

26 Rose Avenue,
Madison,
Morris STAFF, NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1011

APRIL 26, 1954

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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 1011

APRIL 26, 1954

1. APPELLATE DECISIONS - O'BERTZ v. PERTH AMBOY.

VICTORIA O'BERTZ,
trading as OBERTZ TAVERN,

Appellant.

v.

BOARD OF COMMISSIONERS OF
THE CITY OF PERTH AMBOY,

Respondent.

ON APPEAL

CONCLUSIONS AND ORDER

Walter Waverczak, Esq., by William K. Miller, Esq., Attorney
for Appellant.
Francis M. Seaman, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action on November 18, 1953, whereby it denied, without stating any reason, an application for transfer of appellant's plenary retail consumption license from 22 Smith Street to 33-35 Smith Street.

In her petition of appeal appellant contends that such denial was arbitrary and unreasonable.

In its answer, respondent asserts that there are three plenary retail consumption licenses on the north side of Smith Street, between Rector Street and High Street (in the same block as the proposed new premises), all close together; that appellant's past record "and the type of persons who patronize her present licensed premises and disturbances occurring at said premises are not conducive to the issuance of the transfer requested"; that public necessity and convenience do not warrant the granting of the transfer; and that "It is in the interest of the public welfare of the City of Perth Amboy that the action of the respondent in denying the application for transfer be in all respects affirmed".

At the hearing on this appeal numerous exhibits were introduced in evidence by stipulation, including the written objections presented to respondent and petitions for and against the granting of the transfer. In addition, appellant, her daughter, her son and her attorney testified for appellant while a clergyman, four persons who reside near the proposed new location and three of the five members of the local issuing authority testified for respondent.

From all of the evidence the following facts appear to be undisputed: On October 19, 1953 appellant filed her application for the place-to-place transfer, the denial of which is the subject of this appeal. Notices were published as required by law. In the application and notices the premises to which the transfer was sought were properly identified as 33-35 Smith Street but, in answer to a number of questions designed to elicit information with respect to previous violations of law and appellant's record as a licensee, appellant gave negative answers, thereby denying and concealing

certain convictions (hereafter recited) and the fact that, in 1935, the then local issuing authority had refused to renew a plenary retail consumption license which she then held for premises 8 Smith Street. Objections to the transfer having been filed the present issuing authority held a public hearing November 4, 1953, at which the question of false answers in the application was raised. The hearing was continued on November 18 to afford appellant an opportunity to engage counsel. At or before the continued hearing on November 18, appellant filed an amended application amending the answers to three of the questions (Nos. 33, 34 and 35) whereby she disclosed the following convictions:

February 11, 1927--convicted of selling liquor to three boys, 15, 17 and 18 years, respectively--paroled.

March 7, 1932--convicted on a charge of disorderly conduct liquor violation and fined \$50.

May 7, 1933--convicted as a disorderly person on a charge of possession of liquor at 8 Smith Street and fined \$50.

May 13, 1935--convicted of violation of City liquor ordinance, selling liquor to a girl under 17 years, and fined \$50.

May 13, 1935--convicted of violation of City liquor ordinance, selling liquor to a girl under 17 years (different girl)--sentence suspended.

The amended application also amended Question No. 40 to disclose the fact that, on May 31, 1935, an application by this same appellant for renewal of a license had been denied.

In the amended application the address of the premises to which the transfer is sought was inadvertently given as 22 Smith Street. However, the issuing authority apparently ignored this error and proceeded to dispose of the matter on the merits.

At the continued hearing below the issuing authority heard further comment both favoring and opposing the transfer. The minutes of the meeting state that 24 objectors appeared and were counted. After recessing, the members of the local issuing authority voted unanimously to deny the application for transfer, without further comment.

Appellant, admittedly, has been a licensee on Smith Street for many years. From December 18, 1933 until June 30, 1935 she held a plenary retail consumption license for 8 Smith Street. As hereinabove indicated, a renewal of that license was denied in 1935. From 1936 to 1939 a license was held by appellant's daughter, Rose Melvin, first for 22 Smith Street then for 8 Smith Street. In 1939 the license was retransferred to 22 Smith Street. Appellant again obtained a license for 22 Smith Street, effective July 1, 1940, and thereafter such license has been renewed annually to appellant for the premises at 22 Smith Street. Those premises are included in a housing and redevelopment project and, as a result thereof, appellant is being required to vacate.

Appellant testified that she looked all over for a place and finally bought the premises at 33-35 Smith Street, which are on the southwest corner of Smith Street and Rector Street. No. 22 Smith Street is on the northeast corner of Smith Street and Willocks Lane. Thus the two premises are on opposite sides of Smith Street and are approximately 150 to 200 feet apart.

Appellant further testified that she is a widow, 65 years of age; that she supports herself on the income from her licensed business; that she has been a licensee on Smith Street for many years; that she now has to move; that she has no previous record of violations; that she has not been convicted of any offense since 1940 and that she has had no trouble with the police. On cross-examination she admitted selling alcoholic beverages during Prohibition.

Appellant's daughter testified with respect to the various licenses heretofore held by appellant and herself and further testified that she (the daughter) had made out the license applications for her mother.

Appellant's son testified that he tends bar for her and generally corroborated her testimony.

Mr. Wawerczak, appellant's attorney, testified with respect to the neighborhood and the buildings on Smith Street. He further testified that he has personally inspected appellant's present licensed premises and that such premises are kept clean.

The contentions of the objectors, as they appear from their testimony and the exhibits, are as follows: Appellant's present licensed premises are frequented by undesirable males and females; women passing the premises have been insulted by men (some of whom appear to have been intoxicated) standing in front of the premises; fights and brawls have occurred there; the present premises are noisy even late at night; many more children would have to pass the premises at the proposed new location; the location of a tavern at that site would be inconsistent with the redevelopment program and there are already enough taverns (three or four) within one block of that site. Several of the female witnesses and a clergyman testified with respect to certain extremely unpleasant personal experiences, involving insults, while passing appellant's present licensed premises and the clergyman testified that, because of the location of 33-35 Smith Street, many children who do not now have to pass appellant's licensed premises would have to pass the proposed new premises in order to travel west on Smith Street to the church "center." This would also be true of shoppers going to the stores on Smith Street west of Rector Street. The objectors admitted, however, that they had not previously complained to the local issuing authority and had not objected to the annual renewals of the license.

The three members of the local issuing authority who testified at the hearing on this appeal were also present at the hearings below. Each testified that he had considered the entire record before the Board of Commissioners, including the protests, appellant's previous record of convictions and the police records which disclosed the following in addition to the convictions hereinabove set forth:

April 8, 1953--Complaint received at 7:10 p.m. from 22 Smith Street, Officers Michael Pavlovics and Gerald Peterson assigned. No police action taken.

June 1, 1953--Complaint received 10:20 p.m. Officers found 72-year-old male suffering from bump on scalp--Had been sitting on stool in Mom's (appellant's) Tavern--fell backward, hitting head on floor.

September 5, 1953--Fight on sidewalk in front of Mom's (appellant's) Tavern--man lying in gutter in semi-conscious state--another man lying on sidewalk, unconscious--another man standing near entrance to tavern--men refused to sign complaints against each other--disorderly persons charges dismissed. (Chief of Police

Bachman notified the Board of Commissioners, in writing, that after a thorough investigation of this matter he was of the opinion that there had not been any violation of the statute or regulations and that no grounds for disciplinary action existed.)

Each of the three commissioners also testified that, until the hearings below, he was unaware of appellant's previous record of convictions and the fact that she had ever been denied a license. In this connection Commissioner Balinski testified that he had considered the record of convictions only with respect to the present application for transfer, but Commissioners Mihalko and Tarloski testified that they believed that such record reflected on appellant's general fitness to hold a license. Commissioner Tarloski testified that, during the recess on November 18, 1953, he expressed that thought to the other Commissioners, saying that, in his opinion, she should be denied a license entirely, not merely the transfer. It was admitted, however, that no proceedings have been instituted by the local issuing authority for suspension or revocation of appellant's license, either for the false answers in her successive license applications or for any other reason.

It was stipulated that the present premises and the proposed new premises are located in one of the oldest sections of the City, which is a mixed business and residential zone, and that in the near vicinity there is an industrial zone. Appellant contends that both premises are in the same neighborhood while several of respondent's witnesses, including the three City Commissioners, testified that they considered the two premises to be in different neighborhoods. These witnesses described the buildings in the area east of Rector Street as being run-down, with little or no attempt at modernization, while the area west of Rector Street is a shopping center where the buildings have been cared for and improved.

Commissioner Balinski testified that the two premises are in different blocks and that more people use the part of Smith Street where the proposed new premises are located than the part where the present premises are located. Commissioner Mihalko testified that the present premises are "located in an area which is surrounded by a tremendous amount of vacant land" whereas the area in which the proposed new premises are located is more congested and there is more business and there are more residents. He further testified that the area east of Rector Street, where the present premises are located, is a different business section because "on that side of the street there is nothing offered as far as merchandise is concerned." Commissioner Tarloski testified that, while both areas are zoned for business, the block west of Rector Street has better business establishments than are found east of Rector Street; that no effort has been made to improve the buildings in the latter area so as to "attract finer clientele" and that, while he would have no objection to members of his family shopping in the block between Rector and High Streets, he would object to their going beyond Rector Street to the area where appellant's present licensed premises are located. He said, in part, "The type of business that is conducted there is not the type that you would send your wife and daughter to do business with because of the character."

Because of this conflict in the testimony I personally inspected the neighborhood. While it may be true that some of the buildings east of Rector Street are different in use and appearance from some of those west of Rector Street, I cannot find, as a fact, that No. 22 Smith Street and No. 33-35 Smith Street are in different neighborhoods. The two premises are less than 200 feet from each other and are in the same general neighborhood.

Several of the witnesses, including the three City Commissioners, testified that there are three taverns in the block in

which the proposed new premises are located and that, in their opinion, public necessity and convenience do not require the grant of the application to transfer the license.

In appeals of this nature the burden is on the appellant to establish that the action of the issuing authority was erroneous and should be reversed. Rule 6 of State Regulations No. 15.

No one is entitled to a license to sell alcoholic beverages as a matter of right. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946). Nor is there any inherent right to transfer such a license to other persons or premises. The issuing authority, in the exercise of its discretion, may grant or deny a transfer. If denied on reasonable ground, such action will be affirmed. Fafalak v. Bayonne, Bulletin 95, Item 5; VanSchoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; Semento v. West Milford, Bulletin 253, Item 2; Masarik, et al. v. Milltown, Bulletin 283, Item 10; Biscamp & Hess v. Teaneck, Bulletin 821, Item 8; Kemo v. Trenton, Bulletin 983, Item 2.

On the other hand, where it appears that refusal of a transfer is arbitrary or unreasonable, the action of respondent in refusing the transfer will be reversed. Maliken v. Neptune City, Bulletin 915, Item 2; Shapley v. Delaware, Bulletin 294, Item 7.

Before proceeding to the merits two other matters should be disposed of.

First, at the hearing below, respondent announced no reason for its decision. While it has been repeatedly indicated that, in all fairness, a local issuing authority should state the reasons for its decisions, such failure is not fatal. Since this is a trial de novo, appellant is being accorded her full day in court. Furthermore, the reasons were set forth in respondent's answer. Trinity Methodist Church of Rahway, N. J. v. Rahway, et al., Bulletin 972, Item 3; CF. Goricica v. Wallington, Bulletin 659, Item 10. However, under these circumstances and even though there is no indication of improper motivation, the reasons now assigned by respondent for its action ought to be scrutinized most carefully.

Second, Commissioner Tarloski testified that some of the objectors had communicated with him and had asked him if there were legal means of objecting to the transfer and how they could do it. He further testified that he told them what they could do in this regard and had been "guiding them and advising them" on the petition which had been circulated in opposition to the transfer. On cross-examination he was asked whether he had disqualified himself at the hearings below and, when he said that he had not, he was then asked whether he thought that that was "fair" to the licensee in view of the fact that he was to sit in judgment upon the application for transfer. He then testified that he had not "guided" or "advised" the objectors beyond giving "procedural advice" as to "how they could form a petition and how they could appear before the Board." He further testified that his vote was based on a consideration of the entire record before the issuing authority. While there may be some doubt as to the wisdom of the "guidance" and "advice" afforded the objectors by Commissioner Tarloski, it would not appear that his conduct constituted an improper interest in the matter or in any way required him to disqualify himself. I am satisfied that appellant was not prejudiced by his participation in the vote, which was unanimous. There is no evidence that he influenced the vote of any of the other four members of the Board, all of whom were present at both hearings below.

On the merits, it would appear from the testimony of three of its members that the Board was influenced by these three factors, (1) the protests of the neighbors and the reasons behind those

protests, (2) appellant's record of convictions and the police records, and (3) the difference in the character of the neighborhood at the old and the proposed new premises.

As to (1), while there is some evidence tending to establish that, in the past, the manner in which appellant's licensed premises have been conducted has been something less than satisfactory, some of the incidents complained of could not be traced directly to appellant's premises. Furthermore the objections lose force by virtue of the fact that it was generally admitted that no complaints had been registered with the local authorities, no objections to license renewals had been filed and no disciplinary proceedings instituted against appellant during all of the many years she has held a license on Smith Street. Then again, if objectionable conduct in operation were to occur at the new premises adequate remedies to correct that situation would be readily at hand.

As to (2), admittedly, appellant falsely answered the questions thereby suppressing the fact of her convictions, aforementioned, and the fact that a renewal application was once denied. Appellant's daughter testified that she personally made out the license applications for her mother. This is not unusual considering the relationship between them, appellant's age and the fact that said daughter at one time held a license in her own name in the same neighborhood. Of course, it is no defense that someone other than the licensee prepared the applications. One's signature to a sworn document imputes to the affiant knowledge of its contents even though it may not have been read by or to him. State v. Siegler, 12 N.J. 520 (Sup. Ct. 1953); Kleinberg v. Harrison, Bulletin 984, Item 2.

Commissioner Balinski, who has been a member of the issuing authority since 1938, and Commissioners Mihalko and Tarloski, who have been members since 1950, all testified that they had no knowledge of these convictions when they voted on appellant's earlier applications. I have no way of knowing whether the other two commissioners also were unaware of these convictions or whether they viewed them as affecting appellant's fitness to hold a license. Thus, I do not know whether a majority of the five members considered appellant unfit to be a licensee. I am not aided in divining their view on this matter by the fact that they instituted no proceedings to suspend or revoke her license even after they learned of such record and the false answers concealing such record when appellant filed her amended application in November 1953. Furthermore, respondent has thereby permitted appellant to continue to hold a license and to conduct business at her present licensed premises at 22 Smith Street.

The question of personal "fitness" to hold a liquor license is, generally speaking, unrelated to the geographical location of the licensed premises and the denial of a place-to-place transfer based upon "unfitness" appears to be inconsistent with permitting such "unfit" person to continue to hold a license and to continue to do business at the old location. Respondent, as the local issuing authority, has the duty to determine whether appellant's record of convictions or her false answers concealing such record, or both, are of such nature as to require disciplinary action to suspend or revoke her license, pursuant to R.S. 33:1-31, or to warrant denial of a renewal of such license. However, its determination on these matters rests within its sound discretion and since, among other things, its action or inaction, as the case may be, may possibly come before me on appeal, no opinion whatsoever is expressed herein with respect thereto. In evaluating this alleged reason I must also take into account two other important factors. First, it is the duty of respondent, as the local issuing authority, to investigate applicants for license (R.S. 33:1-24), and second,

appellant's record of convictions and other police record are all in the City of Perth Amboy and thus were, at all times, readily available to respondent so that even a cursory inspection thereof would have revealed the true situation.

As to (3), respondent based its action, at least in part, upon the premise that appellant was seeking to transfer her license from one neighborhood to another neighborhood. As hereinabove indicated, I have found that such premise is contrary to the fact. Thus, we are confronted with a geographical situation closely resembling that in a number of other cases previously adjudicated. While it is true that, generally, the question of public necessity and convenience is paramount in determining whether a license should be granted for a particular location, the instant case involves not the issuance of a new or additional license but the place-to-place transfer of a license which has been in existence for many years within this same business area. In such cases it has been held that the mere fact that other licensees also serve the same neighborhood is not a valid reason for denying a place-to-place transfer from one location in a neighborhood to another location in the same neighborhood, since no increase in concentration of licenses results from such transfer. Kupay v. Passaic, Bulletin 803, Item 9; Grower v. Hackensack, Bulletin 789, Item 1; Costa v. Verona, Bulletin 501, Item 2.

Under all the facts and circumstances in this case I find that the denial of the transfer was unreasonable. The decision below is therefore reversed.

Accordingly, it is, on this 6th day of April 1954,

ORDERED that the action of respondent be and the same is hereby reversed, and the respondent is directed and ordered to issue to the appellant a place-to-place transfer, pursuant to the conclusions herein.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary
Proceedings against

THE GLENWOOD TAVERN, INC.,
T/a THE GLENWOOD TAVERN
842 West Side Avenue
Jersey City 6, New Jersey

ON PETITION

O R D E R

Holder of Plenary Retail Consumption
License C-451, issued by the Municipal
Board of Alcoholic Beverage Control of
the City of Jersey City.

Meehan Brothers, Esqs., Attorneys for Petitioner.

BY THE DIRECTOR:

On March 29, 1954, an order was entered herein suspending defendant's license for a period of ten days, commencing at 2 a.m. April 5, 1954, and terminating at 2 a.m. April 15, 1954.

It appears from a verified petition filed herein by Louis E. Renton, Secretary and Treasurer of defendant corporation, that prior to the entry of the aforesaid order defendant had made definite arrangements to service twelve dinner parties of ten people each at its licensed premises on Palm Sunday, April 11, 1954.

It sufficiently appearing that many members of the general public will suffer hardship because of the suspension of defendant's license in accordance with the terms of the original order, and no cause appearing to the contrary,

It is, on this 2nd day of April, 1954,

ORDERED that the suspension of ten days heretofore imposed in these proceedings shall commence at 2 a.m. April 5, 1954, and continue in effect until 2 a.m. April 11, 1954; that thereafter said suspension shall be lifted until 2 a.m. April 12, 1954, when it shall again become effective and continue in effect until 2 a.m. April 16, 1954.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (PERMITTING MAKING ARRANGEMENTS ON LICENSED PREMISES FOR ILLICIT SEXUAL INTERCOURSE) - PERMITTING OBSCENE LANGUAGE ON LICENSED PREMISES - LICENSE SUSPENDED FOR 120 DAYS.

In the Matter of Disciplinary
Proceedings against

JACOB E. HUHN & GEORGE J. OLSH
488 Springfield Avenue
Newark 3, New Jersey

Holders of Plenary Retail Consumption
License C-733, issued by the Municipal
Board of Alcoholic Beverage Control of
the City of Newark.

CONCLUSIONS
AND ORDER

Defendant-licensees, by George J. Olsh, Partner.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to the following charges:

- "1. On Tuesday night, December 29 and early Wednesday morning, December 30, 1953, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the making of arrangements for illicit sexual intercourse, in violation of Rule 5 of State Regulations No. 20.
- "2. On the occasion aforesaid, you allowed, permitted and suffered foul, filthy and obscene language and conduct in and upon your licensed premises, in violation of Rule 5 of State Regulations No. 20."

The file herein discloses that three ABC agents entered defendants' licensed premises about 10:15 p.m. Tuesday, December 29, 1953. George J. Olsh was tending bar. Two couples entered and remained at the bar for about one hour when the two males left the premises, leaving the two females -- Marie and Jeannette -- at the bar. Marie joined another male at the bar, remained with him for about one-half hour and then left the premises. Jeannette sat alone at the bar for some time, and she and the bartender carried on a conversation which was loud, filthy and disgusting. After some time one of the agents approached Jeannette and said to her, "These two kids with me want me to take them some place where they can get

some action." Jeannette replied, "What do you want, women?" and later said, "Stick around, I go out." The net result of the subsequent conversation between her and the agents was that she agreed to have sexual intercourse with each of them but indicated that she could not take them to her room. When Jeannette left the bar to go to the ladies' room one of the agents said to the bartender, "She's going to lay us all for five dollars a piece, is she clean?" and the bartender said, "Oh yeah, she's clean." In reply to a further inquiry the bartender said that she did not engage in unnatural sexual acts. The agents then left the premises with Jeannette, but one of the agents returned with her to the premises while the other two contacted the Newark Police. As a result, the serial numbers of two five-dollar bills were noted before one of these two agents returned to defendants' premises and passed one of the bills to the agent who had previously returned to the premises. Both bills were subsequently handed by the agents to Jeannette and were found in her possession after she had left the premises with the two agents and entered an automobile owned by one of the agents.

In a statement given to the agents Jeannette admitted that she had been arrested in 1943 on a charge of fornication, and in 1947 on a charge of prostitution; that, as a result of her first arrest, she served six months in the House of Good Shepherd and, as a result of her second arrest, she served three years in a reformatory. She further stated that on the evening in question she had "one too many;" that neither she nor Marie has ever taken any other men out of defendants' tavern for immoral purposes, and that George J. Olsh doesn't take any money and "doesn't get me any guys."

In a statement given to the agents George J. Olsh said that he has been a partner in the business for more than four years. He admitted that his conversation with Jeannette was filthy. He denied that he had heard any of the conversation between Jeannette and the agents concerning sexual intercourse, and stated that, when one of the agents asked if she was clean, he replied, "I guess so." He denied that he had any knowledge that Jeannette was a prostitute and said that, during the eight months he had known her, he "never saw her promote anybody in the place."

Defendants have no prior record. It is somewhat difficult to fix a proper penalty in this case. Where the evidence establishes that defendant or his agents or employees permitted solicitation for immoral purposes and the making of arrangements for illicit sexual intercourse on the licensed premises, the license is usually revoked. Re Merjack Corporation, Bulletin 998, Item 1, and cases therein cited. There is no doubt that arrangements for illicit sexual intercourse were made on defendants' premises, but there is a doubt as to whether George J. Olsh heard the conversation concerning these arrangements or knew or had reason to know that the female was a prostitute. Under all the circumstances, including the plea entered herein, I shall suspend defendants' license for one hundred twenty days. The question as to whether George J. Olsh is a fit person to hold a license should be carefully considered by the local issuing authority if he is one of the applicants for renewal of the license.

Accordingly, it is, on this 2nd day of April, 1954,

ORDERED that plenary retail consumption license C-733, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Jacob E. Huhn & George J. Olsh, for premises 488 Springfield Avenue, Newark, be and the same is hereby suspended for the balance of its term, effective at 2 a.m. April 12, 1954; and it is further

ORDERED that, if any license be issued to these licensees or to either of these licensees or to any other person for the premises in question for the 1954-55 licensing year, such license shall be under suspension until 2 a.m. August 10, 1954.

WILLIAM HOWE DAVIS
Director.

4. LICENSED PREMISES - ENTERTAINMENT - BATHING OR OTHER BEAUTY CONTEST TABOO AT TAVERNS.

April 7, 1954

Dear Madam:

In your letter of April 2nd, received today, you ask whether a bathing beauty contest may be held in the cocktail lounge at your tavern.

We have been permitting bona fide talent or so-called "amateur nights" at taverns under the conditions specified in Re Bieler, Bulletin 767, Item 14, copy enclosed. Entertainment of song and dance is a traditional part of the tavern business.

But as for bathing beauty contests, that is quite a different matter. All things wisely considered, I do not believe that a tavern is the proper place or milieu for any bathing or other beauty contest, no matter under whose auspices held. To drop such a contest into the midst of the pastime of drinking at a tavern is like adding fire to the fire-water. The Trojan Wars started because of an attempt, under serene Grecian skies, to award a prize to the goddess adjudged the most beautiful. How much more dire might have been the consequences had the contest taken place in the Greek equivalent of a tavern or barroom!

In more serious vein, it is clear that holding bathing or other beauty contests, with their undue appeal for the young to enter therein and also with their inevitable emphasis upon aspects of dress or undress, would open the door to undesirable problems at taverns. From the viewpoint of sound liquor control, I therefore disapprove of any bathing or other beauty contest at any tavern in this state.

The "Miss America" contest in New Jersey is internationally known. Let's not dim its reputation by the spectacle of taverns in the state having their own beauty contests to the clink of the whiskey glass.

Very truly yours,

William Howe Davis
Director.

5. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PERMITTING
 OBSCENE LANGUAGE ON LICENSED PREMISES - LICENSE SUSPENDED
 FOR 25 days, LESS 5 FOR PLEA.

In the Matter of Disciplinary
 Proceedings against

CLAIRE PINIAZIK & WILLIAM OSIECKY
 506 Springfield Avenue
 Newark 3, New Jersey

CONCLUSIONS
 AND ORDER

Holders of Plenary Retail Consumption
 License C-327, issued by the Municipal
 Board of Alcoholic Beverage Control of
 the City of Newark.

Claire Piniazik & William Osiecky, Defendant-licensees, Pro Se.
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to charges alleging that
 (1) they sold, served and delivered alcoholic beverages to minors
 and permitted the consumption of such beverages by said minors
 in and upon their licensed premises, in violation of Rule 1 of
 State Regulations No. 20; (2) they allowed, permitted and suffered
 foul, filthy and obscene language in and upon their licensed
 premises in violation of Rule 5 of State Regulations No. 20.

The file herein discloses that on Friday night,
 February 5, and early Saturday morning, February 6, 1954, agents
 of this Division observed two females whom they later learned to
 be 17 and 19 years of age respectively, seated in a booth consuming
 beer. When questioned by the agents they claimed that they were
 twenty-two years of age. However, further investigation disclosed
 their true ages and statements were obtained from the minors in
 which they admitted their true ages and that they had been served
 and had consumed drinks of beer at defendants' licensed premises
 on the occasion in question. The younger minor denied having
 visited defendants' licensed premises on any other occasion but
 the older minor stated that she had been there before and had
 verbally misrepresented her age as twenty-two. Both minors denied
 that they had made any written representations with respect to
 their ages at any time.

The verbal misrepresentation of her age by one of the
 minors is neither a defense nor an excuse. R.S. 33:1-77; Re
Rogers, Inc., Bulletin 1002, Item 5; Re Roey, Bulletin 747, Item 3.

While upon the licensed premises the agents heard a male
 customer utter foul, filthy and obscene language which was re-
 peated by one of the licensees. No useful purpose would be served
 by repeating the language here. Suffice it to say that such
 language is clearly prohibited by Rule 5 of State Regulations
 No. 20.

Defendants have no prior adjudicated record. Since
 one of the minors was only 17 years of age, I shall suspend de-
 fendants' license for fifteen days. Re Bochniak, Bulletin 989,
 Item 9. I shall suspend the license for an additional ten days on
 charge 2. Re Lukas, Bulletin 963, Item 4; Re Arno, Bulletin 830,
 Item 1. This makes a total suspension 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 1st day of April, 1954,

ORDERED that Plenary Retail Consumption License C-327, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Claire Piniazik & William Osiecky, for premises 506 Springfield Avenue, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m., April 7, 1954, and terminating at 2:00 a.m., April 27, 1954.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS, IN VIOLATION OF REGULATIONS NO. 38- LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

JAMES P. GALLAGHER
T/a JIMMY GALLAGHER'S TAVERN
1085 Summit Avenue
Jersey City 7, New Jersey

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-495, issued by the Municipal
Board of Alcoholic Beverage Control of
the City of Jersey City.

James P. Gallagher, Defendant-licensee, Pro se.
David S. Piltzer, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold alcoholic beverages at retail in original containers for off-premises consumption, in violation of Rule 1 of State Regulations No. 38.

The file herein discloses that on Sunday, February 28, 1954, two ABC agents observed a sale by defendant to two patrons of six cans of beer for off-premises consumption. At 6:30 p.m. one of the agents purchased from defendant six cans of beer. The agents left the premises with the beer, but returned and identified themselves.

Defendant has no prior record. I shall suspend his license for the minimum period of fifteen days. Re Fleming's Wine & Liquor, Inc., Bulletin 984, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 31st day of March, 1954,

ORDERED that plenary retail consumption license C-495, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to James P. Gallagher, t/a Jimmy Gallagher's Tavern, for premises 1085 Summit Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. April 5, 1954, and terminating at 2 a.m. April 15, 1954.

WILLIAM HOWE DAVIS
Director

7. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR
 LICENSE CONCEALING MATERIAL FACT (NON-RESIDENCE) - ILLEGAL
 SITUATION CORRECTED - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary
 Proceedings against

CATHERINE MADGE
 T/a CLUB 400
 Route #17
 Mahwah, New Jersey

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption
 License C-4, issued by the Township
 Committee of the Township of Mahwah.

Vanderburgh & Aronsohn, Esqs., by I. William Aronsohn, Esq.,
 Attorneys for Defendant-licensee.

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

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"In your application dated May 16, 1953, filed with the Mahwah Township Committee, upon which you obtained your current plenary retail consumption license, you falsely stated your residence in answer to Question 3 as Route #17, Mahwah, New Jersey, and also falsely stated 'Yes' in answer to Question 27(a), which asks: 'Are you and all persons mentioned in this application actual and bona fide residents of the State of New Jersey at the present time?', whereas in truth and fact you resided at such time at 337 Third Avenue, New York City, said false statements being in violation of R. S. 33:1-25."

The evidence herein discloses that defendant obtained the license which she now holds by the transfer thereof to her from one Wilbur Kelly in October 1952. Thereafter she filed an application, dated May 16, 1953, for renewal of her license for the present licensing year, and said application contained the questions and answers set forth in the charge herein.

On behalf of the Division there was introduced into evidence a statement obtained by an ABC agent from defendant on August 25, 1953, which statement contains the following questions and answers:

"Q. Where do you live?

A. I really live at 337 - 3rd Ave., New York City, because I vote from that address and my car is registered from that New York address. I have lived at 337 - 3rd Ave., N.Y.C., about 8 years, I lived in the New York City neighborhood about 13 years.

Q. Do you work in the grocery store at 337 - 3rd Ave., New York City?

A. Yes, I usually get up at 5 a.m. every morning and work there until about 3 p.m., when I come to the tavern in Mahwah and I work in the tavern from about 4 p.m. until about 2 p.m. (sic). The grocery store is presently closed in New York City for two weeks vacation.

- Q. Do you have any New Jersey residence?
A. I have been sleeping at the Mahwah tavern nights off and on. I usually sleep two or three hours here at the 400 club and then I leave for New York where I open up around 7 a.m. as I have early morning grocery customers at my place of business."

At the hearing defendant testified that she still has an apartment on Third Avenue, New York City, and operates a grocery store, for which she holds a beer license, at the same address. She further testified that in May 1953 she was residing "most of the time in Jersey" and bases this contention on the fact that she slept almost every night at the Club 400 where she had a small room containing a convertible couch and a few chairs. She admits, however, that in May 1953 she was registered to vote in New York City; that she held a New York driver's license, and that her automobile was registered in the State of New York.

After considering all the evidence I am satisfied that in May 1953 defendant was not a resident of the State of New Jersey within the meaning of the term as used in R.S. 33:1-25. In Re Gellert, Bulletin 618, Item 1, it was held that the words "resident" and "residence" as presently used in the Alcoholic Beverage Law contemplate physical presence in addition to domicile. It is clear that, at least prior to May 1953, defendant had not changed her domicile from New York to New Jersey because, at least up to that time, she had not established a residence in New Jersey "animo manendi." Hence I find defendant guilty as charged.

At the hearing herein it appeared, however, that defendant and her brother-in-law purchased in September 1953 a four-room house in Upper Saddle River, New Jersey. Defendant testified that she has furnished this house "as much as I could afford to buy," that she now spends all of her spare time at the Upper Saddle River place except that she goes to New York once or twice a week, and that she considers the Upper Saddle River place as her permanent address at this time. Under these circumstances it appears that she is now a bona fide resident of the State of New Jersey (Re Heesch, Bulletin 635, Item 9), and hence that the unlawful situation has been corrected.

Defendant has no prior record. Because of the false answer in her application filed on May 16, 1953, I shall suspend her license for a period of ten days. Re Meyers and Phelan, Bulletin 635, Item 4; Re Heesch, supra.

Accordingly, it is, on this 30th day of March, 1954,

ORDERED that plenary retail consumption license C-4, issued by the Township Committee of the Township of Mahwah to Catherine Made, t/a Club 400, for premises on Route #17, Mahwah, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. April 6, 1954, and terminating at 2 a.m. April 16, 1954.

WILLIAM HOWE DAVIS
Director

8. PLENARY RETAIL TRANSIT LICENSE - OBJECTIONS TO ISSUANCE OF,
HELD TO BE WITHOUT MERIT.

In the Matter of Objections to the)
Granting of Applications filed by)

N. V. NEDERLANDSCH-AMERIKAANSCH)
STOOMVAART MAATSCHAPPI)
(HOLLAND-AMERICAN LINE))

Pier, foot of Fifth Street) CONCLUSIONS
Hoboken, New Jersey) AND ORDER

For Plenary Retail Transit Licenses)
for "S.S. Maasdam", "S.S. Ryndam",)
"M.V. Westerdam", "S.S. Nieuw Amsterdam")
and "M.V. Noordham.")

Joseph C. Dunn, Esq., Attorney for Hoboken Liquor Dealers)
Association, Objector.)

Emory, Langan & Lamb, Esqs., By Raymond J. Lamb, Esq.,)
Attorneys for Applicant.)

BY THE DIRECTOR:

Written objections to the granting of the applications
for plenary retail transit licenses having been filed, a hearing
was held on March 23, 1954.

At the hearing the attorney for the objector introduced
the written objection, which alleged in substance that:

- (1) Applicant is not qualified to hold a license because
it was not a resident of New Jersey or a citizen of
the United States at the time of the submission of its
application and because the holders, directly or in-
directly, of more than ten per centum (10%) of its
stock do not qualify as individual applicants;
- (2) Upon information and belief, that applicant has been
selling alcoholic beverages, without a license, to
passengers, guests, crew members and longshoremen
while its vessels were docked in Hoboken;
- (3) At no time are the vessels "in transit" in New Jersey.

The only evidence presented by the objector was given
by Frank J. Bellizzi, President of the Hoboken Liquor Dealers
Association, who testified that a member of the Association had
reported to him that longshoremen and guests have been buying and
drinking liquor aboard the ships. This testimony, which was
purely hearsay, was denied by Jacob Van Der Werff, operating
manager of applicant corporation. The latter witness admitted,
however, that, while the vessels are docked at Hoboken, a certain
amount of beer has been lawfully taken out of bond and sold at
"practically cost" to members of the various crews at relaxation
periods, and only during certain hours. He further testified that
the members of the crew are residents of the Netherlands, and some
other countries of Europe, and that the applications herein were
filed because question had arisen as to the legality of the sales
to crew members as a result of an investigation made by ABC
agents.

As to (1): Applicant is a corporation of the Netherlands.
The applications disclose that the corporation is authorized to do
business in New Jersey, and has a Registered Office and Registered

Agent in this State. Aise D. Swierstra, Assistant Comptroller of the Corporation, testified that the 300,000 shares of stock of the corporation are issued to bearer, are transferred by delivery, are traded on the Amsterdam Exchange, and that, in his opinion, no person owns more than ten per centum of the stock. He further testified that the officers of the corporation are designated as "General Manager" and "Manager" instead of "President" and "Vice President." Upon the evidence presented it does not appear that the provisions of R.S. 33:1-25 would prevent the applicant from holding the licenses.

As to (2): There is no evidence of prior violations, except perhaps as to crew members, and the issuance of the licenses is sought to remove any question as to the legality of such sales.

As to (3): The vessels are "in transit" while they are in waters subject to the jurisdiction of the State of New Jersey. This would include the period of time during which they are docked at Hoboken piers. Cf. Re Wall, Bulletin 53, Item 10.

For the reasons aforesaid, I conclude that the objections are without merit.

The applications will be granted if and when they are in proper form.

WILLIAM HOWE DAVIS
Director

Dated: April 6, 1954

9. STATE LICENSES - NEW APPLICATIONS FILED.

Monarch Wine Company of Ga.
Sawtell Ave., S. E.,
Atlanta, Ga.

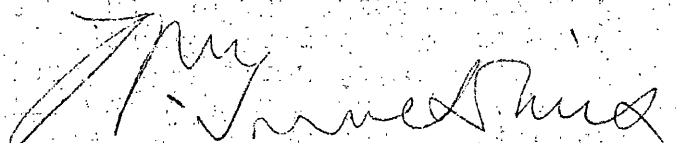
Application filed April 19, 1954 for Transportation License.

George Haines
21 Peshine Avenue
Newark, N. J.

Application filed April 19, 1954 for transfer of
Transportation License T-49 from Concesso Pizzarelli.

Tomasello Winery
225 White Horse Pike
Hammononton, N. J.

Application filed April 19, 1954 for transfer of
Plenary Winery License V-19 from Annie Tomasello.



William Howe Davis
Director