municipality to issue a license, even if the municipality has none at all, or to issue a new one when the municipality has several but in good faith wants no more. Bumball v. Burnett, supra. Contrary to the law in some states, our law permits municipalities to forbid taverns and package store altogether. R. S. 33:1-12; R. S. 33:1-44,45,46. Cf. Barry v. O'Connell, 303 N. Y. 46, 100 N. E. 2d 127 (Ct. of App. 1951); Compare State v. Harris, 112 Mont. 344, 115 P. 2d 292 (Sup. Ct. 1941) with Phillips v. Head, 188 Ga. 492, 4 S. E. 2d 240 (Sup. Ct. 1939).

When there is an appeal to this court from the action of the Director in cases involving the exercise of municipal discretion, we take into consideration and give due weight to the fact that the Director has special expertness and broad experience in this general field. But our obeisance to that expertness and experience is not equally deep in all cases. It depends upon the issues in each case. If the case is one which he is plainly better equipped than we are to decide, because of his expertness, knowledge and experience, we naturally defer to his judgment. In some cases that deference would be almost to the point of considering his judgment conclusive. Cf. Hickey v. Division of Alcoholic Beverage Control, supra; Belmar v. Division of Alcoholic Beverage Control, supra. On the other hand, where the issues are such that we can evaluate them as well as he, we do not defer to his expertness to the same degree. Bumball v. Burnett, supra.

In short, upon the review of a reversal by the Director of municipal discretionary action we give the Director the benefit of a presumption of the correctness of his conclusion which is engendered by the knowledge that he is an expert and we are not, but the strength of that presumption varies with the degree of expertness involved, which in turn depends on the subject matter.

Failure to recognize the spirit and the legislative policy of the statute under which an administrative agency functions may be sufficient reason to reverse its action, even in the absence of express prohibitory language in the statute. Cf. R. S. 33:1-38; Greco v. Smith, 40 N. J. Super. 182, 184-185 (App. Div. 1956). Applying these principles to the case at bar, we are satisfied that the Director's ruling was erroneous. The legislative policy enunciated in the Alcoholic Beverage Control Act requires that his action be reversed and the action of the municipality affirmed.

The primary purpose of the act is to promote temperance (R. S. 33:1-3) and "to be remedial of abuses inherent in liquor traffic and shall be liberally construed" to effect those purposes. R. S. 33:1-73; Hudson Bergen County Retail Liquor Stores Assn., Inc. v. Hoboken, supra. Because these are the purposes there is a sharp and fundamental distinction between the power of the Director when a license

is denied by the municipality and when one is granted, because refusing a license can not lead to intemperance nor to any of the other evils the act is intended to prevent. Cf. Cummins v. Board of Adjustment of Bor. of Leonia, 39 N. J. Super. 452 (App. Div. 1956), certif. denied, 21 N. J. 550 (1956).

The transfer of a license into an area in which there are no taverns or package stores is in the same category as the issuance of an original license. No person is entitled to either as a matter of law. R. S. 33:1-26; Zicherman v. Driscoll, supra, 133 N. J. L. at 588; Bumball v. Burnett, supra, 115 N. J. L. 254.

As we have indicated, when a municipality decides in good faith that a substantial area within its boundaries in which there are no taverns or package stores shall remain that way, the Director may not interfere. That there are no licenses in the area is no reason that there should be one. Cf. Mauriello v. Driscoll, 135 N. J. L. 220 (Sup. Ct. 1947). Nor does the municipality need to have any articulated reasons for keeping the area inviolate. It is sufficient if in good faith and not with the intention of oppressing the individual applicant the governing body wants it that way. If the motive of the governing body is pure, it reasons, whether based on morals, economics, or aesthetics, are immaterial. In Bumball v. Burnett, supra, after Bumball applied for a license the governing body of Bernardsville informally decided to issue no more licenses for the time being and rejected his application. Bumball appealed to the Commissioner, who affirmed. The Supreme Court in turn affirmed, saying at p. 255 of 115 N. J. L.:

> "Apart from this, and assuming the facts claimed, to wit, that the ordinance itself placed no limit on the number of licenses to be issued, and the resolution of council to grant no more was adopted after prosecutor's application and one other were already filed, we see no illegality whatever in the refusal of a particular license, at least so long as the refusal is not shown to be fraudulent, corrupt, or inspired by improper motives. Nothing of the kind appears in this case. Prosecutor argues apparently that a liquor license is to be obtained and is obtainable on the same theory as a license to carry on, say a grocery business, demandable by any respectable citizen on payment of the prescribed fee; but that is not the case. The sale of intoxicating liquor is in a class by itself. Paul v. Gloucester, 50 N. J. L. 585, 595. 'No one has a right to demand a license; license is a special privilege granted to a few, denied to the many.' Ibid. 596. 'There is no inherent right in a citizen to sell intoxicating liquors by retail. It is not a privilege of a citizen of the State of the United States.' Meehan v. Board, 29 N. J. L. J. 370; 64 Atl. Re. 689. See also, Hagan v. Boonton, 62 N. J. L. 150.
>
> One phase of the present argument for the writ seems to be that as the ordinance (as claimed) says nothing about the number of licenses to be issued, the

> borough council has no power to call a halt until, with a slate clean of pending applications, it ordains a limit, or at least fixes a limit by resolution: but we see no merit in this. If the ordinance had fixed one hundred as a limit, still the council, in its discretionary power to license or not to license, could stop short of that number at any point, or could license A and refuse B. As a matter of history, in this very county of Somerset a quarter of a century ago, when licenses were controlled by the Court of Common Pleas, and there was no legal limit on the number, that court announced that, in its opinion, there were enough licensed places in the county, and no more licenses would be granted until further order. No question of the legality of this action was ever formally raised."

The legislature has entrusted to the municipal issuing authority the right and charge it with the duty to issue licenses (R. S. 33:1-24) and place-to-place transfers thereof "...on application made therefore setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to said premises..." R. S. 33:1-26. As we have seen, and as respondent admits, the action of the local board may not be reversed by the Director unless he finds "the act of the board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Assn., Inc. v. Hoboken, supra. at p. 511. In Ward v. Scott, 16 N. J. 16 (1954) the Supreme Court dealt with an appeal from a zoning variance which had been granted by a municipality. Therefore, what the court said in that case is doubly weighty here, for here the more serious matter of liquor is involved, and here the municipality did not grant, but denied, the application. The court said in Ward (p. 23):

> "Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications... And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U. S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913). Where, as here, the application...has been given careful and conscientious consideration by the zoning board and the town council and has been acted upon by both of them in strict conformity with the procedural and substantive terms of the statute, the ultimate interests of effective zoning will be advanced by permitting the action of the municipal officials to stand, in the absence of an affirmative showing that it was manifestly in abuse of their discretionary authority."

Respondents cite Tp. Committee of Lakewood v. Brandt, supra, for the proposition that "an owner of a license or privilege acquires through his investment therein an interest which is entitled to some measure of protection in connection with the transfer." That merely means that in certain situations (of which the Lakewood case is an example) there are equities in favor of the holder of a license, which an applicant for a new license can not claim, which should be considered together with all of the other factors in the case. Cf. Grundlehner v. Dangler, 29 N. J. 256, 269, (1959); Bivona v. Hock, supra; Belmar v. Division of Alcoholic Beverage Control, supra. But the holding of a license does not overcome considerations such as we have here.

In his brief the Director said he reversed because of "the Borough's failure to give proper attention to the paramount issue of public convenience and interest..." (Italics ours.)

This, he says, is shown (quoting from his brief) by:

> "A mere perusal of Exh. A-1, [the map of Fanwood] is starkly indicative of the fact that the operation of the municipality's lone package store at the new location would serve the public convenience. The transfer would permit its removal from the most northwesterly tip of the community, in a wholly residential section, to a centrally located business section on a heavily-trafficked state highway."

The terms "public necessity" and "public convenience" are probably as confusing and misleading when used in connection with liquor cases as the term "abuse of discretion." It is to be noted that these terms are not found in the statute but are the unfortunate products of our case law. Judge Clapp pointed this out in the Lakewood case, supra, at 464-466 of 38 N. J. saying: "An even more obvious question arises as to the significance of the term in connection with intoxicating liquors. Is there any public necessity for a tavern?" Cf. Barry v. O'Connell, supra. It would help clarify our thinking if the use of such sonorous expressions were avoided wherever possible, and instead there were hammered out a plain statement of the facts and the considerations leading to the decision. The Director may not compel a municipality to transfer licensed premises, to an area in which the municipality does not want them, because there more people would be able to buy liquor more easily. Such "convenience" may in a proper case be a reason for a municipality's granting a transfer but it is rarely, if ever, a valid basis upon which the Director may compel the municipality to do so.

The judgment is reversed. Costs only against respondent Rocco.

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2. DISCIPLINARY PRODDEDINGS - FALSE ANSWER IN APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against Charles Nassaney 185 Paterson Street Paterson 3, New Jersey Holder of Plenary Retail Consumption License C-313 (for the 1958-59 and 1959-60 licensing years), issued by the Board of Alcoholic Beverage Control for the City of Paterson, and transferred during the pendency of these proceedings to Tiny's Bar & Grill, Inc. for the same premises.	CONCLUSIONS AND ORDER

H. Dick Cohen, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to the following charges:

"1. In your application dated December 11, 1958, filed with the Paterson Board of Alcoholic Beverage Control, upon which you obtained your current 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 Albert Nassaney had such an interest in that he was the real and beneficial owner of the licensed business; said false statment being in violation of R.S. 33:1-25.

"2. From about December 29, 1958 until the present time, you knowingly aided and abetted Albert Nassaney 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."

On July 15, 1952, Albert Nassaney was convicted of a crime involving moral turpitude, which precluded him from engaging in the alcoholic beverage industry in this State. On February 11, 1958 the Director, pursuant to an application for such relief, entered an order removing his statutory disqualification. On November 13, 1958 Albert Nassaney filed an application with the local issuing authority for transfer to him of the license in question, then held by Joe's White Birch Bar, a corporation. On December 10, 1958 Albert Nassaney, having been informed that his application would be denied because of his criminal record, withdrew the same.

On December 11, 1958 Charles Nassaney, brother of Albert Nassaney, applied for transfer to him of such license and his application was granted on December 29, 1958.

These proceedings were instituted because the actual owner and operator of the licensed business is Albert Nassaney. Such ownership is evidenced by the following facts which also appear in the file. On April 11, 1958 Joe's White Birch Bar executed a chattel mortgage on its goods and chattels in the licensed premises to Albert Nassaney as security for the repayment of a loan in the sum of $8754. Thereafter, the mortgage was foreclosed and on October 27, 1958 Albert Nassaney obtained a bill of sale to the goods and chattels. On March 20, 1959 Charles Nassaney was interviewed in Clifton at his place of employment and informed agents of this Division that he has not invested any money in the licensed business; that he is under no obligation to pay Albert any money which Albert had invested in the business; that he does not expect to share in the profits of the business; that he has not been employed in the licensed premises and that the business belongs to Albert.

However, the records of the Division disclose that the license is now held by Tiny's Bar & Grill, Inc., of which the following are officers and stockholders: Charles Nassaney, President (50 shares); Albert J. Nassaney, Secretary-Treasurer (49 shares) and Julia Nassaney, wife of Albert J. Nassaney, Vice-President (1 share). It thus appears that the illegal situation has been corrected. Under the circumstances, I shall suspended the defendant's license on both charges for thirty days. Cf. Re Benson, Bulletin 742, Item 6.

Accordingly, it is, on this 12th day of January 1960,

ORDERED that Plenary Retail Consumption License C-313, for the 1959-60 licensing year, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Charles Nassaney, and transferred to Tiny's Bar & Grill, Inc., for premises 185 Paterson Street, Paterson, be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m., Tuesday, January 19, 1960 and terminating at 3:00 a.m., Thursday, February 18, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - CLUB LICENSE - SALE TO NON-MEMBERS - SALE FOR OFF-PREMISES CONSUMPTION - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Societa DiMutuo Soccorso DiSanta Croce Camerina In America
57 Pink Street
Hackensack, New Jersey

Holder of Club License CB-3, issued by the City Council of the City of Hackensack.

CONCLUSIONS AND ORDER

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

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On Friday October 23, 1959, between 8:45 P.M. and 8:50 P.M., you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to persons not bona fide members of your club or bona fide guests of any such members; in violation of Rule 8 of State Regulation No. 7.

"2. On Friday October 23, 1959, at about 8:50 P.M., you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of one case (twenty-four 12 ounce bottles) of Ceres Beer, an alcoholic beverage except for consumption on your licensed premises; in violation of Rule 9 of State Regulation No. 7.

"3. On Friday October 23, 1959, at about 8:50 P.M., at your licensed premises, you sold at retail one case (twenty-four 12 ounce bottles) of Ceres Beer, an alcoholic beverage, at less than the price thereof listed in the then currently effective pamphlet of New Jersey Minimum Consumer Resale Prices of Alcoholic Beverages published by the Director of the Division of Alcoholic Beverage Control in violation of Rule 5 of State Regulation No. 30."

On October 23, 1959, at about 8:45 p.m., two ABC agents, who were not members of defendant club, entered the licensed premises and went to the bar. Joseph Bellafati, who stated that he was employed by the club, sold to the agents two bottles of beer for on-premises consumption and a case of beer for $4.50. After conversing for a short time with Mr. Bellafati, the agents carried the case of beer from the premises. The agents returned to the licensed premises and identified themselves to said employee and to William Mania (manager of the club). The minimum consumer resale price then in effect for the case of beer was $5.50.

Defendant has no prior adjudicated record. I shall suspend defendant's license for forty days. Re Local Union #595 U.A.W. - C.I.O., Bulletin 1281, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 12th day of January, 1960,

ORDERED that Club License CB-3, issued by the City Council of the City of Hackensack to Societa DiMutuo Soccorso DiSanta Croce Camerina In America, for premises 57 Pink Street, Hackensack, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m. Thursday, January 21, 1960, and terminating at 2:00 a.m., Thursday, February 25, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against Sid Mark, Inc. t/a Stevens Bar & Package Store 241 Stevens Street Camden 3, New Jersey Holder of Plenary Retail Consumption License C-158, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.	CONCLUSIONS AND ORDER

Defendant-licensee, by Marcus L. Jaslow, President.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On November 25, 1959, you served beverages to a woman directly over a bar on your licensed premises; in violation of Section 10 of an Ordinance adopted by the Board of Commissioners of the City of Camden on December 27, 1934, as amended by Ordinance adopted September 12, 1935."

At 11:35 p.m., Wednesday, November 25, 1959, ABC agents who were in defendent's licensed premises heard a woman who was seated at the bar order a mixed drink of whiskey and water from Marcus L. Jaslow, president of the corporate-licensee herein. Jaslow served the drink and when the woman had taken a few sips, the agents identified themselves and seized the remaining portion of the beverage for evidential purposes. Jaslow admitted violating the aforesaid Ordinance, the pertinent section of which provides that "No women shall be served with beverages directly over any bar..."

Defendant has no prior adjudicated record. I shall suspend its license for the minimum period of five days and remit two days for the plea entered herein, leaving a net suspension of three days. Re Pennington, Bulletin 1132, Item 8.

Accordingly, it is, on this 11th day of January 1960,

ORDERED that Plenary Retail Consumption License C-158, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Sid Mark, Inc., t/a Stevens Bar & Package Store, for premises 241 Stevens Street, Camden, be and the same is hereby suspended for three (3) days, commencing at 2:00 a.m., Monday, January 18, 1960 and terminating at 2:00 a.m., Thursday, January 21, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISQUALIFICATION REMOVAL PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR SOLICITOR'S PERMIT - PERMIT PREVIOUSLY CANCELLED BECAUSE OF FALSE ANSWER - DISQUALIFICATION LIFTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2. Case No. 1520	)	CONCLUSIONS AND ORDER

BY THE DIRECTOR:

On November 30, 1948 petitioner was convicted of assault and battery of a high and aggravated nature, as a result of which he was sentenced to prison for a term of three years. On April 6, 1949 petitioner was released from the penal institution at which time the balance of the sentence was suspended and he was placed on probation for five years.

Assault and battery of a high and aggravated nature is a crime involving the element of moral turpitude.

Petitioner produced three character witnesses on his behalf--an employee of an industrial organization who has known him for eight years, a waitress who has known him five years and a factory worker who has known him nine years. The witnesses testified that petitioner now bears a good reputation in the community in which he lives for being a law-abiding person. The police department of the municipality wherein petitioner resides has advised that there are no complaints or investigations now pending involving the petitioner.

Petitioner testified that he is presently unemployed and that he was last employed for two years as a truck operator for a beer distributor. It appears that petitioner denied in an application for a solicitor's permit filed with this Division, that he was ever convicted of a crime. Petitioner's explanation for such false answer was that because the original charge of rape was reduced to assault and battery of a high and aggravated nature he was of the opinion that he had never been convicted of a crime.

The false answer in the application in question, based upon a mistaken belief, cannot be condoned, especially where petitioner could have avoided his error by applying for a ruling from this Division respecting his status. If one neglects to avail himself of his opportunity he does so at his peril.

Ordinarily, I would withhold relief until ninety days after the date of the filing of the petiton herein. However, petitioner has been deprived of his permit since its cancellation by this Division on July 27, 1959. Under the circumstances, the statutory disqualification because of the conviction described herein will be removed effective immediately. The petitioner thereupon may, if he wishes, file a new application for a solicitor's permit forthwith.

Accordingly, it is, on this 12th day of January 1960,

ORDERED that petitioner's statutory disqualification because of the conviction described herein, be and the same is hereby removed in accordance with the provisions of R. S. 33:1-31.2.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING UNLAWFUL TRANSPORTATION - HINDERING INVESTIGATION - PRIOR RECORD - LICENSE SUSPENDED 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Caridi's Bar, Inc. t/a Pat's Bar 700 Mt. Vernon Street Camden, New Jersey Holder of Plenary Retail Consumption License C-191, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.	CONCLUSIONS AND ORDER

Cahill and Wilinski, Esqs., by Robert Wilinski, Esq., Attorneys for Defendant-licensee
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On December 20, 1958, you aided and abetted another in the unlawful transportation of alcoholic beverages, contrary to R.S. 33:1-2; in violation of R.S. 33:1-50(d).

"2. On March 6 and 17, 1959, you failed to facilitate and hindered and delayed and caused the hindrance and delay of an investigation, examination and inspection being conducted by investigators of the Division of Alcoholic Beverage Control; in violation of R.S. 33:1-35."

The file herein discloses that on December 20, 1958, agents of the Pennsylvania Liquor Control Board observed a large quantity of alcoholic beverages being removed from defendant's licensed premises and being placed in a vehicle parked in front of said premises. After the vehicle crossed a bridge into Philadelphia, said agents stopped the vehicle and arrested the driver (Anthony Laino). The driver subsequently denied that he was employed in any capacity by defendant but admitted that he had purchased the alcoholic beverages from Pat Caridi, who was formerly an officer, director and stockholder of defendant corporation but who is now acting only as manager of defendant's licensed premises.

On March 6, 1959, an ABC agent visited defendant's premises, identified himself to Pat Caridi and informed him that he was going to inspect the licensed premises. Caridi informed the agent that he would not allow any inspection to be made. The same agent and another ABC agent visited defendant's premises on March 17, 1959, at which time Caridi told them that they would be permitted to inspect things of an impersonal nature only. When one of the agents started to inspect documents, Caridi grabbed them from his hand. Caridi then telephoned an attorney (not connected with the office of defendant's present attorneys) and the attorney informed the agents that they could complete their inspection if they refrained from checking anything personal. The agents decided that, under the circumstances, they could not make a proper inspection and left the premises.

Defendant has a prior record. Effective July 23, 1957, its license was suspended by the Director for ten days for selling to women over the bar and permitting obscene language on the premises. Bulletin 1185, Item 3. This case may be distinguished from recent cases (Re Cork'n Bottle Inc., Bulletin 1232, Item 3; Re Bill's B. Bar, Bulletin 1314, Item 4) wherein suspension of forty-five days were imposed, because the first charge herein alleges that defendant aided and abetted another in the unlawful transportation (which of itself is a serious violation). However, considering also the additional "hindering" charge and the prior dissimilar record, I shall suspend defendant's license in this case for forty-five days. Five days will be remitted for the plea, leaving a net suspension of forty days.

Accordingly, it is, on this 14th day of January 1960,

ORDERED that plenary retail consumption license C-191, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Caridi's Bar, Inc., t/a Pat's Bar, for premises 700 Mt. Vernon Street, Camden, be and the same is hereby suspended for forty (40) days, commencing at 2 a.m. Wednesday, January 27, 1960, and terminating at 2 a.m. Monday, March 7, 1960.

WILLIAM HOWE DAVIS
Director

New Jersey State Library